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BEFORE THE  
PHILADELPHIA WATER COMMISSIONER

- - -

IN THE MATTER OF  
THE PHILADELPHIA WATER DEPARTMENT'S  
PROPOSED INCREASE IN RATES  
FOR WATER AND WASTEWATER UTILITY SERVICES

PHASE II

- - -

TECHNICAL HEARING

- - -

January 13, 2009  
10:05 a.m.

- - -

1515 Arch Street, 18th Floor  
Philadelphia, PA

- - -

BEFORE: HARRIS T. BOCK, ESQ.  
Hearing Officer

- - -

VERITEXT NATIONAL COURT REPORTING COMPANY  
KNIPES COHEN  
1801 Market Street - Suite 1800  
Philadelphia, Pennsylvania 19103

APPEARANCES:

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- - -

ALSO PRESENT:

MICHAEL L. GALBRAITH, ESQ.  
The Dispute Resolution Institute

GERALD D. LEATHERMAN, ESQ.  
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City of Philadelphia Law Department

KEVIN R. DUNLEAVY, ESQ.  
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1           PHASE II - TECHNICAL HEARING

2           THE HEARING OFFICER: We are going  
3 to convene this hearing right now. This  
4 is a further proceeding pursuant to the  
5 regulations of the Philadelphia Water  
6 Department, a hearing specifically with  
7 regard to proposed stormwater rates.  
8 This hearing has been called and set  
9 pursuant to Hearing Officer Order No. 17.

10           Mr. Dasent, are you ready to proceed  
11 in some fashion?

12           MR. DASENT: Yes. If Your Honor  
13 please, you requested that we give a  
14 presentation on stormwater to give sort  
15 of an overview for your benefit of the  
16 proposals that we're undertaking in the  
17 context, the broader context, within  
18 which this new allocation approach is  
19 being undertaken.

20           Joanne Dahme, a witness for the  
21 Department, is prepared to give that  
22 presentation today. She has not been  
23 sworn as yet and perhaps for purposes of  
24 the record we would swear her in now, if  
25 you choose to do so.

1 PHASE II - TECHNICAL HEARING

2 THE HEARING OFFICER: Well, we will  
3 do that when we get to the testimony.  
4 This need not be sworn, the presentation.

5 MR. DASENT: Okay.

6 THE HEARING OFFICER: So I guess the  
7 purpose of this request was to give the  
8 Hearing Officer better information and  
9 understanding of the 619 miles of  
10 separate storm sewers, the 1,599 miles of  
11 combined sewers, as well as the 75,000  
12 stormwater inlets.

13 So with that background in mind, the  
14 floor is yours.

15 MS. DAHME: Thank you. I am going  
16 to dim the lights just a little bit just  
17 to make sure, can everyone see that?

18 Yes.

19 So good morning. I'm Joanne Dahme  
20 with the Philadelphia Water Department  
21 and this presentation is about 40  
22 minutes. Let me know if I get in your  
23 way, anybody.

24 But essentially it's a presentation  
25 we've been doing over the past year and a

1 PHASE II - TECHNICAL HEARING

2 half to commercial customers, other City  
3 agencies, other public partners, so it's  
4 matured a little bit, but essentially a  
5 lot of the information is pretty true to  
6 what we were originally presenting.

7 So it's regarding our parcel-based  
8 stormwater charge, the Water Department's  
9 more equitable approach to recovering the  
10 cost as far as stormwater management  
11 purposes.

12 We always start with the simple  
13 equation, the amount of impervious cover  
14 in an area is equal to the percentage of  
15 the high runoff, the stormwater  
16 management impact, to our sewer system  
17 and into our rivers and streams.

18 So very simply, when you think about  
19 how developed an area is, if stormwater  
20 cannot infiltrate into the ground, as we  
21 once had a very natural watershed, that's  
22 what the impact is to our sewer system  
23 and our rivers and streams. So  
24 infiltration is key.

25 The way we look at this, we look at

1           PHASE II - TECHNICAL HEARING  
2           the variety of impervious covers  
3           throughout the City. So we sort of look  
4           at all the parcels in the City of  
5           Philadelphia: Parking lot parcels take  
6           up about 18% of that; we look at roads,  
7           25% of the impervious cover; buildings  
8           could be residential buildings,  
9           commercial buildings, public buildings,  
10          about 37%.

11                 So the Water Department's goal is to  
12          design a program to reduce combined sewer  
13          overflows to our streams to better manage  
14          stormwater as it runs off of land into  
15          our streams.

16                 The way we are going about doing  
17          that is sort of dividing this into a  
18          public component and a private component.  
19          So the public component, the City of  
20          Philadelphia expects to spend about  
21          \$20 million over the next few years and  
22          then potentially about \$2 billion over 20  
23          to 35 years in doing a lot of  
24          infrastructure work to reduce the amount  
25          of impervious cover or to capture that.

1 PHASE II - TECHNICAL HEARING

2 But we're also looking at city  
3 streets as a way to do what we call green  
4 infrastructure, capturing stormwater at  
5 the source, to reduce the impact of these  
6 impervious covers on our sewage  
7 collection system and on our rivers and  
8 streams.

9 So what we're presenting today is  
10 how we're looking to provide some  
11 incentives for the privately owned  
12 parcels to do something similar to what  
13 the City of Philadelphia will be doing.

14 So the impact of impervious land  
15 covers essentially is all about  
16 infiltration. 200 years ago our City was  
17 a very natural area, covered by woods,  
18 covered by grass. We didn't have any  
19 stormwater management problems because  
20 Mother Nature is the best stormwater  
21 manager. It rained, it infiltrated into  
22 the sewer, it went back to our streams.  
23 We had a nice hydrological system.  
24 Mother Nature was doing it all.

25 As the City developed and as we

1           PHASE II - TECHNICAL HEARING  
2           became more pervious, we put down  
3           streets, buildings, sidewalks. That  
4           required stormwater management. We now  
5           had to sort of take over what Mother  
6           Nature was doing.

7           The result of that is we have  
8           increased volumes. You see the little  
9           picture of the street. Streets act as  
10          stormwater conduits. So the water that  
11          builds up in that gutter there is taken  
12          into our stormwater system or our  
13          combined sewer system, is treated or  
14          delivered to a stream.

15          The picture you see on the bottom is  
16          a picture of a typical stream system in  
17          the City of Philadelphia. You see a  
18          creek that its sides, you know, the banks  
19          are blown apart, the beds are gone, tree  
20          roots are exposed. That is really  
21          volume. So this is one of our major  
22          pollutant problems right now.

23          While we're collecting it off of the  
24          streets, that stormwater is taken  
25          directly to a sewer system which delivers

1           PHASE II - TECHNICAL HEARING  
2           that to a nearby stream and that volume  
3           sort of rampaging through these systems  
4           under heavy weather conditions is really  
5           what is causing a real impact to our  
6           stream systems and our rivers. So it's  
7           really about managing the stormwater as  
8           it impacts our streams from what falls on  
9           our land.

10           We also have problems with the  
11           pollutants that are picked up by  
12           stormwater runoff. Water is sort of the  
13           universal solvent. So when water hits  
14           the land, it picks up waste, gasoline,  
15           any kind of products that are on our  
16           land, fertilizers from lawns, takes that  
17           into our sewer systems, and we have an  
18           impact to the quality of that stormwater  
19           runoff.

20           So we have two things we're dealing  
21           with, the quality of the runoff and the  
22           volume of the runoff. This project is  
23           really based on the volume of the runoff,  
24           what is not able to infiltrate and  
25           sending it into our sewer systems and

1           PHASE II - TECHNICAL HEARING

2           into our stream systems.

3           We also deal with sewer backups as a  
4           result of that. Our systems are not  
5           designed to handle some of the intense  
6           flows that we're getting.

7           Increased temperatures --

8           THE HEARING OFFICER: Before we go  
9           on, what is a CSO?

10          MS. DAHME: It's a combined sewer  
11          overflow. The City has two separate  
12          sewer systems. One is a combined sewer,  
13          which collects waste from properties,  
14          sanitary waste, businesses, properties,  
15          but also the stormwater that's picked up  
16          from the streets, picked up in one sewer,  
17          which is normally directed to our  
18          wastewater treatment plants.

19          But those sewers were also designed,  
20          because they were built prior to the  
21          1940s, to overflow into a nearby river or  
22          stream if they're filled to capacity  
23          because you don't want them backing up  
24          into basements or backing up into the  
25          street. So they were designed to

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2 overflow into our rivers and streams.

3 The Clean Water Act nixed that, you  
4 know, in the 1970s. We had to stop that  
5 overflow over the next 20 or 30 years.  
6 So we're on a real timetable where we're  
7 looking at the volumes of that and the  
8 pollutants of that.

9 Other sections of the City have  
10 separate sewer systems and that's a  
11 problem also. So we have rainwater  
12 falling onto the streets going into storm  
13 drains, and these separate storm drains  
14 and sewers take it right into the stream.  
15 So we have a volume and pollution problem  
16 there. So we are sort of dealing with  
17 these in a variety of ways.

18 For the Department there are  
19 increasing stormwater management costs.  
20 As I mentioned, stormwater volume and the  
21 quality has been identified as the  
22 number-one pollutant to our rivers and  
23 streams today.

24 The Clean Water Act which was put  
25 together in 1974 initially had us focus

1           PHASE II - TECHNICAL HEARING  
2           on what we call point discharges, what  
3           were our wastewater plants delivering to  
4           our rivers and streams, how dirty was  
5           that water, how much did we need to clean  
6           that up.

7           We've done a good job with that over  
8           the past few decades, as have other  
9           industrial customers. Now we're really  
10          focused on stormwater. That is the  
11          major, number-one pollutant.

12          So as a result of that we expect to  
13          spend 2 to 4 billion dollars over the  
14          next 20 to 30 years making these  
15          infrastructure improvements. It might be  
16          underground storage tanks, large sewer  
17          relief systems.

18          But as I mentioned, we're also  
19          looking to do what we call recapturing  
20          the rainwater at the source, doing things  
21          on the land so you mimic what Mother  
22          Nature is doing, and I will be showing  
23          you some examples of that, how can you  
24          capture that stormwater, allow it to  
25          infiltrate so it's not getting into our

1 PHASE II - TECHNICAL HEARING

2 sewer systems.

3 As a result of some of the intense  
4 rainstorms we have had over the past few  
5 years, we have had a high incidence of  
6 basement backups in some of our combined  
7 sewer areas, so properties are getting a  
8 combination of sewage and stormwater  
9 backing into their basements. We expect  
10 to spend about \$300 million over the next  
11 five to ten years remedying that through  
12 large sewer relief systems.

13 So that's sort of where we are  
14 today. But back in the '90s, in 1994,  
15 the Water Department put together a  
16 Stormwater Citizens Advisory Council and  
17 this Council was put together at the  
18 recommendations of a variety of  
19 stakeholders.

20 We had friends groups who recognized  
21 that there was a real impact on the  
22 stream systems that they were stewarding,  
23 that they were taking care of. We had  
24 commercial customers approaching us also  
25 because they recognized what they felt

1           PHASE II - TECHNICAL HEARING  
2           they were overpaying for their stormwater  
3           fees because it was meter-based.

4           So we put the CAC together that had  
5           representatives of commercial customers,  
6           industrial customers. One of those  
7           industrial customers had a NPDES permit.  
8           We had small businesses, big businesses,  
9           universities, all sorts of stakeholders,  
10          nonprofits, public agencies, sat down  
11          with the CAC.

12          This was a two-year process and what  
13          this two-year process involved, we did a  
14          lot of education up front, what is  
15          stormwater management all about, what are  
16          the Department's rate impacts as a result  
17          of that, what are our operations and  
18          maintenance obligations. They became  
19          very engrained in stormwater management  
20          and how the Water Department does that.

21          So once they had a real  
22          understanding of how we were billing for  
23          that now, we looked at what other cities  
24          were doing, what some best practices  
25          were, how can we better, more fairly

1           PHASE II - TECHNICAL HEARING

2           charge for stormwater so it actually  
3           adheres to the impact that that  
4           particular property is causing.

5           At the end of that two-year  
6           process -- and I should say this was a  
7           consensus-based process, so each of these  
8           stakeholders had to agree and say we  
9           agree that this is the best way for the  
10          Water Department to move forward -- what  
11          they came up with was that we should take  
12          that stormwater base charge which is  
13          attached to the size of the water meter  
14          and move that to what we're calling this  
15          parcel-based charge.

16          So you're looking at the size of  
17          that parcel, how big is the site, and how  
18          impervious is that parcel so you're not  
19          allowing the rainwater to infiltrate, and  
20          we came up with a formula.

21          80% of the charge would be based on  
22          the hard surfaces of the property because  
23          that is really what causes the most  
24          runoff impact to our rivers and streams  
25          and to our systems; and then the smaller

1           PHASE II - TECHNICAL HEARING  
2           component, 20%, would be based on how big  
3           the property is, recognizing there are  
4           some large green properties, like golf  
5           courses.

6           One of the other recommendations was  
7           how to treat our most customers, our  
8           residential customers, because the vast  
9           majority of residential customers are row  
10          houses. About 300,000 of those  
11          properties are row house properties out  
12          of the 450,000 residential customers we  
13          have.

14          So we looked at our row house  
15          properties, our singles, and our twins,  
16          and they recommended that we sort of  
17          bring these properties together and treat  
18          them as one single entity, a total gross  
19          area and a total impervious area for all  
20          residential parcels, and that's what we  
21          did.

22          We were able to move forward with  
23          that during our last rate tariff back in  
24          2002 because we had the information we  
25          needed for them. So they moved to a

1           PHASE II - TECHNICAL HEARING  
2           parcel-based charge even though that  
3           charge was still tied to the meter,  
4           although they were now getting a  
5           parcel-based charge.

6           Also at that time the Commercial  
7           Customer Consortium came to us and said  
8           we want you to do the same thing for our  
9           commercial customers, but we were not  
10          able to do that at that time because we  
11          did not have the information available.  
12          But now we do.

13          So we have this recommendation that  
14          our Citizens Advisory Committee made in  
15          1996. We spent the last two years really  
16          looking at all the parcel-based  
17          information that we would need to have in  
18          order to now move this parcel-based  
19          charge to our nonresidential customer  
20          base.

21          We intend to do that over this most  
22          recent rate tariff, our fiscal year '09  
23          tariff. Our goal is to start that within  
24          the next year or so. We're still doing  
25          some work on our databases. But this

1           PHASE II - TECHNICAL HEARING  
2           will mean that now properties that do not  
3           have an account with us, what we call and  
4           are going to become stormwater only  
5           customers, like parking lots, vacant  
6           lots, will become stormwater customers  
7           now, even though they do not have a  
8           meter.

9           So taking it from a meter-based  
10          charge to a parcel-based charge allows us  
11          to make sure that we are able to charge  
12          all customers who impact our rivers and  
13          streams and our sewer collection system.

14          The data that we are using to create  
15          this stormwater database, how we're going  
16          to be charging our customers, of course,  
17          we base it on our water and sewer  
18          accounts as a start. We're also using  
19          the information from the Bureau of  
20          Revision of Taxes, our BRT database,  
21          which has all the parcel information in  
22          it, the zoning information.

23          Our system is really built upon the  
24          United Records Lands System. It's the  
25          property deeds system that the Department

1           PHASE II - TECHNICAL HEARING  
2           of Records collects so we know what the  
3           deeds say, what is built on those  
4           properties.

5           We also have what we call  
6           orthographic/geographical information  
7           system data, where we have parcel  
8           information from fly-overs where we can  
9           take a look at -- and I'll show you some  
10          examples of that -- what do these  
11          properties look like, how impervious are  
12          they, what size buildings do they have.

13          If we have questions about some of  
14          these properties, we can do some on-site  
15          inspections, has there been a change from  
16          the information that we have, has  
17          somebody built on the property, have  
18          things been demolished on the property.

19          And the Project Ocean reference is a  
20          reference to our new billing system.  
21          That is also going to be a component of  
22          this new stormwater parcel-based billing  
23          system.

24          This is just an example of the  
25          fiscal year 2007 meter-based charges. So

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2 you can see that there's a wide range in  
3 charges and as a surrogate they probably  
4 made sense in a lot of ways.

5 You would think a property that has  
6 a 10" meter, a 12" meter, must be a  
7 pretty big property, so the thought was  
8 they probably are impacting our  
9 stormwater collection system fairly well,  
10 there should be a large amount of runoff.  
11 But that's not necessarily the case.

12 You will see from some of the  
13 examples I show you that there are some  
14 buildings that are not really big that  
15 might be 100% impervious. They don't  
16 have large footprints, but they have  
17 these big meters, and this is one of the  
18 concerns of some of our commercial  
19 customers. They felt like they were  
20 being overcharged solely because they had  
21 a large meter, but they really were not  
22 impacting our stormwater collection  
23 system.

24 I should also emphasize, this is a  
25 revenue-neutral operation. We are not

1           PHASE II - TECHNICAL HEARING  
2           making more money. Our goal really, what  
3           our mandate is, is to collect as much as  
4           our operations and maintenance costs  
5           require us to collect to make sure that  
6           our system is operating well.

7           So the way we look at that, we look  
8           at what are the overall revenue  
9           requirements for stormwater management,  
10          and that looks at our capital costs,  
11          infrastructure and treatment plant costs,  
12          our collection systems, our maintenance  
13          systems, inlet cleaning, some of the real  
14          basic stuff, which is put into one total  
15          for that.

16          The impervious area portion of that  
17          charge would be 80% of that since 80% of  
18          the cost is based on the imperviousness  
19          of the properties. The gross area  
20          portion of that charge is 20% of that  
21          overall collection that we have to make.

22          So then each property fee is based  
23          on what we're calling these unit service  
24          costs based on that 80/20 ratio by the  
25          property's characteristics, how big is

1           PHASE II - TECHNICAL HEARING

2           the property and what percent  
3           imperviousness does that property have.

4           So this is just sort of a very  
5           general breakdown. We take a look at the  
6           total gross area of the City, the total  
7           impervious area of the City, and that's  
8           looking at the residential parcels, the  
9           nonresidential parcels, and the  
10          condominium parcels. We come up with a  
11          total estimated billed area.

12          We have our revenue requirements and  
13          that's the 20%, which equaled about  
14          \$20 million. We come up with stormwater  
15          units of services in square feet. And  
16          then we have the unit rate, which is the  
17          amount of money per 500 square feet  
18          because that's sort of our base factor.

19          So we have a GA unit service cost  
20          and an IA unit service cost. Those are  
21          the two numbers we multiply against every  
22          parcel characteristic.

23          You will see as a general rule of  
24          thumb the properties and how they're  
25          impacted. Generally properties that have

1           PHASE II - TECHNICAL HEARING  
2           big meters and a large land mass will  
3           probably see a decrease because their  
4           meters are so large or no real change in  
5           what their bills are. Properties that  
6           are large parcels and have tiny meters  
7           are seeing an increase. Properties that  
8           have large meters and a small land mass  
9           are certainly going to see sometimes a  
10          major decrease. And then the properties  
11          with small meters and a small land mass,  
12          they might see a small increase, a small  
13          decrease, all depending upon how  
14          impervious their parcel is.

15                 So I'm just going to run through a  
16                 bunch of examples so you can see what  
17                 these look like.

18                 This is a typical one, a site on  
19                 Essington Avenue. You see it has a large  
20                 gross area imprint. Most of it you can  
21                 see is impervious, lots of asphalt, lots  
22                 of building, really no real green. But  
23                 the property does not have large meters.  
24                 It might have two or three small meters.

25                 So right now they are paying -- and

1           PHASE II - TECHNICAL HEARING  
2           these are estimates -- about \$377 per  
3           month. Their new charge goes up to  
4           \$4,600 per month. So you can see this is  
5           really based on the imperviousness of  
6           this property. And, again, this new  
7           charge is because their meters are small  
8           and when we apply the gross  
9           area/impervious area charges, they're  
10          going to see that real change.

11          So you see these characteristics in  
12          all of these properties, essentially  
13          large properties, not a whole lot of  
14          green so that stormwater cannot  
15          infiltrate in any of these areas and  
16          they're small-metered, so these are all  
17          very typical of the customers who we are  
18          working with who will be impacted by  
19          this.

20          Lots and lots of parking. You see  
21          parking areas are really sort of key, no  
22          real natural areas to sort of help them  
23          mitigate the stormwater runoff. So these  
24          are all examples of that.

25          These are some typical examples of

1           PHASE II - TECHNICAL HEARING

2           properties that are going to see  
3           decreases in their stormwater cost.

4           This is Jefferson Hospital. So you  
5           see a property with a gross area which is  
6           totally impervious, you know, they're a  
7           footprint, nothing green on that, no  
8           infiltration on that. Their existing  
9           charge -- and these are monthly  
10          charges -- is over \$10,000 a month. That  
11          property has large meters. It could have  
12          two 12" meters because it's a hospital,  
13          it has to have some redundant services.

14          Their new charge is significantly  
15          dropping because the amount of stormwater  
16          runoff being generated from that parcel  
17          impacts our system in that amount.

18          That's sort of a fair cost for them. So  
19          they are essentially a property that was  
20          overcharged regarding their stormwater  
21          mitigation.

22          These are all similar properties.  
23          Some of them may look impervious but,  
24          again, they have large meters, were  
25          paying a lot of money over the past

1 PHASE II - TECHNICAL HEARING

2 because of their large meters, and a lot  
3 of them are also fairly impervious.

4 This is Temple University. This is  
5 the Phoenix. You will see highrises and  
6 condos, they have large meters because  
7 they need a lot of pressure, need to get  
8 that water up there, so they have been  
9 paying a lot of money on that stormwater  
10 fee that was attached to the meter size.

11 Most of our customers -- and this is  
12 the analysis we have been doing over the  
13 past few years -- are really not going to  
14 see a huge impact. They're going to see  
15 maybe a small increase or a small  
16 decrease, and that's what that thick  
17 horizontal line is, looking at the vast  
18 majority of our customers. You see on  
19 the down trend a lot of our customers are  
20 going to see large increases. So there's  
21 a small group that you see a large  
22 increase where they will rise. You see a  
23 small group where they're going down.

24 Our focus and what we've been really  
25 doing over the past year and a half is

1           PHASE II - TECHNICAL HEARING  
2           sort of reaching out early to these  
3           commercial customers who are in that area  
4           where they're going to see large  
5           increases. Our goal was to make sure  
6           they knew this was happening, that they  
7           be able to sort of plan financially for  
8           that, and we will be talking to them  
9           about potential programs to help them  
10          mitigate those costs.

11                 So some of the general policy issues  
12           that we've been sort of hashing out over  
13           the past year, for the purposes of our  
14           billing calculation, we're using 500  
15           square feet to derive the unit service  
16           costs and then we sort of round up the  
17           property footage to the next whole number  
18           in order to sort of multiply against that  
19           GA and IA unit service cost.

20                 We're maintaining that 80%/20%  
21           ratio.

22                 The unit service cost for the  
23           impervious area and gross area will be  
24           the same for all of our customers, you  
25           know, nonresidential, residential, and

1 PHASE II - TECHNICAL HEARING

2 commercial.

3 We established a minimum charge for  
4 commercial properties less than 5,000  
5 square feet, which is pretty much what we  
6 call the standard residential property.  
7 So it's their gross area plus their  
8 runoff factor for the impervious area.

9 And the stormwater service charge,  
10 there would still be a fixed billing cost  
11 that is added to their parcel-based IA/GA  
12 fee, and that's the billing and  
13 collection cost that goes along with  
14 that.

15 We're also dealing with properties  
16 in a way we haven't had to deal with them  
17 before. So we look at properties that  
18 have many what we call water accounts to  
19 one BRT, one parcel base. An example is  
20 the Archdiocese of Philadelphia.

21 How we will be sort of treating that  
22 will be the stormwater charge will be  
23 apportioned equally among all of the  
24 accounts that that property has. So it's  
25 a single property owner, has multiple

1           PHASE II - TECHNICAL HEARING  
2           accounts, some of those accounts may have  
3           discounts, some may not; we will equally  
4           apportion the stormwater charges across  
5           those accounts. Or the property owner  
6           may tell us, I want you to charge this  
7           one account, put the stormwater fee  
8           against this one account, which we will  
9           do.

10           And that's sort of an example of an  
11           Archdiocesan property, so you have a  
12           rectory, a school, a convent, but they  
13           own that entire parcel.

14           We have some properties where we  
15           have one account to many BRT parcels so  
16           there's one water service serving a  
17           variety of parcels. An example of that  
18           is a junkyard. I thought that was a nice  
19           example to use.

20           So how we'll be treating properties  
21           like that, the one parcel that does have  
22           the water account will be getting a  
23           stormwater bill, but we'll also be  
24           looking at those individual parcels  
25           without a water/sewer account as our

1 PHASE II - TECHNICAL HEARING

2 stormwater only customers. So each of  
3 those parcels will receive a stormwater  
4 only bill.

5 Condominium parcels will be treated  
6 in much the same way, individually  
7 metered condos. The total gross  
8 area/impervious area for the entire condo  
9 lot -- and often this is how we deal with  
10 condominiums, each may have a meter, but  
11 they also have shared areas like a  
12 parking area -- that area will be sort of  
13 equally divided among all the condominium  
14 property owners.

15 Highrise condos that are  
16 master-metered, the stormwater fee will  
17 be attached to that meter.

18 Combination properties, high-rise  
19 plus townhouses, the stormwater fee will  
20 be attached to their master meter.

21 Condos are also eligible for what we  
22 call and we'll explain a little bit about  
23 our credit program. So that's the  
24 example of the condo.

25 We also have built in an appeals

1           PHASE II - TECHNICAL HEARING  
2           process. We expect to have customers  
3           come to us and say, "You know what? The  
4           way you've calculated how big my property  
5           is and how impervious it is, I don't  
6           agree with that."

7           So we're going to be asking  
8           customers to come in and tell us why  
9           don't they agree with that, share their  
10          deeds, share whatever information they  
11          have, so we know how maybe that property  
12          has changed since we acquired the  
13          information originally to make that  
14          calculation.

15          We will also be working with the Tax  
16          Review Board, the entity that our  
17          customers go to now when they are  
18          appealing their bill. So we also  
19          recognize we need to educate the TRB  
20          about what this new process is.

21          We've also spent a lot of time  
22          putting together a credit/incentives  
23          program for our impacted nonresidential  
24          customers, and this is really one of our  
25          goals. Besides making this program a

1 PHASE II - TECHNICAL HEARING

2 more fair cost of service, how you are  
3 contributing to our system is what you  
4 are paying for, we really would love to  
5 see these properties change the way they  
6 manage stormwater, so that is really a  
7 key part of this.

8 Currently we have our 2006  
9 stormwater regulations in place and those  
10 regulations require any property owner  
11 who is disturbing more than 15,000 square  
12 feet on their parcel, if they're building  
13 something new, if they're renovating  
14 something, they are now required to  
15 manage that first 1" of rainfall as it  
16 falls onto their property, and this is a  
17 real win for the City and a real win for  
18 the community.

19 So they have to do things in a  
20 different way. They have to capture or  
21 detain that stormwater runoff through  
22 green practices or through more standard  
23 practices.

24 The goal of the incentive program  
25 for our stormwater parcel-based charge is

1           PHASE II - TECHNICAL HEARING  
2           to provide an equal incentive for these  
3           property owners to do something very  
4           similar and we will be paying these  
5           property owners a discount on their bill  
6           when they make these retrofits to their  
7           properties, and I'm going to show you  
8           some examples of that.

9           This comes from the Department's  
10          stormwater management manual. This is  
11          what developers look at and others when  
12          they're looking to see what do I need to  
13          do to make my property more  
14          environmentally friendly, more stormwater  
15          management friendly.

16          Green rooftops is something that  
17          large properties can do, and we see many  
18          of these things happening in the City.  
19          Chris Crockett mentioned that we're  
20          number two in the nation for green roofs  
21          that will be within the City of  
22          Philadelphia, being mostly on private  
23          sites, and we're looking for that  
24          publicly.

25          It could be a standard roof with a

1           PHASE II - TECHNICAL HEARING  
2           growing medium on top and that roof  
3           captures the stormwater runoff. It acts  
4           as almost like a natural area so we erase  
5           the footprint of that building. It has a  
6           lot of other environmental properties,  
7           air quality, urban heat island effects.  
8           We love to see that happening.

9           For other properties, depending on  
10          the size, the photo on the bottom  
11          right-hand, parking lot infiltration.  
12          You go into a parking lot now and you  
13          often see trees that are planted sort of  
14          above grade. The idea is now to sort of  
15          create these natural areas where the  
16          stormwater will run off, infiltrate back  
17          into the soil, and you always design some  
18          overflow components. So if you have a  
19          heavy rainstorm, it can't infiltrate fast  
20          enough, it's designed to overflow into  
21          maybe an existing inlet so you don't have  
22          any kind of flooding problems.

23          Rain barrels/cisterns for larger  
24          buildings, disconnecting the downspout  
25          that comes from the roof. Rain gardens

1 PHASE II - TECHNICAL HEARING

2 are wonderful features.

3 So wherever you have what we call  
4 directly affected impervious area, if you  
5 can take that runoff into natural areas  
6 where it's infiltrating, our customers  
7 can receive a credit for that, and  
8 sometimes a huge credit. If they're able  
9 to manage that first 1" on all their  
10 impervious area, they can get a 100%  
11 impervious area credit, which is huge.  
12 And there's also a gross area credit  
13 that's built into this.

14 Infiltration planters, we see a lot  
15 of like condominium owners, highrises,  
16 this is essentially disconnecting those  
17 roof downspouts so it goes into some  
18 green planters surrounding the building  
19 so it's not going directly into our sewer  
20 system. It is only designed to do that  
21 when these systems are saturated and  
22 overflow.

23 Porous pavement, we're beginning to  
24 see a lot of this in parking areas,  
25 sidewalks. It looks/acts hard when

1           PHASE II - TECHNICAL HEARING  
2           people are walking on top of it, but the  
3           rainwater actually falls onto it and  
4           infiltrates through and then recharges,  
5           gets back into our soil.

6           So these sorts of things are key  
7           methods for people to change the way  
8           they're managing stormwater on their  
9           property.

10          This is an example from Portland,  
11          Oregon, another parking lot example. The  
12          parking lot is graded to drain into that  
13          green area. It looks beautiful, it's a  
14          community amenity, but it's also managing  
15          100% of the stormwater from that mostly  
16          impervious site. A property like that  
17          would get a 100% impervious credit from  
18          us, so really substantially wiping out  
19          that bill.

20          For the City that's what we want to  
21          see happen. We need to see stormwater  
22          managed at the surface really to make  
23          sure we're able to bring back our rivers  
24          and streams as required and as we want to  
25          do.

1           PHASE II - TECHNICAL HEARING

2           We also had many concerns, we had  
3 concerns that the CAC had voiced but also  
4 that we had recognized, for some of the  
5 public entities. We looked at Fairmount  
6 Park. We looked at our neighborhood  
7 parks. We have recreation sites. We  
8 have a lot of public facilities that are  
9 also going to be impacted by these  
10 charges. Everyone is being charged.

11           Potentially the way we're going to  
12 sort of be mitigating the charges to our  
13 large parcels, our parks, essentially  
14 we're going to be using these park  
15 systems, particularly what we call our  
16 watershed parks, Wissahickon, Cobbs,  
17 Tacony. They really act like sponges.  
18 They are already taking a lot of the  
19 rainwater from the City from those  
20 surrounding areas.

21           We intend to sort of feed more  
22 rainwater into those park areas. We're  
23 going to start disconnecting streets,  
24 disconnecting large parcels around them,  
25 and bringing that rainwater into these

1           PHASE II - TECHNICAL HEARING  
2           park systems so the parks can be used as  
3           a stormwater mitigation component.  
4           We are going to be looking at  
5           recreation properties in the same way.  
6           Wherever we have some green surface, can  
7           we disconnect hard surfaces like streets  
8           and bring them into those properties.  
9           City-owned distressed properties are  
10          the only properties we're fully exempting  
11          from this stormwater parcel-based charge  
12          and this was a CAC recommendation, but it  
13          is also a recognition that these are  
14          vacant properties that the City has taken  
15          on because they're essentially abandoned  
16          by their property owners and the City is  
17          doing this as a public health benefit so  
18          there's not a detrimental impact to our  
19          neighborhoods.  
20          Customers will also be able to sort  
21          of appeal. When we analyze what their  
22          gross area and impervious area charges  
23          are, we expect that they will be coming  
24          in and talking to us about those things.  
25          They will be able to provide us with the

1 PHASE II - TECHNICAL HEARING

2 property information, the deeds, the  
3 building permits, the other things that  
4 we need to have in hand to assess are we  
5 charging them properly.

6 In addition to that, we know this is  
7 a huge change for the City. It can have  
8 a huge impact in a good way certainly for  
9 our environment and for our residential  
10 residents, but there is also a real  
11 business impact on our customers who are  
12 going to be affected.

13 We spent the last year and a half  
14 really starting to reach out and talking  
15 to these potentially impacted customers.  
16 We have met with the Commercial Customers  
17 Consortium, nonprofits, universities. We  
18 have met with anybody we could think of  
19 that could sort of help us get the word  
20 out early so they knew that this was sort  
21 of in the works.

22 We're going to continue conducting  
23 those meetings as we move into the future  
24 and as a result of this we have also  
25 recently put together a Commercial

1 PHASE II - TECHNICAL HEARING

2 Customer Service Group. It's something  
3 that our commercial customers have been  
4 asking for for a long time. This sort of  
5 gave us the impetus to do that.

6 Knowing that this charge alone is  
7 going to create a lot of concern, a lot  
8 of questions, we wanted to make sure that  
9 we have a unit on hand who can sort of  
10 hold commercial customers' hands and sort  
11 of walk them through the process and  
12 really help them understand what are the  
13 impacts and how they can sort of mitigate  
14 those impacts.

15 We've also had ongoing discussions  
16 with our political leaders, the Mayor's  
17 Office, the Managing Director's Office,  
18 we've been working with City Council, the  
19 Commerce Department, Philadelphia Greater  
20 Chamber of Commerce, and expect to be  
21 doing this over the next few years just  
22 to make sure people are on board and  
23 understand.

24 So our next steps are really what  
25 we're in the process of doing right now.

1 PHASE II - TECHNICAL HEARING

2 We're here today as part of the  
3 stormwater rate filing. We're continuing  
4 all sorts of public education initiatives  
5 on this new parcel-based charge. We're  
6 going to continue moving forward talking  
7 to our impacted customers.

8 The Department has also put together  
9 some site evaluation contracts which  
10 we're offering to our impacted customers.  
11 We have consultants on board who can go  
12 out to a commercial site, take a look at  
13 the site. They'll be asking for drainage  
14 information, topo, as-builts, whatever  
15 these commercial customers can supply, to  
16 come up with a conceptual design, what  
17 can this property do in a cost-effective  
18 way to sort of mitigate their costs by  
19 providing some green components as a way  
20 for that property to manage its own  
21 stormwater, and that process has started.

22 We also have a team of Water  
23 Department staff and other City agencies  
24 working on various implementation plans,  
25 plans focused on the billing system, the

1           PHASE II - TECHNICAL HEARING  
2           stormwater database system that we're  
3           creating, a public education group, a  
4           credit group, just ensuring that we have  
5           all our bases covered as this new program  
6           is rolled out.

7           I think that's it.

8           THE HEARING OFFICER: That was very  
9           helpful. Thank you very much. Very well  
10          done.

11          MS. DAHME: You're welcome.

12          MR. DASENT: If Your Honor, please,  
13          we would like to take the summary of the  
14          various slides and have them marked as  
15          PWD Exhibit 45 so the record can reflect  
16          the slide presentation that we presented.

17          THE HEARING OFFICER: So received.

18                                 - - -

19                 (Whereupon the document was marked,  
20                 for identification purposes, as PWD  
21                 Exhibit 45 and admitted in evidence.)

22                                 - - -

23          MR. DASENT: At this point in time,  
24          with your permission, we would like to  
25          call our panel, the Water Department's

1           PHASE II - TECHNICAL HEARING  
2           various witnesses, for the Supplemental  
3           and the Rebuttal Testimony, to  
4           authenticate that testimony and subject  
5           those witnesses to cross.

6           THE HEARING OFFICER: For the  
7           benefit of Ms. Dahme and the court  
8           reporter, let's take a ten-minute break.

9           MR. DASENT: Thank you.

10   - - -

11   (Whereupon there was a recess in the  
12           proceedings.)

13   - - -

14           THE HEARING OFFICER: Are we ready  
15           to reconvene, Mr. Dasent?

16           MR. DASENT: Yes. Thank you, Your  
17           Honor.

18           We have a number of witnesses in a  
19           panel which we would like to present. We  
20           have several statements, though, that we  
21           need to authenticate.

22           So I wanted to start with Ms. Dahme  
23           and then proceed to Mr. McKinley and then  
24           our Rebuttal Testimony, authenticate  
25           everything, and then subject everyone to

1                   PHASE II - TECHNICAL HEARING

2                   cross-examination as a panel.

3                   THE HEARING OFFICER: Let's swear  
4                   the witnesses in, please, first.

5   - - -

6                   ...JOSEPH S. CLARE, III, DAVID KATZ,  
7                   JOANNE DAHME, and J. ROWE MCKINLEY,  
8                   sworn...

9   - - -

10   DIRECT EXAMINATION

11   - - -

12 BY MR. DASENT:

13                 Q.    Ms. Dahme, I'm going to present you  
14                 with a document and it's entitled "Direct  
15                 Testimony of Joanne Dahme." Is this your  
16                 prepared testimony?

17                 A.    (Dahme) Yes, it is.

18                 Q.    It's in question-and-answer format.  
19                 Are the questions presented and the answers  
20                 therein true and correct, the answers  
21                 particularly true and correct, as of this  
22                 time?

23                 A.    (Dahme) Yes, they are.

24                 Q.    Do you have any corrections to make  
25                 to your testimony?

1 PHASE II - TECHNICAL HEARING

2 A. (Dahme) No, I don't.

3 MR. DASENT: I would like to have  
4 marked for identification, if Your Honor  
5 please, as Water Department Statement 4,  
6 the Direct Testimony of Joanne Dahme  
7 concerning stormwater rates.

8 THE HEARING OFFICER: So marked.

9 - - -

10 (Whereupon the document was marked,  
11 for identification purposes, as PWD  
12 Statement 4.)

13 - - -

14 MR. DASENT: I would like to move  
15 now to Mr. McKinley.

16 - - -

17 (Whereupon the document was marked,  
18 for identification purposes, as PWD  
19 Statement 7.)

20 - - -

21 BY MR. DASENT:

22 Q. Mr. McKinley, I have before me a  
23 statement entitled "Supplemental Testimony of  
24 J. Rowe McKinley." Is this your testimony?

25 A. (McKinley) Yes, it is.

1 PHASE II - TECHNICAL HEARING

2 Q. It's in question-and-answer format.  
3 If I were to ask you the same questions today,  
4 would your answers be the same or  
5 substantially so?

6 A. (McKinley) Yes, with the exception  
7 of one errata sheet that we have provided.

8 Q. Okay. With respect to your errata  
9 sheet, will you explain the change to your  
10 testimony?

11 A. (McKinley) Yes. What this  
12 testimony deals with is the alternative basis  
13 of stormwater charge that is the parcel-based  
14 charge as opposed to the equivalent  
15 meter-based charge.

16 We've just explained a little bit  
17 about what had to go on in order for the  
18 parcel-based charge to take effect and how we  
19 would plan to phase that in.

20 At the time when we submitted the  
21 testimony, I misstated how the minimum charge  
22 applicable to nonresidential customers would  
23 actually be implemented as was actually  
24 incorporated into the regulations.

25 Just to explain, basically the

1                   PHASE II - TECHNICAL HEARING  
2   minimum charge for a nonresidential customer  
3   is essentially established at the residential  
4   charge and the process by which that charge is  
5   identified is according to the regulations,  
6   the gross and impervious area is determined  
7   for the nonresidential customer and the gross  
8   and impervious area charge is applied to those  
9   customers and then the resulting charge is  
10  compared to the residential minimum charge.

11                   If the nonresidential charge is  
12  greater than that, that becomes their charge.  
13  If their charge is less than the minimum  
14  charge, the minimum charge for residential  
15  customers is applied.

16                   We misstated how that was determined  
17  in the testimony.

18           Q.   Okay.  Now, the correction  
19  specifically that's the subject of your errata  
20  sheet is to strike certain lines of your  
21  testimony at Pages 14 and 15?

22           A.   (McKinley)  That's correct.  That is  
23  where the minimum charge is explained  
24  inappropriately and the errata sheet corrects  
25  how that minimum charge would be calculated

1 PHASE II - TECHNICAL HEARING

2 and applied in the regulation.

3 MR. DASENT: If Your Honor, please,  
4 it might be easier to just mark as an  
5 exhibit this particular errata sheet,  
6 which would be PWD 46, and it more or  
7 less describes the lines on Page 14 of  
8 his testimony where the testimony has  
9 been stricken to remove the erroneous  
10 statement.

11 THE HEARING OFFICER: That will be  
12 fine except that the testimony, as I  
13 understand it, still contains erroneous  
14 testimony in that it hasn't been amended  
15 to show the change in the implementation.

16 MR. MCKINLEY: Well, I'm making the  
17 change as related back to the time period  
18 of March, when we did feel at that  
19 time --

20 THE HEARING OFFICER: You were asked  
21 if your answers today would be the same  
22 and on Page 13 you say that the charges  
23 will be for fiscal years 2010 through  
24 2012. We now know that's not correct.  
25 So how do we handle that?

1 PHASE II - TECHNICAL HEARING

2 MR. DASENT: Well, I think that also  
3 would be really addressed by Mr. Clare,  
4 but in terms of Mr. McKinley's testimony  
5 also, the implementation date has  
6 changed, as Mr. Clare has stated in his  
7 testimony.

8 THE HEARING OFFICER: And we can  
9 just assume that, that it's modified  
10 accordingly, as a matter of record, that  
11 your testimony is modified to reflect the  
12 testimony of the Department.

13 MR. MCKINLEY: That's fine.

14 MR. DASENT: So if Your Honor  
15 please, we will mark the errata sheet as  
16 PWD Exhibit 46 and ask its admission into  
17 evidence.

18 - - -

19 (Whereupon the document was marked,  
20 for identification purposes, as PWD  
21 Exhibit 46 and admitted in evidence.)

22 - - -

23 MR. DASENT: Finally, we have  
24 Rebuttal Testimony which I'm going to  
25 present to the panel, which the panel

1 PHASE II - TECHNICAL HEARING

2 includes Joseph Clare, Joanne Dahme, and  
3 David Katz.

4 BY MR. DASENT:

5 Q. Mr. Clare, if you could speak for  
6 the panel, before you is the Rebuttal  
7 Testimony which I would like to mark for  
8 identification.

9 THE HEARING OFFICER: Wait a second.

10 I want the Deputy Commissioner to have a  
11 real live chair. I mean, appropriate  
12 respect has to be afforded to the  
13 representatives and public servants that  
14 serve us so well.

15 MR. DASENT: I would like to mark  
16 for identification as PWD Statement 8 the  
17 Rebuttal Testimony of Joseph Clare,  
18 Joanne Dahme, and David Katz.

19 BY MR. DASENT:

20 Q. Mr. Clare, before you is a document  
21 in question-and-answer format entitled  
22 "Rebuttal Testimony of Joseph Clare, Joanne  
23 Dahme and David Katz." Is this testimony true  
24 and correct to the best of your knowledge,  
25 information, and belief?

1 PHASE II - TECHNICAL HEARING

2 A. (Clare) Yes, it is.

3 Q. Do you have any changes to make to  
4 the testimony today?

5 A. (Clare) I do not.

6 MR. DASENT: We would then like,  
7 with Your Honor's permission, to mark it  
8 as PWD Statement 8 and move its admission  
9 into the record.

10 THE HEARING OFFICER: So marked.

11 - - -

12 (Whereupon the document was marked,  
13 for identification purposes, as PWD  
14 Statement 8 and admitted in evidence.)

15 - - -

16 MR. DASENT: With all of those  
17 changes, I would like to present the  
18 panel for cross-examination this morning.

19 MR. DELANEY: Should we go first?

20 THE HEARING OFFICER: Would you like  
21 to go first? We are an accommodating  
22 group here.

23 MR. DELANEY: Great.

24 - - -

25 CROSS-EXAMINATION

1 PHASE II - TECHNICAL HEARING

2 - - -

3 BY MR. DELANEY:

4 Q. Good morning, panelists. I am going  
5 to address my questions to some pieces of the  
6 testimony of the particular witnesses and I  
7 guess I'll start with that.

8 Ms. Dahme, I guess my initial  
9 questions are to your direct testimony.

10 THE HEARING OFFICER: Speak up a  
11 little bit. They are straining to hear  
12 you.

13 MR. DELANEY: Okay.

14 BY MR. DELANEY:

15 Q. Ms. Dahme, you describe the City's  
16 stormwater system on Page 2 of your testimony  
17 and you indicate that it consists of 619 miles  
18 of service of separate storm sewers, 1,599  
19 miles of combined sewers, and approximately  
20 75,000 stormwater inlets, and that's on Page 2  
21 of your testimony.

22 My question to you is: Does the  
23 Department provide any treatment to the  
24 stormwater conveyed by its separate storm  
25 sewers?

1 PHASE II - TECHNICAL HEARING

2 A. (Dahme) The water that falls into  
3 our storm sewers is discharged directly to our  
4 rivers and streams. So that water is not  
5 directed to a wastewater treatment facility.

6 Q. So it's delivered directly to the  
7 rivers and creeks.

8 A. (Dahme) That's right.

9 Q. Okay.

10 I have good news for Mr. McKinley.  
11 I discovered two pages of my cross-examination  
12 from August that I can now ask you, if that's  
13 okay.

14 That's a joke, Mr. McKinley.

15 I wanted to ask you, if I correctly  
16 understand Ms. Dahme's prior response, it  
17 would appear on a cost of service basis that  
18 the City incurs fewer costs for its separate  
19 stormwater sewer system because it's not  
20 providing treatment to the water, the  
21 stormwater, that is conveyed through it.

22 I'm wondering, how did you treat  
23 that in the development of the rates for the  
24 stormwater?

25 A. (McKinley) Basically we identified

1                   PHASE II - TECHNICAL HEARING  
2   how much of the infiltration inflow that gets  
3   to the treatment plant, which is flow not  
4   directly discharged by customers but is  
5   through infiltration into the combined system,  
6   into the separate sanitary system, that  
7   infiltration inflow that reaches the City's  
8   three treatment plants, wastewater treatment  
9   plants, we identified through discussions with  
10  the Water Department over the years  
11  approximately how much of that infiltration  
12  inflow quantity was related to stormwater  
13  inflow versus other infiltration sources.

14                   It's that stormwater inflow that's  
15  included in the stormwater cost. We did not  
16  try to identify what stormwater flows through  
17  the separate stormwater sewers and goes to the  
18  rivers and streams directly. That's not part  
19  of our cost of service.

20                   Q.   Okay.  Would you agree with me,  
21  though, the fact that the City is not treating  
22  the stormwater conveyed through the separate  
23  stormwater system, that the City actually  
24  incurs fewer costs because it's not treating  
25  it?

1 PHASE II - TECHNICAL HEARING

2 A. (McKinley) There's less cost in not  
3 treating it, but the City has other types of  
4 cost issues to mitigate that flow because it's  
5 been found by the US EPA that one of the  
6 largest sources of pollutions going to the  
7 city and the country streams is through  
8 separate stormwater sewers. So the City is  
9 addressing those issues and there are costs  
10 associated with that.

11 Q. Were those costs included in your  
12 cost of service study that you presented in  
13 the case?

14 A. (McKinley) There are no costs  
15 associated with treating the stormwater from  
16 those pipes because there are other mitigating  
17 types of issues rather than treatment that the  
18 City is looking at.

19 Q. Yes. But in your prior response you  
20 talked about the other costs that the City was  
21 incurring for the remediation, if I understood  
22 your response, and were those costs included  
23 in your cost of service study?

24 A. (McKinley) Well, to the extent that  
25 there are costs associated with the Water

1                   PHASE II - TECHNICAL HEARING  
2 Department's staff dealing with mitigation  
3 issues, those costs would be a part of the  
4 overall cost of service that we have to  
5 allocate. I don't know that I could identify  
6 one dollar specifically of that mitigation  
7 cost.

8                   But those are part of the  
9 administrative costs and part of the costs of  
10 Joanne Dahme, the Watershed Management Group,  
11 David Katz. Those people are all dealing with  
12 those kinds of cost issues and the costs of  
13 those personnel are included in our cost of  
14 service study.

15           Q.    What you're describing are employee  
16 costs, which, of course, were in the  
17 calculated cost of service in your study. How  
18 about the remedial costs that are identified  
19 in the City's NPDES permits?

20           A.    (McKinley) If those are reflected  
21 in the capital program, the capital projects  
22 that have been built to deal with such  
23 mitigating costs, no capital costs would be  
24 reflected in our cost of service.

25                   Now, the City is just in the process

1                   PHASE II - TECHNICAL HEARING  
2 of doing a lot of those projects and those  
3 costs may not be yet in place in terms of the  
4 plant that's serviced that is the result of  
5 the City mitigating those issues in the  
6 future. They may not be currently in the  
7 plant investment.

8           Q.    So if I understand you, you're not  
9 certain whether they're in there or not, in  
10 your cost of service study?

11          A.    (McKinley) I don't have the  
12 specific line item identification associated  
13 with those costs.

14          Q.    All right. Ms. Dahme, on Page 4 of  
15 your Direct Testimony you explain the  
16 Department's plan to charge stormwater rates  
17 to noncustomers and you specifically mention  
18 parking lots, utility rights-of-way, and  
19 vacant land.

20                    Would it be correct that the reason  
21 to extend charges to these properties is  
22 because they discharge stormwater into the  
23 City's sewer system and therefore contribute  
24 to the Department's costs concerning  
25 stormwater runoff?

1 PHASE II - TECHNICAL HEARING

2 A. (Dahme) Yes. Using a parking lot  
3 as an example that may not have a meter right  
4 now, that parking lot, if you're out there in  
5 the rain, if you're standing there in a  
6 rainstorm, you see the rain hit, you see the  
7 stormwater runoff occur. You see it either  
8 drain into an area drain or drain into the  
9 street. That is the reason, because there is  
10 a true impact, a true quantifiable runoff  
11 amount, that goes into our sewer system or  
12 could run off into a nearby stream.

13 Q. So these properties are in effect  
14 getting a free ride now on the Department's  
15 stormwater remediation costs?

16 A. (Dahme) They were not being charged  
17 previously.

18 Q. Right. And I think what you just  
19 explained to us is the connection now is their  
20 property discharges of stormwater are finding  
21 their way into the City's sewer system that  
22 collects it?

23 A. (Dahme) That's correct. There is a  
24 true stormwater impact from those properties.

25 Q. Now, would it be correct that this

1 PHASE II - TECHNICAL HEARING

2 is something of a departure for the  
3 Department, to be billing costs to customers  
4 or properties that do not have an account with  
5 the Department otherwise?

6 A. (Dahme) That's correct. We are  
7 creating a new stormwater only customer base.

8 Q. Otherwise these new customers do not  
9 really receive services from the Department?

10 A. (Dahme) They're receiving services,  
11 but services they have not paid for in the  
12 past.

13 Q. So they were receiving services and  
14 now their free ride is over and they're  
15 actually paying for them?

16 A. (Dahme) Right. We're not putting  
17 it quite so harshly, but that's correct.

18 Q. Okay.

19 THE HEARING OFFICER: A free ride  
20 has been described in some of the  
21 testimony that's been submitted in this  
22 case, so that's where the term comes  
23 from.

24 BY MR. DELANEY:

25 Q. Deputy Commissioner Clare, I have

1                   PHASE II - TECHNICAL HEARING  
2   some questions for you, and I think this is  
3   largely on the Rebuttal Testimony, but I would  
4   like to ask you initially some questions on  
5   some discovery responses that you provided. I  
6   understood that I could rely on the  
7   Department's set of the Interrogatories. I  
8   can show you some of them.

9           A.   (Clare) Yes. We have them here.

10          Q.   Initially I would like to ask you  
11   about one that was a PennFUTURE Interrogatory,  
12   which is No. 5, I believe, PennFUTURE Set 1,  
13   No. 5, which I believe has been entered into  
14   the record as the Water Department's Exhibit  
15   44.

16          A.   Okay. I have that out.

17          Q.   Now, that question, as I understand  
18   it, asked you: "Does the Department incur  
19   stormwater costs that are influenced either by  
20   the quantity of the stormwater or by the  
21   quality of the stormwater discharge?"

22                   And my understanding of your  
23   response is that the primary factor increasing  
24   the Department's costs in stormwater is  
25   actually the quantity of the stormwater, not

1 PHASE II - TECHNICAL HEARING

2 particularly the quality of it.

3 A. (Clare) Correct.

4 Q. Yes. So in looking at your initial  
5 response in that Interrogatory, I think the  
6 first sentence says: "The stormwater costs  
7 are primarily impacted by the quantity of  
8 stormwater runoff and the consequent combined  
9 sewer outflow (CSO) issues."

10 I guess the reference there, implied  
11 at least, is what we're talking about, is  
12 stormwater being introduced into the City's  
13 sewer system is at least in some circumstances  
14 causing combined sewer outflow issues.

15 A. (Clare) Correct.

16 Q. That's what the reference is. And  
17 really what we're talking about is stormwater  
18 being discharged into the City's sewer system  
19 for purposes of this answer; is that correct?

20 A. (Clare) Yes, sir.

21 Q. Okay. Thank you.

22 Now, the other Interrogatory I  
23 wanted to ask you about is the Sunoco Set 1,  
24 1 to 5, and that's been identified in the  
25 record as Water Department Exhibit 41. That's

1                   PHASE II - TECHNICAL HEARING  
2 the Interrogatory where we asked you to  
3 quantify the costs through the transition  
4 period for the Sunoco Philadelphia Refinery  
5 property.

6           A.    (Clare) Okay, I have those.  
7           Q.    Now, the Direct Testimony, which the  
8 Sunoco witnesses will testify to later,  
9 actually repeats a number of different  
10 projected costs and property sizes that we  
11 sort of piecemeal received and we received  
12 your Interrogatory response I think the day  
13 that we filed the testimony, and I really just  
14 wanted for you to clarify on the record a  
15 couple things about this.

16                   We've gotten sort of different  
17 calculations by the Department on the actual  
18 size of the refinery property and its IA and  
19 GA components. So the initial question I have  
20 for you is: For purposes of your calculation,  
21 this is in the Interrogatory, how did you  
22 actually identify, what steps did you take to  
23 identify, the IA and the GA of the property,  
24 impervious area and gross area?

25           A.    (Clare) Well, in order to do that

1           PHASE II - TECHNICAL HEARING  
2 we have created a database of properties  
3 throughout the City, nonresidential  
4 properties, and in Sunoco's case we basically  
5 went into that database and created a series  
6 of maps similar to this one where we  
7 identified the parcel limitations based on the  
8 deed of the property as it's recorded in the  
9 Department of Records.

10           Then we used information from our  
11 orthographic database to determine the  
12 impervious cover, which is also incorporated  
13 into our database.

14           THE HEARING OFFICER: Could you  
15 define for the record, you said "this  
16 one"?

17           MR. CLARE: This property is 3404  
18 Penrose Avenue. And I'm only using it as  
19 an example. I had it handy.

20           But you would essentially go -- and  
21 we have some people that are a lot  
22 smarter than I that do this, they do it  
23 for a living, they're GIS specialists, et  
24 cetera -- they would go, query the  
25 database, find the parcel identification,

1           PHASE II - TECHNICAL HEARING  
2           and then also query the database and  
3           inquire about what impervious cover is  
4           there. And essentially the computer  
5           calculates it for them.

6           And we did that for a series of four  
7           maps for Sunoco: 3404 Penrose, 3144 West  
8           Passyunk Avenue, 6900 Essington, and 6300  
9           West Passyunk Avenue. And actually on  
10          the 3144 West Passyunk, there's a sister  
11          parcel called 3515 Moore Street; and on  
12          the 6300 West Passyunk Avenue parcel,  
13          there's a sister address, 6500 West  
14          Passyunk Avenue, all of which are  
15          BRT/Board of Revision of Taxes parcel  
16          IDs. So that was the process  
17          essentially.

18 BY MR. DELANEY:

19          Q. So using the BRT data to identify  
20          the parcel, then the GIS images are examined  
21          by the Department for purposes of developing  
22          the gross area and the impervious area?

23          A. (Clare) Correct.

24          Q. And that's what you did for the  
25          Interrogatory response?

1           PHASE II - TECHNICAL HEARING

2           A.    (Clare)  Correct.

3           Q.    All right.  Could I ask you really  
4 just briefly to sort of summarize the rate  
5 calculations that you did on the Interrogatory  
6 response?  You don't have to read the whole  
7 thing.

8           A.    (Clare)  Yes.  In a nutshell, there  
9 were two sets of calculations required.  The  
10 first calculation is what's currently paid by  
11 the property owner, which essentially is a  
12 tabulation of all the meter-based charges that  
13 are assessed at this time.

14                   What we do there is we also have in  
15 the database all of our account numbers  
16 cross-referenced.  So they would make a  
17 listing up of all the account numbers, what  
18 the meter sizes are, and then identify what  
19 the current meter-based charge is.  That's  
20 essentially the before condition, if you will.

21                   For the after condition, they  
22 determined the gross area for the parcel and  
23 the impervious area for the parcel and  
24 calculated by the gross area charge and the  
25 impervious area charge to come up with the

1 PHASE II - TECHNICAL HEARING

2 total area base charge for that parcel.

3 We did not have credit information  
4 for any potential credits we are aware that  
5 Sunoco might likely receive either for gross  
6 area remediation, for impervious area  
7 remediation, or for a NPDES permit. So there  
8 are potential credits which were not reflected  
9 in our tabulation because we didn't have  
10 specific information to make those  
11 calculations.

12 Q. Now, the Department is currently  
13 billing the property under the status  
14 quo/existing equivalent meter allocation  
15 methodology; correct?

16 A. (Clare) Correct.

17 Q. And, of course, that's based on the  
18 table of the costs determined by meter size,  
19 the size of the water meter that the customer  
20 has; correct?

21 A. (Clare) Correct.

22 Q. Now, the bills that Sunoco is  
23 currently receiving, is it correct that the  
24 stormwater charge is not currently broken out  
25 on the bill but is included in the service

1 PHASE II - TECHNICAL HEARING

2 charge?

3 A. (Clare) That's correct.

4 Q. What change will the Department make  
5 as it moves to the parcel-based system in the  
6 billing?

7 A. (Clare) Well, there will be a new  
8 bill that will identify the stormwater charge  
9 and the stormwater billing charge as a  
10 separate component on the bill.

11 Q. So in the future at least it will be  
12 separately identified for the customer to  
13 determine that?

14 A. (Clare) Correct. In the  
15 regulations I believe it's referred to as the  
16 stormwater management service charge.

17 MR. DASENT: That's correct.

18 BY MR. DELANEY:

19 Q. All right. Now, let me direct your  
20 attention, in the summary response you  
21 provided to Question No. 5 of this Set 1 --

22 A. Okay, I have that.

23 Q. Actually, let me ask you, though --  
24 hold that place for a second -- on the first  
25 answer, what is the 2008-2009 total stormwater

1 PHASE II - TECHNICAL HEARING

2 cost that you've calculated on this response  
3 on the initial Interrogatory? Maybe it's the  
4 second Interrogatory actually.

5 A. (Clare) It looks like for the  
6 property that was in question on this  
7 Interrogatory, which was only the 3144 West  
8 Passyunk Avenue parcel, it was \$12,255.

9 Q. Okay. Let's go back to the fifth  
10 response then, and I think you provided a  
11 total annual cost at the bottom of the  
12 Interrogatory. What property does that relate  
13 to? Is that all of the properties you  
14 previously identified?

15 A. (Clare) That's still just the 3144  
16 West Passyunk.

17 Q. Okay. And the charge that you  
18 described on the first response was the \$9,000  
19 charge?

20 A. (Clare) \$12,000.

21 Q. Would I be correct that the response  
22 on 5 that we're now looking at goes from  
23 \$12,000 to \$362,788 a month? Is that correct?

24 A. Give me that number again.

25 Q. I'm looking at the number in the

1                   PHASE II - TECHNICAL HEARING  
2 chart on the first page of your Interrogatory  
3 Response 5 and my understanding is the total  
4 number at the bottom of the chart will be the  
5 fully implemented monthly stormwater  
6 management charge for that property.

7           A.    (Clare) Correct, \$362,788.

8           Q.    In the next paragraph you calculate  
9 the new annual cost for the stormwater  
10 remediation service charge for that property,  
11 again, on an annual basis; right?

12          A.    (Clare) Right. That number is  
13 \$4,353,428.

14          Q.    Would you agree with me, that's a  
15 pretty dramatic increase, maybe 5,000%?

16          A.    Certainly.

17          Q.    Okay. Could you go to the next page  
18 in the appendix?

19          A.    The next page? Okay.

20          Q.    You make some suggestions to what  
21 Sunoco should do in that paragraph about the  
22 utility accounts and the assessment of billing  
23 and collection charges. Could you just  
24 briefly explain what your recommendation is  
25 there?

1 PHASE II - TECHNICAL HEARING

2 A. (Clare) Well, essentially we're  
3 saying here that each account would be billed  
4 a billing and collection charge, each existing  
5 water account, which I believe is in the area  
6 of \$2 and change. So if you were to  
7 consolidate accounts, for instance, eliminate  
8 accounts, you would be able to save a small  
9 amount of pocket change.

10 Q. And I think you told us there are 12  
11 accounts at the property?

12 A. (Clare) I believe that's correct,  
13 yes. That is in one of these responses.

14 MR. DASENT: Are you referring to  
15 3144 West Passyunk Avenue only?

16 MR. CLARE: That's correct, 12  
17 accounts for that parcel.

18 BY MR. DELANEY:

19 Q. All right. I'll accept that subject  
20 to check. I am not certain.

21 Then just to have you clarify  
22 another sentence in that paragraph, you say:  
23 "We have assumed that the property owner,"  
24 Sunoco, "will request another reasonable  
25 allocation of the SWMS charge." Are you

1 PHASE II - TECHNICAL HEARING

2 referring to requesting credits for the  
3 property in that sentence?

4 A. (Clare) No. Essentially we're  
5 saying that you could allocate this  
6 property-based charge between accounts any way  
7 the owner would prefer since there are no  
8 discounts involved.

9 Q. The effect of that would be just to  
10 have that \$4 million or the larger number  
11 divided through by the number of accounts and  
12 be allocated on 12 bills; is that what you're  
13 suggesting?

14 A. (Clare) That's correct.

15 Q. Now, I have some additional  
16 questions on the regulation changes and on the  
17 revised schedule, and I understand that the  
18 Department -- I haven't had a chance to  
19 incorporate them in the cross so you can make  
20 the corrections -- had the revised regulations  
21 distributed just in the last day or so, so  
22 maybe you could incorporate those in your  
23 answer if it's different from what I  
24 understand. Okay?

25 A. (Clare) Yes.

1 PHASE II - TECHNICAL HEARING

2 Q. Now, on Page 2 of the Rebuttal  
3 Testimony, I think that's where you identify a  
4 year delay in the implementation of the  
5 proposed stormwater management charges, and  
6 you're going to delay them until July 1, 2010,  
7 instead of starting them, as you originally  
8 proposed, in July of 2009.

9 A. (Clare) That is our proposal,  
10 that's correct.

11 Q. Now, I just would like to ask you  
12 what the impact of that is going to be on some  
13 of the actions that are defined in the  
14 regulations.

15 Now, if I correctly have the  
16 numbering, Section 304.3(c)(7) of the proposed  
17 regulations requires 60 days' notice of the  
18 property's gross area and impervious area  
19 prior to issuing a bill for stormwater  
20 management charges, and that 60 days' notice  
21 would be retained in the new regulations;  
22 correct?

23 A. (Clare) Correct; but it would be  
24 from the new implementation date.

25 Q. So would that be now May 2010 that

1 PHASE II - TECHNICAL HEARING

2 those notices would be issued?

3 A. (Clare) Correct, correct. One of  
4 the reasons we're requesting the delay is the  
5 timing of this decision is such that we won't  
6 get a Commissioner's decision until probably  
7 April or so and we had actually hoped to have  
8 our notices out in about that time period. So  
9 we would have very, very little time to  
10 implement those under the current hearing  
11 schedule. So this would give us a full year  
12 for implementation.

13 Q. Okay.

14 THE HEARING OFFICER: Why did you  
15 decide to wait a full year versus six  
16 months? You could do it any time.

17 MR. CLARE: Well, I think there are  
18 some system improvements that we would  
19 like to do. There are a lot of  
20 administrative procedures. And this is  
21 complicated stuff. We want to make sure  
22 we get it right.

23 THE HEARING OFFICER: So after  
24 reviewing everything you feel better that  
25 you would be up and running by May of

1 PHASE II - TECHNICAL HEARING

2 2010?

3 MR. CLARE: Correct.

4 THE HEARING OFFICER: Okay, great.

5 BY MR. DELANEY:

6 Q. All right. Section 304.3(c)(8) -- I  
7 think that's in the same section -- provides  
8 the customers with a 30-day period to file an  
9 appeal of these determinations of the property  
10 gross area and impervious area, and that  
11 30-day appeal period would be retained in the  
12 new regulations?

13 A. (Clare) It would.

14 Q. With the expansion of the effective  
15 date, though, those appeals would be due in  
16 June of 2010?

17 A. (Clare) That's correct.

18 Q. Now, under the appeal procedure the  
19 customer has the burden of proof to  
20 demonstrate that the gross area and impervious  
21 area determinations are erroneous and the  
22 customer would have to pay the actual charge,  
23 the SWMS charge, billed under the calculation  
24 while the appeal is decided. Now, that's in  
25 the current regulation. All that is going to

1 PHASE II - TECHNICAL HEARING

2 be carried over into the revised regulations?

3 A. (Clare) It is proposed to be  
4 carried over, that's correct.

5 Q. Well, now, at this time, if I  
6 correctly understand the proposal, you would  
7 only be phasing in one-third of the revised  
8 allocation; right? For the first year at  
9 least, which is now going to be in 2010, it  
10 would be two-thirds the equivalent meter  
11 calculation and one-third of the revised  
12 parcel-based allocation; correct?

13 A. (Clare) Correct, unless that is  
14 further extended by either the Hearing Officer  
15 or the Commissioner.

16 Q. Okay. What do you contemplate in  
17 terms of what kind of period would the appeal  
18 take? Do you have any estimate of that?

19 A. (Clare) Well, it was our intention  
20 certainly for the 500 most impacted customers  
21 to have this resolved well before the May  
22 date, before even the notice date. So for the  
23 people that we know are severely impacted, it  
24 was our intention to notify them well before  
25 the May date and advise them of the mitigation

1                   PHASE II - TECHNICAL HEARING  
2   that they could take, work with them on  
3   appeals and that kind of thing, and hopefully  
4   go into the billing cycle starting in July  
5   with a clean kind of no appeal there.

6                   If we weren't able to come to terms  
7   with a particular owner, if we're at a  
8   difference of opinion, my guess is that appeal  
9   could take somewhere around 90 to 120 days to  
10  wind its way through the entire administrative  
11  process.

12                  THE HEARING OFFICER:   But what would  
13   be the process for an appeal?

14                  MR. CLARE:   Well, the way we see the  
15   appeal process -- and that would be  
16   reflected in the final credit and appeals  
17   manual -- essentially we would notify the  
18   owner of their gross and impervious area.  
19   They would review it and come back to us  
20   with any pertinent information, hopefully  
21   with some engineering advice on whether  
22   there's specific deed changes that we're  
23   unaware of or there's particular  
24   differences in the imperviousness of  
25   certain surfaces, that kind of thing.

1 PHASE II - TECHNICAL HEARING

2 THE HEARING OFFICER: Will you  
3 request that when you send out the  
4 notice?

5 MR. CLARE: Right. We're  
6 essentially going to send out a map  
7 similar to that along with the notice  
8 saying here is our proposed stormwater  
9 charge, kind of give them a heads-up, let  
10 them review it; and to the extent they  
11 either don't understand, which is  
12 probably more likely than they don't  
13 agree with it, they would be able to call  
14 our new large customer group, and those  
15 people would kind of triage, you know, is  
16 it information they need or do they need  
17 somebody to go out and explain what we  
18 did or do they want to come in and look  
19 at maps or talk to us.

20 But essentially from the point of  
21 notice we would work in our credit and  
22 appeals group administratively until  
23 there was a final determination at that  
24 point.

25 That final determination by our

1           PHASE II - TECHNICAL HEARING  
2           credit and appeals group could be  
3           appealed to the Commissioner and the  
4           Commissioner would have the final  
5           administrative say. You could present  
6           evidence to the Commissioner and he would  
7           take a second kind of open look at  
8           whatever credit or appeal issue you had.

9           After the Commissioner --

10          THE HEARING OFFICER: Are there time  
11          deadlines that are set forth with regard  
12          to this?

13          MR. CLARE: There are, there are.  
14          Generally we would look to resolve the  
15          first set of appeals within 60 days or  
16          so, and I'm thinking you would have 30  
17          days for the Commissioner's appeal as  
18          well.

19          After that point everybody in the  
20          City as a matter of the City Code is  
21          entitled to appeal a case to the Tax  
22          Review Board. So the Tax Review Board  
23          would give another level of appeal beyond  
24          the Commissioner's decision.

25          They're not necessarily geared up to

1           PHASE II - TECHNICAL HEARING  
2           do that right now in terms of gross and  
3           impervious area and credits and  
4           understanding drainage information and  
5           stuff, which Joanne's presentation  
6           indicated that we need to do some  
7           education there for the TRB.

8 BY MR. DELANEY:

9           Q.    Now, I think a moment ago you agreed  
10          that all this would occur in a period where  
11          you were only implementing a third of the new  
12          parcel-based charge; right?

13          A.    (Clare) Correct.

14          Q.    But through this appeal period that  
15          you just described the customer would have to  
16          pay the higher rate?

17          A.    (Clare) Correct.

18          Q.    Since there's only a partial  
19          implementation of the revised allocation  
20          methodology in this period, would the  
21          Department consider keeping the customer's  
22          rate based on the meter-based allocation while  
23          this appeal took place?

24          A.    (Clare) I certainly would be open  
25          to discussion on that. The concern would be

1           PHASE II - TECHNICAL HEARING  
2   that you would get unfounded appeals just to  
3   delay the payment of the charge, which is why  
4   we said we want the property owner to pay the  
5   disputed part as well and be subject to a  
6   refund.

7           THE HEARING OFFICER:   And the burden  
8   is less since it's only one-third.

9           MR. CLARE:   Correct.

10          THE HEARING OFFICER:   It's not the  
11   full charge going in right at the outset.

12          MR. CLARE:   We would certainly be  
13   willing to discuss that.   I think my main  
14   concern would be kind of the unfounded  
15   appeals, kind of inviting them, if you  
16   will.

17          THE HEARING OFFICER:   The  
18   implementation for the stormwater only  
19   customers, would they pay one-third or  
20   would they pay the full amount the first  
21   year?

22          MS. DAHME:   We would phase them in  
23   also.

24          MR. CLARE:   Yes.   Stormwater only  
25   would just pay one-third of the new

1 PHASE II - TECHNICAL HEARING

2 charge.

3 MS. DAHME: Right.

4 BY MR. DELANEY:

5 Q. Tell us about how the refunds are  
6 done. If the appeal is successful, you would  
7 just mail them a check or what?

8 A. (Clare) Well, I think under the  
9 City procedure the property owner would have  
10 to do a petition for refund with the Revenue  
11 Department and then they would refund the  
12 money, hopefully within whatever their --

13 Q. A prior step to petition would be  
14 some communication from the Department  
15 agreeing that there had been a misbilling?

16 A. (Clare) Correct.

17 Q. But the customer then still would  
18 have another City department to deal with to  
19 get the actual refund?

20 A. (Clare) Correct.

21 Q. Let me ask you about the scheduled  
22 change for the application for credits under  
23 Section 304.5.

24 A. (Clare) Okay.

25 Q. Now, that provides an opportunity

1           PHASE II - TECHNICAL HEARING  
2 for the customer to make an application to  
3 receive credits for the property. Let me ask  
4 you first, does this regulation stay the same  
5 in the revisions that the Department is  
6 proposing today to the proposed regulations?

7           A. (Clare) The one that we sent out  
8 yesterday?

9           Q. Yes. I haven't seen it so I'm  
10 wondering if this section is the same.

11           MR. DASENT: There's certain  
12 language that's bracketed. That would  
13 note the changes.

14           MR. CLARE: Yes. There are very few  
15 changes. Primarily the changes on the  
16 credits involve the gross area credit,  
17 which has to do with we're trying to get  
18 to what we call a curve number, which  
19 essentially is like a runoff coefficient  
20 for properties.

21 BY MR. DELANEY:

22           Q. What subsection has the change, can  
23 I ask you?

24           A. (Clare) Yes. That is in  
25 304.5(b)(2).

1 PHASE II - TECHNICAL HEARING

2 Q. And that's a reference to the credit  
3 manual then or what, that language that's been  
4 added?

5 A. (Clare) Yes. We're bringing up  
6 these curve numbers, as the smart people like  
7 to call them.

8 Q. Okay. And you have another language  
9 change in the later part of that section?

10 A. (Clare) Yes. In 304.5(c)(2) the GA  
11 credit is also referring to these curve  
12 numbers. And in (2)(ii), that whole section  
13 is new actually about another mention of the  
14 GA credit.

15 Q. Thank you for identifying those  
16 changes for me.

17 From my reading of the section,  
18 though, it doesn't really provide a period for  
19 the customer to apply for the credits. It  
20 doesn't identify a time that that should be  
21 done.

22 A. (Clare) That will be in the manual.  
23 But I think it would be our position that the  
24 customer could apply for the credit at any  
25 time, if presumably he's done his engineering

1                   PHASE II - TECHNICAL HEARING  
2 analysis. So if he elected not to do the  
3 credit, say, at day one, he could come to us  
4 six months from now, a year from now, and pay  
5 the application fee, do the engineering, and  
6 we'll entertain the credit.

7           Q. So if I correctly understand your  
8 response, it would be possible for a customer  
9 to actually be aware of the credits they  
10 qualify for prior to receiving the  
11 notification of the GA and IA surfaces or  
12 portions of their property that would be  
13 identified in the 60-day notice, it would be  
14 in advance of that it's possible?

15           A. (Clare) Correct. It's our  
16 intention certainly for the 500 most impacted  
17 to advise them of what the credits are, what  
18 they need to do to apply for the credits, and  
19 what other mitigating behaviors they could  
20 undertake and do them before the  
21 implementation of the new charge, or at least  
22 during the phase-in period.

23                   THE HEARING OFFICER: Is there a  
24 list of that 500 readily available?

25           MR. CLARE: Yes.

1 PHASE II - TECHNICAL HEARING

2 MS. DAHME: We do have that.

3 THE HEARING OFFICER: If you could  
4 produce that, please.

5 MR. CLARE: Okay.

6 BY MR. DELANEY:

7 Q. Would it be correct that that  
8 activity is ongoing by the Department staff  
9 now? Is the staff doing that now?

10 A. (Clare) Absolutely, to the extent  
11 we can. I mean, the Hearing Officer hasn't  
12 recommended and certainly the Commissioner  
13 hasn't directed that we implement a  
14 property-based stormwater charge. So it's  
15 really outreach at this point. We can't enter  
16 into credit negotiations if there's no  
17 property-based charge. But we're certainly  
18 out there letting people know what they can do  
19 to mitigate these charges or to get credits.

20 Q. Now, you are also sponsoring a  
21 portion of the Rebuttal Testimony, Deputy  
22 Commissioner.

23 A. (Clare) Correct.

24 Q. I would like to ask you a question  
25 about a reference in that testimony.

1 PHASE II - TECHNICAL HEARING

2 A. (Clare) Okay.

3 Q. It's the reference to the NPDES  
4 credit on Page 7 of the Rebuttal Testimony.  
5 Now, I think on that page you describe the  
6 proposed 7% credit on stormwater management  
7 service charges proposed for NPDES  
8 permitholders.

9 Now, is it correct that the  
10 Department determined the 7% to be the credit  
11 from a survey of what NPDES credits were being  
12 provided by other cities that had implemented  
13 stormwater management service charges?

14 A. (Clare) That's correct, that's my  
15 understanding.

16 Q. So you surveyed them. Then what did  
17 you do? How did you end up with 7%?

18 A. (Clare) Well, basically Ogden, our  
19 contractor at the time, had performed a survey  
20 in approximately 1995, and the results of that  
21 survey are unavailable. But they brought the  
22 results of that survey back to the Stormwater  
23 CAC, who deliberated over the range of NPDES  
24 credits and the practice as to whether  
25 jurisdictions allowed or did not allow a

1                   PHASE II - TECHNICAL HEARING

2 credit, and in the final report the CAC  
3 recommended that we utilize or permit a NPDES  
4 credit to be competitive, I guess, with other  
5 jurisdictions, if you will, and that that  
6 credit be in the amount of 7%.

7           Q.    And the study that the CAC performed  
8 actually describes that as a midpoint value?

9           A.    (Clare) It does not. It does not.  
10 We believe that it's currently about the  
11 midpoint value of the 14 or so jurisdictions  
12 that we're aware of that entertain NPDES  
13 credits.

14          Q.    Can I have a second? Let me look at  
15 the study and see if I can correctly quote it  
16 to you.

17                   The reference I have is Page 14 of  
18 the study, the Citizens Advisory Committee --

19          A.    (Clare) The CAC report?

20          Q.    Yes, the CAC report.

21          A.    (Clare) Okay.

22          Q.    -- and it's just a sentence there  
23 and it just says: "These percentages  
24 represent the approximate midpoint of the  
25 range of potential program cost reductions

1                   PHASE II - TECHNICAL HEARING  
2   achievable by the activities for which the  
3   individual properties would obtain credit." I  
4   can show it to you.

5           A.   (Clare) Okay.

6           MR. DELANEY: May I approach the  
7   witness here, Your Honor?

8           THE HEARING OFFICER: Absolutely.

9           Don't be intimidated by him  
10   approaching.

11 BY MR. DELANEY:

12          Q.   I'll stay at arm's length.

13          A.   (Clare) Okay.

14          Q.   The reference on the prior page I  
15   understood to be the credit number.

16          A.   (Clare) Correct.

17          Q.   But you don't think they're choosing  
18   a midpoint value? That's what the next page  
19   seems to say.

20          A.   (Clare) Yes, it does indeed say  
21   that on Page 14 of the final report.

22          Q.   So I don't know. Do you want to  
23   amend your prior answer then?

24          A.   (Clare) Sure. Based on my review  
25   of the CAC report, I see that they used a

1 PHASE II - TECHNICAL HEARING

2 midpoint of available ranges.

3 Q. Okay. Now, my understanding from  
4 our conversation previously was that the  
5 Department had actually gone to the DEP and  
6 made an inquiry about the number of NPDES  
7 permitholders in the City. Do you remember  
8 that discussion that we had?

9 A. (Clare) Yes, I do.

10 Q. And my notes indicate that what the  
11 DEP identified to the Department was that  
12 there were 60 NPDES permitholders in the City.  
13 Is that correct?

14 A. (Clare) We said approximately 60,  
15 that's correct.

16 Q. Approximately 60. And my  
17 understanding is the Department's  
18 understanding of those 60 permitholders is  
19 that Sunoco is the only NPDES permitholder in  
20 the City that actually has on-site waste  
21 treatment plants?

22 A. (Clare) They're the only one we're  
23 aware of that does treatment, that's correct.

24 Q. Now, one of the additional exhibits  
25 that the Department has put into the case,

1 PHASE II - TECHNICAL HEARING

2 PWD-4, which is I think part of the standard  
3 Interrogatory responses, Attachment 26, which  
4 is the CAC final report --

5 A. (Clare) Okay.

6 Q. -- I think it's Appendix 6 to the  
7 report, and I will give you a chance to find  
8 that, Appendix 6 to the report, specifically  
9 we're looking at Page 69.

10 A. (Clare) Oddly enough, I found it.

11 Q. Do you have it?

12 A. (Clare) Yes.

13 Q. I am a little disappointed at that,  
14 but I'll continue.

15 Can you read to yourself the last  
16 paragraph, what's on Page 69 and the top of  
17 Page 70 of Appendix 6?

18 A. (Clare) Okay.

19 Q. Now, would you agree with the  
20 statements there that the maintenance of a  
21 NPDES permit places costs on the industrial  
22 customers that have them? I am looking now at  
23 the third sentence of the paragraph. Do you  
24 agree with that?

25 A. (Clare) Absolutely.

1 PHASE II - TECHNICAL HEARING

2 Q. Would you also agree that the  
3 primary beneficiaries of these industrial  
4 activities, referring to the permitholding and  
5 the requirements of that, are the downstream  
6 residents and the city population in general?

7 A. (Clare) Yes, I think that's a fair  
8 statement.

9 Q. And the final sentence there or the  
10 additional sentence there, that rewarding  
11 industries for carrying out such a stormwater  
12 protection program would seem to be both fair  
13 and reasonable, would you agree with that part  
14 of it?

15 A. (Clare) What was the question  
16 again?

17 - - -

18 (Whereupon the court reporter read  
19 back the pertinent testimony.)

20 - - -

21 THE WITNESS: It does say that in  
22 the report.

23 BY MR. DELANEY:

24 Q. My question was whether you agreed  
25 with that.

1 PHASE II - TECHNICAL HEARING

2 A. (Clare) Yes, I think it's certainly  
3 reasonable. I think that that's the intent of  
4 the NPDES credit.

5 Q. All right. Now, I think a moment  
6 ago, in responding to one of my questions, I  
7 think you repeated that we had actually asked  
8 for the survey that was the basis of selecting  
9 the 7% by the CAC.

10 A. (Clare) That's correct.

11 Q. And did I correctly understand that  
12 you said that you could not locate the survey?

13 A. (Clare) We had requested Black &  
14 Veatch, our consultant, to talk to Ogden to  
15 see what they had in their file that  
16 documented the exact results of that survey,  
17 and Ogden responded that they no longer had  
18 that information.

19 Q. That means that you were then unable  
20 to provide it to us?

21 A. (Clare) Correct. We do have a  
22 fairly current Black & Veatch NPDES credit  
23 survey that Black & Veatch could certainly  
24 proffer and describe the results of that.

25 Q. But I think our inquiry was as to

1                   PHASE II - TECHNICAL HEARING

2 the material relied on by the committee in  
3 1996, which is what we were talking about.

4           A.    (Clare) Correct.

5           Q.    I wanted a clarification.  When I  
6 asked you the series of questions about the  
7 responses to the Sunoco Set 1 Interrogatories,  
8 I realize now that in posing those questions  
9 to you, I actually identified only one of the  
10 component properties for the Sunoco Refinery,  
11 and you very appropriately answered the  
12 questions directed to the only address that  
13 was identified in the question.

14          A.    (Clare) Correct.

15          Q.    As a result of that, when we talked  
16 about the response to the fifth Interrogatory,  
17 where you did the summary number, that was  
18 actually reflecting only one of the four  
19 properties, I think, that you identified from  
20 your review of the maps.

21          A.    (Clare) That's correct.  It is by  
22 far the largest of the four properties, but we  
23 did analyze all four properties independently  
24 of your request.

25          Q.    Okay.  So as a result of that would

1 PHASE II - TECHNICAL HEARING

2 I be correct that the actual stormwater costs  
3 for the entire property when the parcel-based  
4 allocation is fully implemented are actually  
5 higher than the number that we discussed on  
6 the record a while ago?

7 A. (Clare) That's correct.

8 Q. Do you have those numbers for the --

9 A. (Clare) I have numbers here which I  
10 believe are consistent with the previous study  
11 on the Passyunk Avenue site.

12 For the 3404 Penrose site the  
13 existing charge is \$377 a month, the new  
14 charge would be \$40,815, an increase of  
15 \$40,438.

16 For the 6900 Essington site, the  
17 existing charge is \$7,756 per month, the new  
18 charge is \$61,477, an increase of \$53,721 per  
19 month.

20 And for the 6300 Passyunk site, the  
21 existing charge is \$22, the new charge is  
22 \$2,310, an increase of \$2,288.

23 Q. And the summary numbers that you  
24 identified for me in that No. 5 response would  
25 all be higher by virtue of those additional

1           PHASE II - TECHNICAL HEARING  
2 costs you just identified for the other  
3 parcels?

4           A.   (Clare) Correct. And obviously  
5 this is before any credits are applied for or  
6 approved.

7           MR. DELANEY: Your Honor, could we  
8 take a short break and I can get  
9 organized and finish with the witnesses,  
10 five minutes?

11           THE HEARING OFFICER: That will be  
12 fine. We'll take a break.

13   - - -

14   (Whereupon there was a recess in the  
15 proceedings.)

16   - - -

17           MR. DELANEY: I just have a few more  
18 questions for Deputy Commissioner Clare.

19 BY MR. DELANEY:

20           Q.   Can you briefly summarize the  
21 properties of the City that would not be  
22 subject to the stormwater management service  
23 charge? It would be the City's distressed  
24 properties; right?

25           A.   (Clare) Well, there are really two



1 PHASE II - TECHNICAL HEARING

2 to it but likely qualify for 100% credit?

3 A. (Clare) Correct. City parks are  
4 subject to it, as are golf courses and  
5 cemeteries. The thinking is that if they're  
6 largely green, they would be subject to a  
7 substantial GA credit depending on what their  
8 curve number is.

9 Q. And my understanding is part of that  
10 is that the charitable exceptions for  
11 hospitals, schools, those kinds of  
12 institutions, remain unaffected?

13 THE HEARING OFFICER: Not  
14 exceptions. Discounts we're speaking of.

15 MR. DELANEY: Discounts.

16 MR. CLARE: That's correct. We're  
17 required by City Council ordinance to --

18 BY MR. DELANEY:

19 Q. So they're subject to the stormwater  
20 charge but get the discounts?

21 A. (Clare) Correct.

22 THE HEARING OFFICER: And that was  
23 included in the calculation --

24 MR. MCKINLEY: That's correct.

25 THE HEARING OFFICER: -- in terms of

1 PHASE II - TECHNICAL HEARING

2 the anticipated revenue.

3 MR. McKINLEY: We identified  
4 nonresidential customers in terms of  
5 discount and nondiscount and determined  
6 the discount for those eligible.

7 BY MR. DELANEY:

8 Q. Now, I would assume the answer to  
9 this is yes, but after the revised  
10 parcel-based allocation methodology is in  
11 place, it would be the City's intention to  
12 continue having a separate stormwater sewer  
13 system plus a combined stormwater sewer  
14 system; correct?

15 A. (Clare) Absolutely.

16 Q. Now, Ms. Dahme, let me ask you a  
17 question here. I was listening and watching  
18 your presentation today, and would it be  
19 correct that Sunoco is one of the unlucky  
20 customers that has the small meter and the  
21 large impervious and gross area?

22 A. (Dahme) It's certainly one of the  
23 customers we identified as being within that  
24 top 500 most impacted for those reasons, very  
25 large area, highly impervious, mostly you see

1 PHASE II - TECHNICAL HEARING

2 multiple meters, but many of them on the  
3 smaller range.

4 Q. If you know, is Sunoco the property  
5 in the City that is experiencing the highest  
6 percentage increase in its stormwater costs as  
7 a result of the implementation of the  
8 parcel-based allocation?

9 A. (Dahme) They're within the top  
10 three, certainly, because of their size,  
11 because of the imperviousness of the property.  
12 If they're not the top one, they're certainly  
13 within the top three.

14 Q. Would another one be the Airport?

15 A. (Dahme) Yes, that's correct.

16 A. (Clare) Both Airports.

17 A. (Dahme) Northeast Airport and  
18 International Airport.

19 Q. That's the other two of the top  
20 three, both Airports?

21 A. (Dahme) Yes. There's a few getting  
22 close to that. Franklin Mills is another  
23 highly impervious, large property that's  
24 pretty much up there also.

25 THE HEARING OFFICER: Does the list

1           PHASE II - TECHNICAL HEARING  
2           show the dollar amount of the billings?

3           MS. DAHME: It does. But we  
4           probably should update some of those  
5           numbers. They were prepared when we  
6           first started going out six months ago.

7           MR. MCKINLEY: And it has no  
8           credits.

9           THE HEARING OFFICER: Maybe you  
10          could bring that over after lunch.

11          MS. DAHME: Sure.

12 BY MR. DELANEY:

13          Q. Let me clarify your last response.  
14 If you know, do either of the Airports have  
15 NPDES permits?

16          A. (Dahme) They do.

17          A. (Clare) They do.

18          Q. Do either of them have wastewater  
19 treatment facilities on site?

20          A. (Dahme) They do not.

21          A. (Clare) Not that we're aware of.

22          Q. Deputy Commissioner Katz, I would  
23 like to ask you some questions about the  
24 portion of the Rebuttal Testimony I think that  
25 you drafted.

1 PHASE II - TECHNICAL HEARING

2 But let me start by saying I looked  
3 at your resume, your impressive resume, and it  
4 indicates that you have --

5 THE HEARING OFFICER: Did you say  
6 very?

7 MR. DELANEY: Very impressive  
8 resume.

9 THE HEARING OFFICER: That's what I  
10 thought.

11 BY MR. DELANEY:

12 Q. -- a lot of experience with the  
13 City's NPDES permits; is that correct?

14 A. (Katz) That would be true.

15 Q. Just so the record is clear for the  
16 Hearing Officer's benefit, I wanted to ask you  
17 some questions about the general  
18 characteristics of NPDES permits.

19 A. (Katz) Okay.

20 Q. Now, is it true that the National  
21 Pollutant Discharge Elimination System's  
22 permit program was first established by the  
23 Federal Clean Water Act and jurisdiction for  
24 the program, the permit program, was initially  
25 in the Federal Environmental Protection

1 PHASE II - TECHNICAL HEARING

2 Agency?

3 A. (Katz) That is true, initially, it  
4 was. And then they developed a delegation  
5 system where they subsequently delegated to  
6 the states and gave them prime responsibility  
7 to enforce and issue permits. But initially  
8 when first done in '72, yes.

9 Q. And the delegation that you just  
10 described actually occurred in Pennsylvania,  
11 so now the NPDES permit program in  
12 Pennsylvania is administered by the  
13 Pennsylvania Department of Environmental  
14 Protection?

15 A. (Katz) That's correct.

16 Q. Now, the actual permit requirement  
17 set out in the Clean Water Act, as I  
18 understand it, generally prohibits the  
19 discharge of any effluent into a navigable  
20 body of water unless the point source has  
21 attained a NPDES permit?

22 A. (Katz) That is correct.

23 Q. And as a result of the original  
24 authority and then the delegation that you  
25 just informed us of to the Pennsylvania DEP,

1 PHASE II - TECHNICAL HEARING

2 these permits would be subject to EPA and DEP  
3 authority; is that correct?

4 A. (Katz) Correct.

5 Q. Now, as part of our Set 2  
6 Interrogatories to the Department we were  
7 provided with several of the NPDES permits  
8 that the Department has. I understand that  
9 they have been included in the record as PWD  
10 Exhibit 41 and I just would like to briefly  
11 discuss those with you, just ask general  
12 questions. I have copies of them if you want  
13 to look at them, but I'm not sure you'll need  
14 to do that.

15 A. (Katz) We have them here also.

16 Q. Okay. Now, three of the permits of  
17 the four that we were provided authorize  
18 discharges from the Department's Northeast,  
19 Southwest, and Southeast Water Pollution  
20 Control Plants into various bodies of water,  
21 and it's correct that those were three of the  
22 permits; right?

23 A. (Katz) Correct.

24 Q. For those plants. And as a general  
25 matter each of the permits contains detailed

1                   PHASE II - TECHNICAL HEARING  
2 effluent limitations and a timeline or a  
3 schedule to actually achieve the effluent  
4 limitations; is that correct?

5           A.   (Katz) Correct.

6           Q.   And also the permits impose  
7 requirements and conditions on the Department  
8 which include the implementation of a  
9 long-term combined sewer outlet control plan?

10          A.   (Katz) Correct, the CSO long-term  
11 control plan, right.

12          Q.   Okay. And the fourth permit that  
13 the Department provided was a copy of its MS4  
14 NPDES permit which authorized discharges of  
15 stormwater from the Department's separate  
16 stormwater sewer system; is that correct?

17          A.   (Katz) Yes, correct.

18          Q.   And that particular permit  
19 establishes effluent limitations using a  
20 number of things, I think, some of which are  
21 mentioned in your testimony, best management  
22 practices, stormwater management practices,  
23 and erosion and sedimentation plans?

24          A.   (Katz) Correct.

25          Q.   That's all in the permit?

1 PHASE II - TECHNICAL HEARING

2 A. (Katz) Yes.

3 Q. And also as part of the CSO  
4 long-term control plan and its NPDES  
5 stormwater permits, the Department has  
6 developed a long-term CSO control plan; is  
7 that correct?

8 A. (Katz) Correct. Currently we have  
9 one in place and we're currently amending it  
10 as we speak.

11 Q. And the current plan, maybe the  
12 amended plan, too, requires the Department to  
13 develop integrated watershed management plans  
14 for streams and watersheds and monitor their  
15 conditions; is that a general statement of  
16 that requirement?

17 A. (Katz) Yes, that's correct.

18 Q. Now, on those conditions that we  
19 just sort of generally discussed, would you  
20 agree with me that these requirements and  
21 conditions and the Department's NPDES permits  
22 are binding on the Department and the  
23 Department doesn't have authority to impose  
24 those conditions on other NPDES permitholders  
25 such as Sunoco?

1 PHASE II - TECHNICAL HEARING

2 A. (Katz) Well, that's correct. Those  
3 permits are issued to us and they are our  
4 obligations to fulfill. So that's correct.  
5 They are between DEP and us.

6 Q. Would you also agree that the  
7 Department does not have authority to monitor  
8 and enforce the terms and conditions contained  
9 in the Sunoco NPDES permits?

10 A. (Katz) That's correct. That's  
11 between DEP and Sunoco.

12 Q. I don't know if you've had this  
13 opportunity, but have you examined the NPDES  
14 permits which are attached as Exhibits F and G  
15 to Sunoco's Direct Testimony?

16 A. (Katz) Would they be Sunoco's NPDES  
17 permits?

18 Q. Yes.

19 A. (Katz) No, I have not examined  
20 those.

21 Q. Now, would you agree with me, as  
22 part of DEP procedure to adopt these permits,  
23 that there is a public comment period for  
24 interested parties to comment on the proposed  
25 permit?

1 PHASE II - TECHNICAL HEARING

2 A. (Katz) That's correct.

3 Q. And it's published in the PA  
4 Bulletin and provides a period for comments to  
5 be filed?

6 A. (Katz) That's correct.

7 Q. Would I be correct that the  
8 Department has not filed any comments on the  
9 Sunoco permits?

10 A. (Katz) That's correct.

11 Q. Now, could I ask you to turn to the  
12 Department Rebuttal Testimony, Page 5?

13 A. (Katz) Okay.

14 Q. Now, you were kind enough, in a  
15 prior informal session, to answer some  
16 questions that we had about the testimony, so  
17 let me ask you some of those questions and  
18 explain some of them on the record and your  
19 prior responses.

20 As I understand it, on the bottom of  
21 Page 5 and the top of Page 6, your testimony  
22 describes the Department's revised stormwater  
23 allocation proposal which is the subject of  
24 this proceeding, which is a determining of the  
25 customer stormwater cost through the

1                   PHASE II - TECHNICAL HEARING  
2 examination of his property's impervious and  
3 gross areas; correct?

4           A.   (Katz) Correct.

5           Q.   Now, on the middle of Page 6 of your  
6 testimony you indicate or you state that  
7 "Sunoco's stormwater discharges...have  
8 an...impact on the overall water quality and  
9 the environment..."

10                   Now, I think your explanation of  
11 that comment in the informal discovery was  
12 that you were not suggesting in that statement  
13 that Sunoco's stormwater discharges are in  
14 violation of its NPDES permit or negatively  
15 impacting the river water quality or the  
16 environment; is that correct?

17           A.   (Katz) Yes, that's correct. My  
18 statement was really focused on the fact that  
19 stormwater in general as it runs off into  
20 streams and rivers does have an impact. I in  
21 no manner meant to suggest that Sunoco was  
22 violating its NPDES permit or was in any way  
23 causing or contributing to any water quality  
24 violation.

25           Q.   And your use of the word "impact" on

1                   PHASE II - TECHNICAL HEARING

2   Pages 5 and 6 really is referring to the  
3   distinction that you just made, which is the  
4   impact that you're describing is just the  
5   discharge of stormwater from an impervious  
6   area of a property; right?

7           A.   (Katz) Right, yes, because we're  
8   really here for a rate proceeding and we're  
9   trying to find the most sort of sensible and  
10   equitable and rational way to distribute  
11   stormwater costs. So as a general rule that  
12   would be impact and impact would be simply  
13   based on the gross area of a property and how  
14   much impervious area as a general rule.

15                   THE HEARING OFFICER: Well,  
16                   specifically on Page 6 you state it has,  
17                   "...an undeniable impact on the overall  
18                   water quality..." What do you mean by  
19                   that?

20                   MR. KATZ: Well, to the extent that  
21                   all dischargers impact water quality by  
22                   discharging stormwater, I didn't review  
23                   Sunoco's permit and I'm not here to say  
24                   that Sunoco is somehow in violation of  
25                   the permit. I'm saying as a general

1           PHASE II - TECHNICAL HEARING  
2           rule, the larger your areas, the larger  
3           your impervious areas, the greater runoff  
4           you will have and the greater impact on a  
5           general basis you will have on a stream  
6           or river.

7 BY MR. DELANEY:

8           Q.    So you're not suggesting that  
9           Sunoco's, just following up on what you just  
10          said, discharges are degrading water quality  
11          and having adverse environmental effect? You  
12          are not saying that?

13          A.    Right. This is not a permit  
14          proceeding or an environmental hearing. It is  
15          a rate allocation procedure.

16                THE HEARING OFFICER: Do they have  
17          stormwater that doesn't go through their  
18          own system?

19                MR. KATZ: Yes.

20                MR. CLARE: Yes.

21                MR. KATZ: Some of their stormwater  
22          comes to us. Some of their stormwater  
23          gets directly discharged.

24                THE HEARING OFFICER: So it's a  
25          net-net of the water that comes to you;

1 PHASE II - TECHNICAL HEARING

2 yes?

3 MR. KATZ: Well, regardless of  
4 whether it enters our pipe and then gets  
5 discharged or whether it goes directly to  
6 a stream or river, that same amount of  
7 water enters the stream or river. It  
8 still has that same impact.

9 THE HEARING OFFICER: Right. But  
10 we're talking about water quality.

11 MR. KATZ: Correct.

12 THE HEARING OFFICER: How does the  
13 water quality impact whether it comes  
14 from the Water Department or whether it  
15 comes from Sunoco?

16 MR. KATZ: Again, our separate  
17 systems merely convey the water to the  
18 water body. So if you have an area and  
19 it's polluted and rain comes and washes  
20 that water out, whether it's directly  
21 discharged or whether it simply goes  
22 through our pipe and enters a river  
23 first, those same pollutants will enter a  
24 river, generally speaking.

25 THE HEARING OFFICER: When it goes

1 PHASE II - TECHNICAL HEARING

2 through their system, the pollutants are  
3 taken out, though.

4 MR. KATZ: Yes, when it goes through  
5 their system, and we do have credits  
6 available, the GA and IA credits; and if  
7 they are managing their stormwater  
8 properly, they can get credits and  
9 credits can go up to 100% of your bill  
10 depending on how well you manage the  
11 site.

12 So we recognize as a general rule  
13 impact makes sense, but also we have to  
14 take into consideration that there are  
15 people who manage their stormwater  
16 properly and they should get credit.

17 And really this is nothing new or  
18 novel. Many, many cities base their  
19 stormwater charge on impact. Black &  
20 Veatch just did a recent survey, I think  
21 they looked at 14 cities. So our  
22 approach not only do we believe makes  
23 sense, but other cities have looked at it  
24 and they also believe it makes common  
25 sense to allocate stormwater based on

1 PHASE II - TECHNICAL HEARING

2 impact.

3 BY MR. DELANEY:

4 Q. Let me ask you sort of a followup  
5 question on that, Deputy Commissioner. Would  
6 you agree that when the DEP issues a NPDES  
7 permit, that it presumes that discharges that  
8 are made pursuant to the permit's requirements  
9 are protective of the environment?

10 A. (Katz) I would think that's safe to  
11 say. They would not issue a permit that they  
12 believed was going to cause or contribute,  
13 sure.

14 Q. Now, do you have a copy of the  
15 Sunoco Direct Testimony at hand there at the  
16 table? I was going to ask you, if you know --  
17 I understand that you may not be aware of  
18 this -- we have as Exhibit E to the testimony  
19 maps of the property and I'm wondering if  
20 you're able to, just for the benefit of the  
21 Hearing Officer, if you know, identify how the  
22 stormwater is handled from the different  
23 parcels of the property.

24 A. (Katz) No. I mean, offhand, I do  
25 not know how each individual parcel handles

1                   PHASE II - TECHNICAL HEARING  
2 their stormwater. I haven't really looked at  
3 this before.

4           Q. All right. I understand.

5                   THE HEARING OFFICER: Are you asking  
6 that to the panel or just to this  
7 witness?

8           MR. DELANEY: Well, is someone else  
9 on the panel --

10           MR. CLARE: Well, I think we  
11 specifically requested drainage  
12 information from Sunoco to gather that  
13 information. I don't think I'm aware of  
14 anybody at the Water Department that  
15 knows all of Sunoco's drainage  
16 information for all four of their  
17 parcels.

18           MR. DELANEY: All right. Fair  
19 enough. Thank you, Deputy Commissioner.

20 BY MR. DELANEY:

21           Q. Deputy Commissioner Clare, I think  
22 you might be the person to answer this  
23 question.

24           A. (Clare) Yes, sir.

25           Q. We had a prior discussion of the

1 PHASE II - TECHNICAL HEARING

2 credits that may be available to NPDES  
3 permitholders. Do you remember that  
4 discussion?

5 A. (Clare) Yes.

6 Q. Would I be correct that at least in  
7 the regulations, there is no distinction in  
8 the credits that a NPDES permitholder would  
9 qualify for by virtue of the particular  
10 permitholder having site-based treatment  
11 plants; right?

12 A. (Clare) Correct, although the  
13 credits are additive. So by virtue of having  
14 a NPDES credit, assuming you paid the  
15 application fee and had the engineering,  
16 requisite engineering, you would be entitled  
17 to the NPDES credit. If you did on-site  
18 treatment, you might also be able to wipe out  
19 some of your impervious area. So the credits  
20 are additive. You know, you could very easily  
21 get a gross area credit, an impervious area  
22 credit, and a NPDES credit.

23 Q. So it's possible that there would be  
24 some credit available for the additional  
25 treatment step that, say, Sunoco was doing

1 PHASE II - TECHNICAL HEARING

2 with its on-site treatment plants?

3 A. (Clare) I would say it's likely.

4 MR. DELANEY: All right. That's all  
5 the questions I have. Thank you very  
6 much.

7 THE HEARING OFFICER: I am going to  
8 pass over the Public Advocate for a  
9 second.

10 Anybody else have any other  
11 questions?

12 MS. LINTON-KEDDIE: PLUG has no  
13 questions, Your Honor.

14 MR. GLASS: I just have a couple.

15 THE HEARING OFFICER: Why don't we  
16 take those now?

17 And we will take yours after lunch.

18 BY MR. GLASS:

19 Q. Brian Glass representing the Next  
20 Great City Stormwater Subcommittee.

21 Is it the Water Department's  
22 position or opinion that a parcel-based  
23 stormwater charge is more fair than a  
24 stormwater charge that's based on meter size?

25 A. (Katz) Yes.

1 PHASE II - TECHNICAL HEARING

2 Q. And can you explain why that is?

3 A. (Katz) Okay. Meter size really  
4 doesn't have any sort of rational nexus  
5 between how much water flows off the parcel  
6 and impacts the stream. As Joanne pointed  
7 out, you could have a very, very large parcel  
8 that's impervious with just a small meter just  
9 because the business there might only have  
10 small water usage, but the amount of runoff  
11 from that parcel can be enormous.

12 So generally speaking, when you want  
13 to allocate stormwater costs, you are looking  
14 for some fair and equitable way to do it. You  
15 can't really do it by benefit. Everybody  
16 benefits from good stormwater management.  
17 Streams are protected, streets are not  
18 flooded.

19 So you look at burden and you can do  
20 it based on burden or impact, and that's  
21 differential. Again, the larger the parcel,  
22 the more impervious area, the more runoff, and  
23 generally speaking the greater the impact on a  
24 stream because of the greater runoff. And  
25 impact is really important for a number of

1 PHASE II - TECHNICAL HEARING

2 reasons.

3 You know, it's the City's policy  
4 that we want to protect and preserve our  
5 rivers, even forgetting about just the  
6 environmental impacts. A healthy, clean river  
7 that's not eroded and that's protected  
8 encourages people to come to the City, to want  
9 to live by that river, to want to do business  
10 by that river. So it makes good sense from  
11 the City's point of view.

12 These rivers that are taking in our  
13 stormwater inflow and pollutants are our  
14 source waters. We draw water from the  
15 Schuylkill and from the Delaware, and the  
16 other smaller creeks flow into that. So since  
17 that's where we get our drinking water from,  
18 we want to make sure we protect our source  
19 waters.

20 Joanne earlier showed a picture of  
21 what a stream looks like when the stormwater  
22 isn't properly managed and you saw those tree  
23 roots hanging out about to fall in the stream.  
24 Quantity is a huge, huge detriment to these  
25 streams. It erodes the banks. It makes it

1 PHASE II - TECHNICAL HEARING

2 difficult for life to be sustained and to  
3 prosper.

4 And I guess lastly, it's important  
5 because we have chosen, as a utility, to meet  
6 our environmental obligations under our NPDES  
7 permits by using these integrated watershed  
8 management plans, by directly protecting these  
9 streams, by going in the streams and doing  
10 things that will protect them. We think  
11 that's the most sensible way to spend our  
12 dollars to meet our environmental obligations.

13 So long answer to a short question,  
14 yes.

15 Q. That's helpful.

16 In your presentation you had talked  
17 about a credit or incentive program. Can you  
18 talk about who that's available to?

19 A. (Katz) Do you want me to address  
20 that or do you?

21 A. (Dahme) Currently the credits exist  
22 for nonresidential customers, so really we  
23 targeted originally, with the way we were  
24 thinking about it, our most impacted  
25 customers, like Sunoco and others, who are

1                   PHASE II - TECHNICAL HEARING  
2 going to see huge increases in their bills.  
3 So the credit system was really designed to  
4 take some of the sting out of those huge  
5 costs, and also to provide us with a  
6 cost-effective benefit recognizing that large  
7 parcels can most easily make improvements to  
8 those parcels and mitigate stormwater.

9           Q.    Does the Department intend to look  
10 at the possibility of extending that credit to  
11 residential customers as well?

12          A.    (Dahme) We do. We intend to spend  
13 the next few years working on a number of what  
14 we're calling model neighborhood projects,  
15 partnering with civic associations and others  
16 to really get a sense of what's feasible at a  
17 residential property level because the  
18 property is so small.

19                   We want to have, again, an  
20 understanding about what residents are willing  
21 to do, what they can feasibly do,  
22 maintenancewise to make sure how they're  
23 mitigating is sustained, but most importantly  
24 really what they are capable of.

25                   And then we have to take a look at

1                   PHASE II - TECHNICAL HEARING  
2 what is the incentive that would encourage  
3 residents to make that change and what would  
4 the impact of that incentive be on the  
5 Department's rate process.

6                   MR. GLASS: Thank you, panel.

7                   THE HEARING OFFICER: Can you give  
8 us a timeline for when there would be a  
9 policy implemented with regard to a  
10 residential program?

11                  MS. DAHME: We're certainly hoping  
12 to have a recommendation for a  
13 residential credit program or discount  
14 program in place in time for the next  
15 rate process, which may be three, four  
16 years away.

17                  THE HEARING OFFICER: So nothing  
18 until that time?

19                  MS. DAHME: Most likely, yes.

20                  THE HEARING OFFICER: How about a  
21 pilot program?

22                  MS. DAHME: When I talked about the  
23 model neighborhood projects, they would  
24 be pilot programs, yes. We will be  
25 partnering with these civic associations

1           PHASE II - TECHNICAL HEARING  
2           and our thoughts are to sort of surround  
3           the areas where the Water Department is  
4           implementing public stormwater projects  
5           in our parks, in our rec centers,  
6           reaching out to the customers who live  
7           along those areas, so they can see what a  
8           public implementation looks like and how  
9           they can sort of join in to make the  
10          entire neighborhood green.

11           THE HEARING OFFICER: Thank you.

12           You mentioned the Citizens Advisory  
13          Committee report previously and the  
14          testimony referred to that. Could you  
15          mark that as an exhibit and sponsor that,  
16          please, and put that in the record?

17           MR. DELANEY: I think it already is.

18           MR. DASENT: Yes. It is in the  
19          standard Interrogatory responses.

20           THE HEARING OFFICER: Could you  
21          indicate specifically where it is for me,  
22          please?

23           MR. DASENT: Yes.

24           THE HEARING OFFICER: We are going  
25          to break until 2 o'clock.

1 PHASE II - TECHNICAL HEARING

2 - - -

3 (Whereupon there was a luncheon  
4 recess in the proceedings.)

5 - - -

6 THE HEARING OFFICER: Were you able  
7 to find that reference?

8 MR. CLARE: PWD-4, Standard  
9 Interrogatory 58, Attachment 26 and 26B.

10 THE HEARING OFFICER: And we're now  
11 referring to the CAC report. Thank you,  
12 Deputy Commissioner Clare.

13 MR. DASENT: We also have the list  
14 of the largest increases.

15 THE HEARING OFFICER: Why don't you  
16 mark this?

17 MR. DASENT: Yes. With Your Honor's  
18 permission, we've distributed a list of  
19 the top 500 most sensitive customers that  
20 have the largest increases in stormwater  
21 charges. We would like to mark that as  
22 PWD Exhibit 47.

23 - - -

24 (Whereupon the document was marked,  
25 for identification purposes, as PWD

1 PHASE II - TECHNICAL HEARING

2 Exhibit 47.)

3 - - -

4 MR. DASENT: And in response to Your  
5 Honor's request, we will also give a list  
6 of the largest decreases and provide that  
7 for the record.

8 THE HEARING OFFICER: Thank you.

9 MR. DASENT: Thank you.

10 THE HEARING OFFICER: Are we ready  
11 to proceed with additional  
12 cross-examination?

13 MR. BERTOCCI: Yes.

14 MR. DASENT: Mr. Bertocci is next  
15 and he promised to be brief.

16 THE HEARING OFFICER: Don't let him  
17 put words in your mouth, Mr. Bertocci.

18 MR. BERTOCCI: Well, I didn't  
19 promise. I have some questions for  
20 Mr. Clare, I think, to begin with.

21 BY MR. BERTOCCI:

22 Q. In the Rebuttal Testimony, Page 3,  
23 the Public Advocate recommended the creation  
24 of a web-based system which would make credits  
25 granted a matter of public record, similar to

1                   PHASE II - TECHNICAL HEARING  
2 the way in which real estate assessments can  
3 be accessed by any member of the public. You  
4 can look up what someone's house is worth,  
5 what it's been assessed at for tax purposes.

6                   Your response was you do not rule  
7 out the possibility. On the other hand, you  
8 don't rule in the possibility either. Can you  
9 tell us more precisely what your position is  
10 on that issue?

11                  A. (Clare) Well, I think to the extent  
12 it could be done technologically and without  
13 any privacy issues, we certainly wouldn't be  
14 opposed to doing it.

15                  THE HEARING OFFICER: There's no  
16 question, are there privacy issues that  
17 would have to be considered?

18                  MR. CLARE: That's a Law Department  
19 question. I would think not, but I  
20 certainly wouldn't tread into trying to  
21 make that determination.

22                  THE HEARING OFFICER: Because you  
23 could have credits that relate to  
24 somebody's use of the property and what  
25 they do at the property and there may be

1 PHASE II - TECHNICAL HEARING

2 some proprietary information with regard  
3 to that underlying that.

4 MR. CLARE: Correct.

5 THE HEARING OFFICER: So there could  
6 be a problem with regard to public  
7 disclosure of that.

8 MR. CLARE: Yes. I mean, for  
9 instance, the Airport, they're a very  
10 vulnerable facility so we would not want  
11 their maps up there for the terrorists to  
12 be planning their next whatever.

13 BY MR. BERTOCCI:

14 Q. My question and I think my  
15 recommendation went much more to the issue of  
16 simply the amount of the credit, the amount of  
17 the credit that people are receiving.

18 A. (Clare) Yes. We are not opposed to  
19 doing that. Doing anything from an IT  
20 standpoint in the City is difficult,  
21 particularly when it's web-based, because it  
22 involves multiple departments and it's really  
23 literally like pulling teeth.

24 So the Water Department is  
25 interested in that. Whether I can get the

1                   PHASE II - TECHNICAL HEARING  
2 Department of Technology's attention and get  
3 the proper bandwidth and all that, that's  
4 another issue that we'll certainly look into.

5           Q.    Would you agree that the political  
6 and social atmosphere in this City is one in  
7 which substantial numbers of people are likely  
8 to regard discounts provided to particular  
9 companies as essentially politically based  
10 rather than based upon the permits?

11           MR. DASENT:  Well, rather than  
12 answer that so directly, transparency  
13 obviously would be an advantage in any  
14 situation where there are credits given  
15 or any decision is made to make sure that  
16 folks know that it's all on the permits.  
17 This isn't a game that we're playing.  
18 This is obviously something that's very  
19 serious in terms of cost allocation.

20           MR. CLARE:  Correct.  And the Nutter  
21 administration is very, very interested  
22 in transparency and openness.  So I don't  
23 see any dispute with respect to  
24 disclosing what the credits are and what  
25 people have taken advantage of them.

1 PHASE II - TECHNICAL HEARING

2 BY MR. BERTOCCI:

3 Q. Have you explored this possibility  
4 beyond within the Water Department itself?

5 A. (Clare) We have not.

6 Hold for just a second, Phil.

7 MR. CLARE: Prabha, is that true, we  
8 haven't explored, or Chris, putting all  
9 the credits up on the web?

10 MS. KUMAR: We have talked about it,  
11 but we haven't finalized anything yet.  
12 But it is not ruled out. We are talking  
13 about it.

14 MR. CLARE: Yes. It's certainly  
15 been discussed as part of our  
16 implementation.

17 BY MR. BERTOCCI:

18 Q. So is this something that you think  
19 the Hearing Officer could recommend if he  
20 believed that this was something that should  
21 be explored further?

22 A. (Clare) Sure.

23 Q. I would like to turn your attention  
24 next to the response to PA-JM 55.

25 A. (Clare) Okay.

1 PHASE II - TECHNICAL HEARING

2 Q. You're familiar with what's called a  
3 discontinuance permit or a discontinuance of  
4 water permit --

5 A. (Clare) Correct.

6 Q. -- under the Philadelphia ordinance  
7 and Water Department regulations?

8 A. (Clare) Yes.

9 Q. And basically what those provisions  
10 mean is that a customer has the right at the  
11 present time to file an application with the  
12 Water Department, I guess, or with L&I, pay a  
13 \$100 fee, and are able to then not be billed  
14 for water and sewer charges under the  
15 ordinance and under the regulations; isn't  
16 that right?

17 A. (Clare) Correct; and at the same  
18 time their service is severed from our system.  
19 That's a condition of the permit.

20 Q. I think that's a legal question.  
21 Let's assume that, in fact, it's not a  
22 condition of the permit that the service be  
23 physically severed from the main as opposed to  
24 being simply shut off.

25 A. (Clare) As a factual matter, we

1 PHASE II - TECHNICAL HEARING

2 don't allow discontinuance permits unless  
3 they're severed at the main. So we could  
4 assume that, but it wouldn't be a correct  
5 assumption.

6 Q. What is the process for severing it  
7 at the main?

8 A. (Clare) We send a crew to break the  
9 pavement, make an excavation, and physically  
10 cut the pipe and plug the main.

11 Q. Maybe this gets into some of my  
12 discovery responses, but you provided a list  
13 on the third page, on the exhibits to this  
14 response --

15 A. (Clare) Correct.

16 Q. -- in which you listed for fiscal  
17 2008 334 discontinuance permits that were  
18 granted.

19 A. (Clare) Those are the ones that  
20 were paid that year; that's correct.

21 Q. Or were paid that year. Is it your  
22 testimony that for all those 334, that a crew  
23 went out and actually dug up the street and  
24 physically separated those properties from the  
25 main?

1 PHASE II - TECHNICAL HEARING

2 A. (Clare) Yes, certainly within a  
3 reasonable period of time.

4 Q. And what would a reasonable period  
5 of time be?

6 A. (Clare) I'm told that the average  
7 time to complete is 48 days.

8 Q. If someone after a couple years  
9 reapplied for service, what would happen then?

10 A. (Clare) Well, they would have to  
11 reconstruct the water service from their meter  
12 all the way out to the main. You know, the  
13 estimated cost is -- it depends on footage,  
14 but -- probably in the 2- to 3-thousand-dollar  
15 range. They would need to obtain a permit and  
16 get a new meter, you know, have the meter  
17 installed, have the water ferrule installed by  
18 Water Department people, and then those  
19 charges would resume.

20 Q. So it's your testimony that legally  
21 everybody that gets a water discontinuance  
22 permit, pays the \$100, that they don't have to  
23 pay for the disconnection, the disconnection  
24 is done by the Water Department; is that  
25 right?

1 PHASE II - TECHNICAL HEARING

2 A. (Clare) That's correct. We  
3 actually lose a lot of money on a  
4 disconnection. We believe the actual cost is  
5 in the area of about \$1,500, including street  
6 opening permits, street restoration, dig up by  
7 the crew. You know, it's a substantial  
8 excavation.

9 But there's a lot of water loss by  
10 these connections. So the policy of the Water  
11 Department is to incentivize people, when  
12 properties no longer exist in particular, to  
13 take out this permit, stop the water and sewer  
14 charges, but also stop this unabated flow of  
15 water from their service line.

16 The whole reason behind the  
17 discontinuance permit is to help us with the  
18 loss of water and indemnities and problems  
19 that relate to cave-ins and such because of  
20 these unabated connections.

21 Q. But what the customer has to do in  
22 order to get this discontinuance is to pay the  
23 \$100; isn't that right?

24 A. (Clare) Correct.

25 Q. Because the action of disconnecting

1 PHASE II - TECHNICAL HEARING

2 is by the Water Department?

3 A. (Clare) Correct.

4 Q. Now, looking at the numbers that you  
5 provided for fiscal 2008, just so that we  
6 understand how these numbers were put  
7 together, I'd like a little clarification. I  
8 guess maybe the best way to get at this is  
9 going across, if we take residential customers  
10 here --

11 A. (Clare) All right, which would be

12 R.

13 Q. R, that's the 5/8" meters; right?

14 A. (Clare) Correct.

15 Q. And 237 accounts, if you start under  
16 the number of accounts?

17 A. (Clare) Correct.

18 Q. \$19.25 is the monthly service  
19 charge?

20 A. (Clare) Correct.

21 Q. Now, that's the monthly service  
22 charge, that includes everything; right?

23 A. (Clare) Correct.

24 Q. That includes water, sewer, and  
25 stormwater; is that right?

1 PHASE II - TECHNICAL HEARING

2 A. (Clare) That's correct.

3 Q. Okay. That was as of what year?

4 A. (Clare) July 1, '07, I believe.

5 Q. So for fiscal 2008 you still have  
6 \$19.25?

7 A. (Clare) Correct. Fiscal '08  
8 started July 1, '07.

9 Q. And looking at fiscal 2006 you still  
10 have \$19.25?

11 A. (Clare) Yes. \$19.25 was used on  
12 all three of these. These schedules were done  
13 for another purpose.

14 Q. Yes. That may be a minor thing. I  
15 mean, I understand what you really were trying  
16 to do for each year was to get the service  
17 charge that was in effect for that fiscal  
18 year; isn't that right?

19 A. (Clare) Correct.

20 Q. I am trying to get the theory of  
21 this. But I think that probably needs to be  
22 corrected, wouldn't you think?

23 A. (Clare) I agree. I already have.

24 Q. Now, to get to the \$4,562, how do  
25 you do that?

1 PHASE II - TECHNICAL HEARING

2 A. (Clare) That's 237 accounts at  
3 \$19.25 a month.

4 Q. Okay.

5 A. (Clare) So basically for those 237  
6 accounts, the combination of those accounts  
7 was paying \$4,562.25 in service charges.

8 Q. Okay. So then if we went down and  
9 got the total monthly charge, \$76,000, that's  
10 the total monthly charge for the accounts, the  
11 service charge that is eliminated for the  
12 accounts that are discontinued; right?

13 A. (Clare) Correct.

14 Q. Now, the \$76,884 at the bottom, that  
15 really doesn't have any relationship to the  
16 next three numbers, does it?

17 A. (Clare) Well, under our regulations  
18 the Water Department is entitled to bill and  
19 collect three months of advance service  
20 charges.

21 Q. Right.

22 A. (Clare) So the next column was  
23 meant to show essentially what the advance  
24 service charge being held by the Department  
25 was.

1 PHASE II - TECHNICAL HEARING

2 Q. And when someone discontinues,  
3 assuming that they're current on their bills,  
4 what would happen is this advance service  
5 charge would be refunded to them, wouldn't it?

6 A. (Clare) Or credited against the  
7 last bill; that's correct.

8 Q. Yes.

9 A. (Clare) More than likely it's  
10 credited against the last bill.

11 Q. But essentially this \$230 is a  
12 refund of what is like a security deposit;  
13 isn't that right?

14 A. (Clare) Correct.

15 Q. Total discontinuance fee, \$33,400,  
16 we know how that figure is calculated by going  
17 back up to R. \$23,700, that's 237 times \$100;  
18 right?

19 A. (Clare) Yes.

20 Q. So then as we go across, when we get  
21 to net effect on revenue then, what you're  
22 saying is that the discontinuances actually in  
23 terms of cash cost you \$197,252 a month;  
24 right?

25 A. (Clare) That's the total advance

1           PHASE II - TECHNICAL HEARING  
2 service charge, the net effect on revenue. So  
3 it's the total of the three months we held  
4 less the amount we got for permit fees.

5           Q.    Okay. Thank you. That's helpful.

6                    Now, we know --

7           THE HEARING OFFICER: Let me ask a  
8 question here while we're dealing with  
9 discontinuance.

10                   The plan is with regard to  
11 stormwater, a person who gets a  
12 discontinuance will still have to pay a  
13 stormwater charge; correct?

14           MR. CLARE: Correct, because when we  
15 sever the water service, one, we don't  
16 sever the sewer service; but, more  
17 importantly, whether the sewer service  
18 exists or not, stormwater will run  
19 unabated from that property into the  
20 system forever, unless the system is  
21 wiped off the face of the earth. So  
22 there's really no way to abate the  
23 stormwater charge.

24           THE HEARING OFFICER: So those  
25 properties that currently have

1           PHASE II - TECHNICAL HEARING  
2           discontinuance permits will be new  
3           customers.

4           MR. CLARE: That's correct, as would  
5           any like undeveloped parcel, for  
6           instance.

7 BY MR. BERTOCCI:

8           Q. Now, we also know from PA-JM 56,  
9           right, that there are about 32,224, according  
10          to your numbers, properties out there with  
11          discontinuance permits?

12          A. (Clare) Correct.

13          Q. And your estimate is that if you  
14          just continued your current policy and did not  
15          bill properties that had discontinuance  
16          permits, that the overall effect on billing  
17          and collection charges would be about \$10,000  
18          a year, is that right, calculating out the  
19          collection factor and all that?

20          A. (Clare) I would say the \$10,000 is  
21          certainly what we represent as an estimated  
22          amount that we would collect from the I guess  
23          it looks like \$4 million or so of billings.  
24          So we think there's very little chance of  
25          collection on these properties.

1 PHASE II - TECHNICAL HEARING

2 Q. Maybe I said \$10,000 a year. If you  
3 look at PA-JM 56, one of my questions was is  
4 that a monthly figure or is that a yearly  
5 figure.

6 If you're not sure, I mean, we can  
7 do it another time.

8 THE HEARING OFFICER: Let them  
9 confer.

10 - - -

11 (Mr. Clare confers with  
12 Mr. McKinley.)

13 - - -

14 A. (Clare) I believe it's an annual  
15 figure, but we can certainly get back to you  
16 on the record.

17 Q. That would be good. Thank you.

18 THE HEARING OFFICER: We'll have a  
19 post-hearing conference, as we did the  
20 last time, which will be a good  
21 opportunity to include in the record  
22 everything that we've requested and have  
23 not been able to get in today, so it's my  
24 intent to do that as well this time  
25 again.

1 PHASE II - TECHNICAL HEARING

2 BY MR. BERTOCCI:

3 Q. Okay. This may be for Mr. Katz.  
4 Turning to Page 3 of the Rebuttal Testimony,  
5 the third question from the bottom: "Is it  
6 appropriate for the proposed regulations to  
7 reflect that outstanding water and sewer  
8 charges (including stormwater charges) may be  
9 abated upon a property's acquisition by the  
10 City or Redevelopment Authority, my question  
11 really doesn't go to quite the Redevelopment  
12 or the City issue. It goes to the statement  
13 that "The purpose of the regulations is to set  
14 forth water, sewer and stormwater charges and  
15 their application administratively."

16 My question is: If an ordinance  
17 says, which the ordinance does say, that  
18 properties acquired by the City and RDA may be  
19 abated, and automatically, then is it  
20 appropriate or on what grounds do you believe  
21 it's appropriate for a regulation to say that  
22 all properties shall be billed a stormwater  
23 charge?

24 The regulation at 304.1(a) says:  
25 "All properties shall be billed a SWMS,"

1                   PHASE II - TECHNICAL HEARING  
2 stormwater management, "charge." So my  
3 question is: How can a regulation essentially  
4 make requirements which are broader than and  
5 allow the Department to do something which an  
6 ordinance says the Department cannot do?

7                   THE HEARING OFFICER: Well, the  
8 Department doesn't intend to do that,  
9 does it?

10                  MR. DASENT: No.

11                  MR. CLARE: Well, the ordinance or  
12 the City Code with respect to  
13 discontinuance says that water and sewer  
14 charges will terminate on the issuance of  
15 a discontinuance permit. I believe  
16 that's the language, or if I paraphrased  
17 it.

18                  These stormwater management service  
19 charges are not water and sewer charges;  
20 they're stormwater charges. So we don't  
21 see them being excluded by that language.

22                  THE HEARING OFFICER: Is that the  
23 question you asked?

24                  MR. BERTOCCI: No, that's not really  
25 the question I asked.

1 PHASE II - TECHNICAL HEARING

2 THE HEARING OFFICER: It's  
3 nonresponsive.

4 BY MR. BERTOCCI:

5 Q. I asked a more general legal  
6 question, leaving aside the interpretation of  
7 the City ordinance. I mean, I call it an  
8 ordinance because an ordinance is similar to a  
9 statute. Code sometimes makes people think  
10 about regulations, although not always, Public  
11 Utility Code.

12 But you have a City ordinance which  
13 says certain types of properties are not  
14 subject to water and sewer charges and yet now  
15 you are proposing a regulation which says that  
16 all properties are subject to water and sewer  
17 charges and stormwater charges.

18 A. (Clare) In terms of hierarchy,  
19 you're correct. I mean, Dave obviously would  
20 opine on that. But, you know, even a pitiful  
21 accountant like myself knows that an ordinance  
22 trumps a regulation. We don't believe they're  
23 inconsistent.

24 Q. Not so pitiful, but why wouldn't it  
25 be more helpful to anybody picking up this

1                   PHASE II - TECHNICAL HEARING  
2 regulation to have the regulation say  
3 something like except as provided by  
4 applicable law a SWMS charge shall apply to  
5 all properties? What that does is it puts  
6 someone reading your regulations on notice  
7 that they might have to look someplace else to  
8 get a final answer on what's covered and  
9 what's not.

10           A.   (Katz) I don't think as a drafting  
11 matter that really helps an individual when he  
12 picks it up and it says except as to other  
13 applicable law. That's always the case. You  
14 always look at other applicable law. You  
15 don't look at anything alone or by itself.

16                   The fundamental disagreement is we  
17 have a legal disagreement as to what the  
18 ordinance says. But if we talk about it  
19 factually, even when that property gets a  
20 D permit, rain still falls on it, runoff still  
21 comes from it. So from a factual matter, it  
22 still has a burden that has to be addressed.

23                   THE HEARING OFFICER: I don't know  
24           that you are answering the question. You  
25           are going on to the discontinuance issue,

1           PHASE II - TECHNICAL HEARING  
2           but I think we have an issue that's  
3           before that issue with regard to it, not  
4           dealing with the discontinuance issue, as  
5           I understand it right at present.

6           What he's talking about and what the  
7           testimony talks about on Page 3 is that  
8           there's seemingly an inconsistency  
9           between the Code and the regulations.  
10          The City Code says that there's  
11          abatement. The regulations say that  
12          everyone is charged. So without regard  
13          to discontinuance, he wants to know why  
14          those regulations are inconsistent with  
15          the City ordinance.

16          Is that correct?

17          MR. BERTOCCI: That's right.

18          THE HEARING OFFICER: We will get to  
19          the discontinuance. But this is just a  
20          coming attraction to that issue.

21          MR. KATZ: Right, and we don't  
22          believe that it is. We believe the  
23          stormwater charge is separate and  
24          distinct and we can continue to bill the  
25          stormwater charge. We don't believe that

1                   PHASE II - TECHNICAL HEARING

2                   that conflicts with the ordinance.

3 BY MR. BERTOCCI:

4           Q.     Just to be clear -- and this is  
5 something we're going to have to brief -- you  
6 believe that the ordinance can be read not to  
7 include stormwater charges?

8           A.     (Katz) Right. We believe there's  
9 currently no conflict between the regulation  
10 as we put it forth and the ordinance.

11          Q.     Because the ordinance, when it  
12 refers to sewer charges, refers only to that  
13 part of the system which is sanitary sewer --

14          A.     (Katz) Right.

15          A.     (Clare) Correct.

16          Q.     -- and water; right?

17          A.     (Katz) Right. But certainly at  
18 that time it didn't envision what we're doing  
19 now, a parcel-based stormwater charge.

20          Q.     Okay. There's also on Page 3 an  
21 issue concerning the definition of "property,"  
22 the middle of Page 3 of the Rebuttal  
23 Testimony.

24          A.     (Clare) We intend to certainly get  
25 that definition of "property" in the regs.

1 PHASE II - TECHNICAL HEARING

2 MR. DASENT: That's an agreement.

3 BY MR. BERTOCCI:

4 Q. What would be your response to  
5 suggesting that you might define a property as  
6 one which is listed as a delineated tax parcel  
7 in BRT?

8 MR. DASENT: That's a possibility.  
9 The Law Department will weigh in on it,  
10 though. We can opine anything we want.  
11 The Law Department will look at that,  
12 among other ideas. But we are agreeing  
13 with you that a definition needs to be  
14 there.

15 MR. BERTOCCI: Well, right now I'm  
16 asking for your wisdom, which would be  
17 the basis for the Hearing Officer's  
18 recommendation, which then the Law  
19 Department is ultimately going to weigh  
20 in on.

21 THE HEARING OFFICER: Well, can we  
22 hope to have some type of agreement,  
23 since you both want "property" defined,  
24 can we just leave it open for the moment  
25 to see if --

1 PHASE II - TECHNICAL HEARING

2 MR. DASENT: We can try to negotiate  
3 some language.

4 THE HEARING OFFICER: -- we can  
5 agree on a definition for "property"  
6 among both sides with regard to that  
7 issue. And then if we're unable to do  
8 that, then I'll make a recommendation as  
9 to what the definition is after briefs by  
10 both sides.

11 But for the time being, let's see if  
12 we can try and work that out. It seems  
13 like something not too formidable, but  
14 you never can tell.

15 MR. DASENT: Yes, we should be able  
16 to work that out.

17 MR. BERTOCCI: Now, the only other  
18 questions I had had to do with the  
19 unanswered discovery and I'm not sure  
20 what the most efficient way to deal with  
21 that is.

22 MR. DASENT: I thought we could  
23 treat those as transcript requests except  
24 to the degree Mr. Clare is prepared to  
25 answer anything today on the record.

1 PHASE II - TECHNICAL HEARING

2 MR. BERTOCCI: It almost seems as if  
3 if they're going to answer some already,  
4 we've covered the subject matter --

5 MR. DASENT: Right, intent and  
6 things like that.

7 MR. BERTOCCI: -- so I would rather  
8 have him, I think, just respond to them  
9 as a transcript request.

10 MR. DASENT: Okay.

11 MR. BERTOCCI: Perhaps what we  
12 should do is enter the Interrogatories in  
13 the record so that the Hearing Officer  
14 can see what they are.

15 MR. DASENT: They are a part of the  
16 record already --

17 MR. BERTOCCI: Well, that's true.

18 MR. DASENT: -- in one of our  
19 exhibits.

20 MR. BERTOCCI: This is PA-JM 59  
21 through 65.

22 MR. DASENT: It's PWD Exhibit 39.

23 THE HEARING OFFICER: Let me take a  
24 look at that.

25 And what is the status of this

1 PHASE II - TECHNICAL HEARING

2 discovery request?

3 MR. BERTOCCI: It was really served  
4 the day after we got the Rebuttal  
5 Testimony, last Friday. This is Tuesday.  
6 So far Mr. Clare has spoken to me and he  
7 said "I don't have them yet but I will  
8 have the answers."

9 THE HEARING OFFICER: When do you  
10 think we can have them?

11 MR. DASENT: Probably later this  
12 week.

13 MR. CLARE: Yes, certainly within  
14 the next day or two.

15 THE HEARING OFFICER: Let's say next  
16 Monday as the deadline.

17 MR. DASENT: That's fine.

18 THE HEARING OFFICER: Okay. So with  
19 regard to Items PA-JM 59, 60, 61, 62, 63,  
20 64, 65, we're going to treat them as  
21 transcript requests and they will be  
22 provided by next Monday to everybody of  
23 record.

24 To the extent that they provide  
25 something that you require

1 PHASE II - TECHNICAL HEARING

2 cross-examination of, we'll certainly  
3 entertain that if it's necessary.

4 MR. BERTOCCI: Thank you.

5 BY MR. BERTOCCI:

6 Q. I have one further question,  
7 Mr. Clare. You stated that the proposed  
8 regulations do not make watershed parks  
9 subject to the SWMS charge, I believe, and I  
10 had understood that ultimately it was decided  
11 that both watershed parks and Fairmount Park  
12 would be subject to the SWMS charge with the  
13 expectation that they would then be eligible  
14 for substantial credits. Did I misunderstand  
15 something? -- because I think it's --

16 A. (Clare) Give me a second because I  
17 think in the CAC report it did recommend  
18 exemption of the watershed parks. I believe  
19 that as part of our implementation we talked  
20 about making them subject to the stormwater  
21 charge but anticipating 100% credit. So  
22 there's a distinction, I guess, between how  
23 the CAC viewed it and our ultimate  
24 implementation.

25 Q. So ultimately they are then subject

1 PHASE II - TECHNICAL HEARING

2 to the SWMS charge, but with an expectation  
3 that they will apply for the credits and  
4 probably --

5 A. (Clare) Correct.

6 Q. -- without prejudging it, are likely  
7 to get a substantial, if not 100%, credit?

8 A. (Clare) Correct.

9 THE HEARING OFFICER: Who applies  
10 for the credit?

11 MR. CLARE: Fairmount Park I would  
12 assume, Fairmount Park staff.

13 MS. DAHME: And we will be  
14 partnering with the parks. We are going  
15 to be using the parks as a component of  
16 our stormwater mitigation. So we plan to  
17 take stormwater runoff from surrounding  
18 streets, perhaps parcels, use the parks  
19 to help treat, pulling it in and out of  
20 our system. We're already teaming up  
21 with the parks to implement that.

22 MR. BERTOCCI: Fine. That clears  
23 things up for me. Thank you. That's all  
24 I have.

25 THE HEARING OFFICER: Any further

1 PHASE II - TECHNICAL HEARING

2 questions along here?

3 MR. DASENT: We will have some  
4 redirect.

5 THE HEARING OFFICER: Okay. I have  
6 some questions. Why don't you go with  
7 your redirect and then we'll take a break  
8 and then I'll go with my questions.

9 MR. DASENT: Okay.

10 THE HEARING OFFICER: You might  
11 cover some of my questions.

12 - - -

13 REDIRECT EXAMINATION

14 - - -

15 BY MR. DASENT:

16 Q. Mr. Clare, during Mr. Delaney's  
17 cross-examination this morning you talked  
18 about the Water Department's cost of service.  
19 What elements of stormwater costs are a part  
20 of the Department's cost of service?

21 A. (Clare) Well, in terms of  
22 stormwater, you know, we have both capital and  
23 operating and maintenance costs. In terms of  
24 capital, we're doing a number of things, many  
25 of which are not yet completed but are in our

1           PHASE II - TECHNICAL HEARING  
2 capital plan. So we have bond indebtedness  
3 outstanding for some of this.

4           We're doing things like stream bank  
5 restoration. We're building wetlands, as  
6 Joanne described. We're digging tunnels to  
7 some extent, like near Kelly Drive and  
8 Dobson's Run, where I think we had Your Honor  
9 up. That's a \$40 million tunnel, just that  
10 one project.

11           THE HEARING OFFICER: There's still  
12 construction going on?

13           MR. CLARE: Correct, correct. And  
14 there will be many, many more of those  
15 kinds of things.

16           On the operating side, we do some of  
17 that stuff with our own forces, like  
18 stream bank restoration, tree planting,  
19 you know, kind of conversion of  
20 impervious to pervious surfaces. We also  
21 do inlet cleaning on the 75,000 inlets.  
22 We dispose of that debris. We treat the  
23 wastewater or stormwater, if you will,  
24 that comes down the pipes, so there's a  
25 treatment component.

1 PHASE II - TECHNICAL HEARING

2 What else is there?

3 Oh, our capital investment in both  
4 the separate sewer system and the  
5 interceptors and stuff that transport  
6 this stormwater to its ultimate  
7 destination are all part of that  
8 stormwater charge.

9 BY MR. DASENT:

10 Q. Okay. And that also is a part of  
11 the \$100 million budget that we spoke about  
12 earlier with Ms. Dahme's presentation?

13 A. (Clare) Correct, correct.

14 Q. Now, reference was also made to  
15 Sunoco's stormwater charges under the new regs  
16 at a roughly \$5 million level. Is that net of  
17 or gross of the various credits that might  
18 apply?

19 A. (Clare) That's before any credits.  
20 We don't have, as I said before, specific  
21 drainage information on the Sunoco site. But  
22 we have had our representatives walk the site  
23 with their representatives and we believe that  
24 there's substantial credits to be had there,  
25 probably reducing it two-thirds or so, in that

1 PHASE II - TECHNICAL HEARING

2 kind of ballpark.

3 Q. Thank you, Mr. Clare.

4 I would like to direct some

5 questions also to Mr. Katz.

6 Mr. Katz, do the proposed stormwater

7 regulations have anything to do with Sunoco's

8 NPDES permits other than the generic 7%

9 discount that will be applied?

10 A. (Katz) No, not at all. Really what

11 we're dealing with here, NPDES permits are

12 really separate and distinct. NPDES is an

13 acronym. It stands for the National Pollutant

14 Discharge Elimination System. Under the Clean

15 Water Act any discharge of pollutants into the

16 waters of the United States must be done in

17 accordance with a NPDES permit. Okay?

18 So NPDES regulates pollutants.

19 NPDES is concerned about the quality of your

20 discharge to a river, not about quantity.

21 Quantity is not a regulated pollutant under

22 the Clean Water Act NPDES system. Okay? So

23 NPDES regulates quality, not quantity.

24 Stormwater is primarily concerned

25 about quantity. It's this large volume of

1                   PHASE II - TECHNICAL HEARING  
2 runoff that goes to our streams that cause all  
3 these issues. It's not to say we're not  
4 concerned about quality, we obviously are, but  
5 it's this quantity that gives us the huge  
6 challenge that we have to control for our  
7 separate system, for our combined system, for  
8 the health of our streams and rivers.

9                   So really NPDES permits and what  
10 we're seeking to do here are really kind of  
11 separate and distinct issues. That 7% you  
12 allude to was really something that I guess  
13 the CAC recommended because they saw other  
14 cities do it, and I think Prabha will maybe  
15 talk a little bit about what other cities do.  
16 But in terms of real impact, it's really based  
17 on that IA and GA component. That's really  
18 the crucial nexus.

19                  Q.    Okay.  Now, sitting next to Dave  
20 Katz is Prabha Kumar, who was introduced a bit  
21 earlier.

22                   THE HEARING OFFICER:  Let's have her  
23                   sworn.

24   - - -

25                   ...PRABHA KUMAR, sworn...

1 PHASE II - TECHNICAL HEARING

2 - - -

3 BY MR. DASENT:

4 Q. Ms. Kumar, have you done a survey of  
5 various cities to find out if other cities are  
6 handling their NPDES surcharge any differently  
7 than Philadelphia plans to under the proposed  
8 regulations?

9 A. (Kumar) Yes, we have. We have done  
10 a specific survey of utilities that do or do  
11 not give NPDES credit.

12 Q. And do other cities give similar  
13 credits or is it all over the ballpark, if you  
14 can just give the Hearing Officer an idea?

15 THE HEARING OFFICER: Let's give  
16 some background as to what size cities  
17 and what the study consisted of to give  
18 some more meaning to it for the record.

19 BY MR. DASENT:

20 Q. What utilities did you look at?

21 A. (Kumar) We actually looked at a  
22 list of about 19 utilities of different sizes  
23 from different parts of the country, so it's  
24 really all over.

25 THE HEARING OFFICER: A

1 PHASE II - TECHNICAL HEARING

2 cross-section?

3 MS. KUMAR: Yes, a cross-section of  
4 utilities that give a credit, that's the  
5 distinction. So all these utilities that  
6 we looked at, they have a stormwater user  
7 fee and most of them do have a permit  
8 program. And then as part of the permit  
9 program we tried to find out whether they  
10 do specifically have a NPDES credit.

11 Out of the 19 utilities that we  
12 surveyed, four of them did not have a  
13 NPDES credit. Some of the large cities  
14 are Minneapolis, Minnesota. Portland,  
15 Oregon, they have a permit program, but  
16 they do not give any credit to NPDES  
17 permitholders.

18 Then the remaining other 15 that we  
19 looked at, they do give credit. Most of  
20 them give credit in the range of 5% to  
21 15%.

22 There was one utility that gives  
23 100% credit, but they give 100% credit to  
24 a NPDES permitholder who has 100% of the  
25 stormwater runoff from the property going

1           PHASE II - TECHNICAL HEARING  
2           through a wastewater treatment process on  
3           site, and that process needs to be  
4           approved by the City's Department of  
5           Engineering. So they are very clear,  
6           100% of the stormwater from that property  
7           has to go through the wastewater  
8           treatment process.

9           There's only one utility that did  
10          that and that is the City of Bloomington  
11          in Illinois.

12          MR. CLARE: How big are they?

13          MS. KUMAR: It's a midsized utility.

14          MR. CLARE: Do you have copies of  
15          that that you can pass out?

16          MS. KUMAR: Sure.

17          MR. DASENT: We will pass out the  
18          survey. We can make copies if we don't  
19          have any with us. I have one at least.

20          We can share those.

21 BY MR. DASENT:

22          Q. Now, in terms of the various cities  
23          you surveyed, where does the City of  
24          Philadelphia fall in terms of its credits in  
25          the range of other cities that have given

1 PHASE II - TECHNICAL HEARING

2 credit?

3 A. (Kumar) It's actually in the  
4 median, median of the 5% to 15%, because the  
5 majority is giving 5%, there's one that gives  
6 15%, one that gives 25%, and one that gives  
7 35%. If you take the median of 5 to 35 that  
8 we have in our list of 15 utilities,  
9 Philadelphia would be right in the median.

10 Q. Great. Thank you very much.

11 A. (Kumar) And just one final  
12 clarification, all the utilities that do have  
13 a stormwater credit program, their stormwater  
14 charge is based on parcel gross and impervious  
15 area like we have here.

16 THE HEARING OFFICER: Is this a new  
17 exhibit, Mr. Dasent?

18 MR. DASENT: Yes. We would like to  
19 mark this as Exhibit 48 for the Water  
20 Department.

21 - - -

22 (Whereupon the document was marked,  
23 for identification purposes, as PWD  
24 Exhibit 48.)

25 - - -

1 PHASE II - TECHNICAL HEARING

2 MR. DASENT: With that we have no  
3 further questions.

4 THE HEARING OFFICER: I will have  
5 some further questions, but we are going  
6 to take a break for ten minutes.

7 - - -

8 (Whereupon there was a recess in the  
9 proceedings.)

10 - - -

11 THE HEARING OFFICER: Okay. We're  
12 ready to reconvene.

13 We're going to give the  
14 triumvirate -- well, there's four of  
15 you -- the inhouse triumvirate and one  
16 outhouse a rest because we're going to  
17 take the public witnesses out of turn,  
18 please, but temporarily. You will be  
19 back for some more.

20 - - -

21 (Witnesses temporarily excused.)

22 - - -

23 MS. LINTON-KEDDIE: Your Honor, PLUG  
24 calls Mr. Michael Ferman.

25 THE HEARING OFFICER: Okay. Swear

1                   PHASE II - TECHNICAL HEARING

2           the witness in, please.

3                                   - - -

4                   ...MICHAEL FERMAN, sworn...

5                                   - - -

6                                   DIRECT EXAMINATION

7                                   - - -

8 BY MS. LINTON-KEDDIE:

9           Q.    Mr. Ferman, if you would, can you  
10 please state your name and business address  
11 for the record?

12           A.    Sure.  Michael Ferman and I am vice  
13 president of Newman & Company, 6101 Tacony  
14 Street.

15                   MS. LINTON-KEDDIE:  Your Honor, I  
16           have provided two copies of the Direct  
17           Testimony of Michael Ferman to the court  
18           reporter, which I would ask be marked as  
19           PLUG Statement No. 1.

20                                   - - -

21                   (Whereupon the document was marked,  
22           for identification purposes, as PLUG  
23           Statement 1.)

24                                   - - -

25

1 PHASE II - TECHNICAL HEARING

2 BY MS. LINTON-KEDDIE:

3 Q. Mr. Ferman, was PLUG Statement No. 1  
4 prepared by you or under your supervision?

5 A. Under my supervision.

6 Q. Do you have any corrections or  
7 modifications with respect to this document?

8 A. Not at this time.

9 Q. If I asked you the same questions  
10 today, would your answers be the same?

11 A. Yes.

12 Q. Is the information in this document  
13 material and correct to the best of your  
14 knowledge?

15 A. It is.

16 MS. LINTON-KEDDIE: Your Honor, I  
17 ask that PLUG Statement No. 1 be moved  
18 into the record.

19 THE HEARING OFFICER: Any objection?

20 MR. DASENT: No objection.

21 THE HEARING OFFICER: So moved.

22 - - -

23 (PLUG Statement 1 admitted in  
24 evidence.)

25 - - -

1 PHASE II - TECHNICAL HEARING

2 MS. LINTON-KEDDIE: Mr. Ferman is  
3 now available for cross-examination.

4 THE HEARING OFFICER: Mr. Dasent?

5 MR. DASENT: Thank you, Your Honor.

6 - - -

7 CROSS-EXAMINATION

8 - - -

9 BY MR. DASENT:

10 Q. Just some brief questions,  
11 Mr. Ferman. Your testimony expresses concern  
12 about the Department's proposal to change the  
13 cost allocation for stormwater based upon its  
14 impact on your business, as I understand it;  
15 is that right?

16 A. Yes.

17 Q. The stormwater charges under our  
18 proposal will cause your business' stormwater  
19 charges actually to double; is that correct?

20 A. 110%, yes.

21 Q. Your quarrel with us, however, is  
22 not about the way we're calculating this or  
23 moving toward a parcel-based system but,  
24 rather, just the financial impact; is that  
25 correct?

1 PHASE II - TECHNICAL HEARING

2 A. That's correct.

3 Q. You are aware that we will have a  
4 system of credits that will be available to  
5 all nonresidential customers?

6 A. I am.

7 Q. And you will take advantage of those  
8 credits?

9 A. I'd like to.

10 Q. And, in fact, you are inviting  
11 people out to your site to give you an idea of  
12 what those credits might be?

13 A. That's correct.

14 Q. Steps that you can take to mitigate  
15 your stormwater costs; isn't that true?

16 A. Yes.

17 Q. Okay. What about the phase-in  
18 itself? We are doing that over a three-year  
19 period. Under the proposed rates, even with a  
20 delay in the implementation of stormwater  
21 rates because of the impact on you, are you  
22 advocating any changes to the Hearing Officer  
23 concerning the phase-in of stormwater charges?

24 A. Certainly the longer, the better.  
25 We have a tremendous burden facing us

1           PHASE II - TECHNICAL HEARING  
2   certainly with utilities. We generate our own  
3   electricity and process steam. We have a  
4   cogeneration plant. So as you can imagine,  
5   natural gas has been crazy. No. 6 fuel oil,  
6   our other option. The cap coming off our  
7   electric rates is pending. So certainly the  
8   longer, the better.

9           Q. Do you have any period to recommend  
10   for the Hearing Officer to consider?

11          A. Ten years.

12                 No. Certainly at least four or five  
13   years would be great.

14                 MR. DASENT: Okay. Thank you very  
15   much, Mr. Ferman.

16                 THE HEARING OFFICER: Any other  
17   questions?

18                 MR. BERTOCCI: None.

19                 MR. DELANEY: No.

20                 THE HEARING OFFICER: Do I  
21   understand that your company makes game  
22   boards?

23                 THE WITNESS: Well, we manufacture  
24   recycled paperboard, much as you see  
25   right on the back of that tablet right in

1           PHASE II - TECHNICAL HEARING  
2           front of you, the back of your legal pad.  
3           That's exactly what we make, recycled  
4           paperboard typically converted into  
5           puzzles, games, high-end packaging.

6           THE HEARING OFFICER: You say it  
7           appears that additional closures of other  
8           plants are imminent. That might help  
9           you.

10          THE WITNESS: All it means is that  
11          our market is shrinking. Invariably the  
12          production goes overseas. I mean, my  
13          family has operated this mill since 1919.  
14          Every time a mill closes, we get excited  
15          about the potential for a ground swell,  
16          but it's just that, it's a swell, but  
17          then it dissipates.

18          THE HEARING OFFICER: But I  
19          understand you do run 24 hours a day?

20          THE WITNESS: We historically have  
21          run 24 hours a day for 27-day cycles, and  
22          then we shut down for maintenance. It's  
23          about a year and a half now we're running  
24          five days a week. It's much slower.  
25          We're getting hit hard.

1 PHASE II - TECHNICAL HEARING

2 THE HEARING OFFICER: Thank you very  
3 much. The witness is excused.

4 THE WITNESS: Thank you.

5 - - -

6 (Witness excused.)

7 - - -

8 THE HEARING OFFICER: The next  
9 witness?

10 MR. DASENT: We would like to call  
11 Christine Knapp and Wesley Horner.  
12 Actually, Next Great City Stormwater  
13 Subcommittee would like to call  
14 Mr. Horner and Ms. Knapp.

15 THE HEARING OFFICER: Will you swear  
16 the witnesses in, please.

17 - - -

18 ...WESLEY R. HORNER and CHRISTINE  
19 KNAPP, sworn...

20 - - -

21 MR. DASENT: Why don't we  
22 authenticate the testimony rather than  
23 stipulate to it?

24 MR. GLASS: Sure. I don't have the  
25 exhibit numbers. Do you know what

1 PHASE II - TECHNICAL HEARING

2 exhibit numbers they are?

3 THE HEARING OFFICER: NGCSS

4 Statement 1 for Mr. Horner and NGCSS

5 Statement 2 for Ms. Knapp.

6 - - -

7 (Whereupon the documents were  
8 marked, for identification purposes, as  
9 NGCSS Statements 1 and 2.)

10 - - -

11 MR. GLASS: I ask that those be  
12 admitted into the record.

13 THE HEARING OFFICER: Authenticate  
14 them first.

15 MR. GLASS: Excuse me.

16 - - -

17 DIRECT EXAMINATION

18 - - -

19 BY MR. GLASS:

20 Q. Is the document that Mr. Dasent  
21 referred to a document that you prepared or  
22 supervised the preparation of?

23 A. (Horner) Yes, it is.

24 A. (Knapp) Yes.

25 Q. If I were to ask you the same

1 PHASE II - TECHNICAL HEARING  
2 questions today, would your answers to those  
3 questions be the same?

4 A. (Horner) Yes, they would.

5 A. (Knapp) Yes.

6 MR. GLASS: I ask that that  
7 testimony be admitted into evidence.

8 THE HEARING OFFICER: They will be  
9 so admitted.

10 - - -

11 (NGCSS Statements 1 and 2 admitted  
12 in evidence.)

13 - - -

14 CROSS-EXAMINATION

15 - - -

16 BY MR. DASENT:

17 Q. Ms. Knapp, in your testimony you  
18 were generally supportive of the Department's  
19 proposal but critical of the absence of  
20 residential credits, and before I get to that,  
21 let me sort of back up and try to figure out  
22 the connection between Next Great City  
23 Stormwater Subcommittee and this whole issue.

24 A. (Knapp) Sure. Well, the Next Great  
25 City initiative is an initiative about three

1 PHASE II - TECHNICAL HEARING

2 years old started by PennFUTURE in order to  
3 create an environmental policy agenda for the  
4 City of Philadelphia in preparation for the  
5 mayoral race of 2007.

6 It was a coalition that is now at  
7 110 organizations and that coalition decided  
8 upon ten recommendations to put forward that  
9 they would like to see the City enact in order  
10 to improve the environmental quality of the  
11 City, and one of those ten was actually for  
12 this restructuring of stormwater rates.

13 Q. Did you issue any sort of  
14 questionnaire or do any sort of polling to  
15 understand how important this issue was to  
16 customers or constituents?

17 A. (Knapp) Yes, we did. We actually  
18 had two tracks. One was much more scientific.  
19 We hired Terry Madonna Opinion Research Group  
20 to conduct two polls for us, one for 600  
21 residents and one for 200 businesses, to get a  
22 sense of what sort of environmental  
23 issues/problems/priorities/attitudes they had.

24 Then secondly, we also did some  
25 anecdotal information-gathering by holding

1 PHASE II - TECHNICAL HEARING

2 community meetings in ten different parts of  
3 the City to collect people's complaints that  
4 way as well.

5 Q. Is there any connection between this  
6 issue, basement flooding, and other issues  
7 that are of concern to Philadelphians?

8 A. (Knapp) Yes, absolutely. We saw  
9 high levels of response about flooding and  
10 sewage backups. 21% of residents and 31% of  
11 businesses had some sort of property damage  
12 from flooding in the prior year from when the  
13 survey was conducted, which was a really  
14 astoundingly high number, higher than most of  
15 us even expected to get.

16 Q. It would seem to me it would take a  
17 lot of residential credits to offer small  
18 parcel owners enough incentive to do something  
19 by way of rain barrels or rain gardens to have  
20 an impact in this area. But I know you want  
21 to see a pilot program.

22 So let me ask Mr. Horner then a  
23 series of questions concerning what's the  
24 nature of a pilot program that you think would  
25 be worthwhile for the City to look at.

1 PHASE II - TECHNICAL HEARING

2 A. (Horner) Well, we understand in  
3 this initial phase that on the nonresidential  
4 side there's going to be a tremendous amount  
5 of activity processing to perform adequately  
6 the nonresidential crediting program. It's  
7 probably hard to actually project exactly what  
8 kind of time requirements that's going to take  
9 in the Water Department.

10 So in terms of a residential  
11 program, we're hoping that we can move forward  
12 on a pilot program that at least puts in place  
13 in different kinds of neighborhoods with  
14 different kinds of housing/residences where  
15 different kinds of what we call best  
16 management practices or what in the proposed  
17 regs is called stormwater management practices  
18 can be put in place both in front yards and  
19 back yards in the private zones of the  
20 residences so that folks can go and see what  
21 can be done, and that's very important, to try  
22 to incentivize a lot of action, get people  
23 interested in taking action, and being able to  
24 start actually taking corrective action in  
25 plot by plot, house by house reducing

1 PHASE II - TECHNICAL HEARING

2 stormwater flows.

3 That's going to be a challenge  
4 because the rates for your row house are  
5 really quite modest and so we've seen some  
6 very large numbers on the nonresidential side  
7 today, but to get folks really excited about  
8 the residential side -- and there's hundreds  
9 and hundreds of thousands of residences that  
10 we've got to deal with -- we're going to have  
11 to get people pretty excited.

12 The positive incentive, whatever  
13 reduction we can figure out in terms of  
14 residences, if your bill is 10 or 15 dollars a  
15 month, it's not going to be all that  
16 compelling. So we really have to try to get  
17 them enthused about these residential actions.

18 It's also really important to show  
19 them exactly what they can do in these very,  
20 very challenging situations, small lots, tight  
21 lots, and it's really important that they  
22 understand how to do it the right way, because  
23 we don't want folks going out and doing it the  
24 wrong way. That is going to be a disaster.

25 So the pilot projects have to be

1                   PHASE II - TECHNICAL HEARING  
2 carefully designed and hopefully with a  
3 certain amount of press and public relations  
4 effort to get people really excited about  
5 what's going on, hopefully dovetailing with  
6 some of the City's wonderful green streets  
7 efforts to show that these things can come  
8 together and really empower neighborhoods,  
9 enhance land values, turn neighborhoods into  
10 something that is much greener, much more  
11 attractive, and functions in a much more  
12 positive way.

13           Q.    Have other cities undertaken  
14 residential credit programs?

15           A.    (Horner) They have, they have, in  
16 different parts. We have amassed a fair  
17 amount of literature that shows that different  
18 cities are doing it in different places. Not  
19 every city obviously has the housing stock  
20 that exactly resembles the City of  
21 Philadelphia, which has its own set of  
22 challenges and opportunities. So those models  
23 inform, but it needs to be tailored very  
24 specifically to the City of Philadelphia at  
25 the same time.

1 PHASE II - TECHNICAL HEARING

2 Q. So in the next couple years it  
3 sounds like we have our work cut out for us.

4 A. (Horner) Absolutely, hopefully. We  
5 have a lot of exciting things to do.

6 Q. One other criticism you had in your  
7 testimony, or it wasn't a real criticism, but  
8 a difference from your proposal and what we've  
9 proposed had to do with pollutant loading as a  
10 variance in the stormwater feed formula. I  
11 take it that's a next step somewhere down the  
12 road.

13 A. (Horner) Yes, that's definitely a  
14 next step. Obviously this is a huge step  
15 forward in our minds in terms of moving from  
16 the meter-based system to a much more rational  
17 parcel-based system that is predicated on how  
18 much of the problem you're causing, that's how  
19 much of the problem you've got to solve. So  
20 that's absolutely critical.

21 It would be nice, we heard there are  
22 60 or so NPDES permitholders in the City that  
23 are working on water quality. There's a lot  
24 of different land uses, typically  
25 nonresidential land uses, that could be

1           PHASE II - TECHNICAL HEARING  
2   classified as hotter spots that are generating  
3   greater loads of non-point source pollutants,  
4   and maybe at some point someone could begin to  
5   consider that water quality loading as well.

6           The total volume issue is absolutely  
7   critical and that's the logical way to launch  
8   the program, absolutely. And volume is very  
9   much linked to quality in many, many respects  
10  in terms of overall watershed impacts. But as  
11  time goes by and the program could be refined,  
12  it would be of interest to see if we can  
13  adjust the program for the expected pollutant  
14  loads and the different land uses as well.

15           MR. DASENT: Thank you, Mr. Horner.

16           That's all I have.

17           THE HEARING OFFICER: Any other  
18  questions?

19           MR. BERTOCCI: I have nothing.

20           THE HEARING OFFICER: I have a  
21  couple questions.

22           The poll that you identified on Page  
23  2 of your testimony, is that the same  
24  poll that Ms. Knapp referred to?

25           MR. HORNER: Yes.

1 PHASE II - TECHNICAL HEARING

2 THE HEARING OFFICER: Is there a  
3 document that's available which sets that  
4 forth?

5 MS. KNAPP: Yes. This has some of  
6 the information. It has the figures that  
7 I just gave you listed in it. If you  
8 want to see the full polling, it's a much  
9 thicker document and I can have that sent  
10 over as well. But this has some of the  
11 highlights of it as related to the  
12 recommendation.

13 THE HEARING OFFICER: I think we'll  
14 make that part of the record. Why don't  
15 you mark that as your next exhibit  
16 number?

17 MR. DASENT: I will tell you what  
18 that is in a second.

19 Actually, it will be Next Great City  
20 Stormwater Subcommittee Exhibit No. 1.

21 THE HEARING OFFICER: Okay.  
22 How big is that?

23 MS. KNAPP: It's probably about 100  
24 pages.

25 THE HEARING OFFICER: If you can get

1 PHASE II - TECHNICAL HEARING

2 that over to us.

3 MS. KNAPP: Sure.

4 - - -

5 (Whereupon the document was marked,  
6 for identification purposes, as NGCSS  
7 Exhibit 1.)

8 - - -

9 THE HEARING OFFICER: What is the  
10 amount of residential credit that you  
11 would envision being made available on a  
12 monthly basis?

13 MR. HORNER: Well, that's a good  
14 question.

15 THE HEARING OFFICER: All questions  
16 by the Hearing Officer are good ones.

17 MR. HORNER: I mean, given the fact  
18 that you're talking about a fee of, I'm  
19 just going to say, somewhere between 10  
20 and 15 dollars and some of that is, as I  
21 understand it, fixed administrative fees,  
22 I mean, I think you can issue these  
23 credits, but they're going to have to be  
24 very modest.

25 I think you're going to have to sell

1           PHASE II - TECHNICAL HEARING  
2           the program beyond the absolute value of  
3           the credit itself. You are going to have  
4           to dovetail it with a variety of other  
5           incentives, hopefully, once again, the  
6           green streets program incentives, and  
7           demonstrate that folks can make this  
8           happen and make individual homes more  
9           attractive, because I can't imagine that  
10          you're going to convince too many people  
11          in the 300-some-thousand row houses in  
12          Philadelphia to do this because their  
13          monthly fee goes down from \$10 to \$8.

14                 THE HEARING OFFICER: That's exactly  
15                 the point that I make. Is it your  
16                 opinion that you would incentivize the  
17                 residential customers by maybe more of a  
18                 public good idea and a green idea,  
19                 environmental idea, rather than just by  
20                 the --

21                 MR. HORNER: Exactly. I think  
22                 people deserve some credit and there will  
23                 have to be some relatively easy,  
24                 straightforward administrative way to  
25                 make that happen because the Water

1           PHASE II - TECHNICAL HEARING  
2           Department isn't going to be able to deal  
3           with 450,000 residential applications and  
4           assessing every lot-by-lot case. That's  
5           just not going to be possible.

6           THE HEARING OFFICER: Well, is the  
7           credit program doable from an  
8           administrative viewpoint with that many  
9           residential houses?

10          MR. HORNER: I think it is doable,  
11          but you are going to have to start out  
12          relatively in modest ways and it's going  
13          to have to be pretty simplified and you  
14          are going to have to be careful that you  
15          avoid any negative implications. We  
16          don't want more water in basements from  
17          inappropriately placed SMPs, BMPs. We  
18          don't want to make that happen. But I  
19          think it really is important.

20          The bad news is that there's that  
21          many residences to contend with. The  
22          good news is that in fact you have  
23          450,000 chances to get folks to do  
24          something and, yeah, it's only going to  
25          happen very incrementally house by house,

1           PHASE II - TECHNICAL HEARING  
2           but nevertheless it can add up and you  
3           can start to make a significant  
4           difference if you can get a reasonable  
5           rate of participation, which is a lot  
6           easier than the gray solutions of mega  
7           tunnels that are awkwardly fitted into  
8           the urban landscape.

9           MS. KNAPP:  If I could just add to  
10          that, too --

11          THE HEARING OFFICER:  Please.

12          MS. KNAPP:  -- in terms of your  
13          comment on the marketing of it, PECO has  
14          a program called PECO WIND where people  
15          can sign up to buy wind credits and  
16          that's a cost to them for their bill of  
17          about 6, 7 dollars a month.  They have  
18          45,000 people willing to pay it just to  
19          do the right thing on the environment.

20          So even if the financials aren't  
21          really going to make a huge difference,  
22          it's a couple dollars a month savings, if  
23          it's the right thing to do  
24          environmentally, people may do it anyway.  
25          So if people are willing to pay 6, 7

1 PHASE II - TECHNICAL HEARING

2 bucks, they'd probably be willing to save  
3 a couple bucks to do the right thing.

4 THE HEARING OFFICER: Any further  
5 questions?

6 - - -

7 (No response.)

8 - - -

9 THE HEARING OFFICER: Thanks very  
10 much. I appreciate your input. I will  
11 certainly take it into consideration.

12 - - -

13 (Witnesses excused.)

14 - - -

15 THE HEARING OFFICER: Mr. Dasent?

16 MR. DASENT: We can bring the panel  
17 back or go with Sunoco, at your pleasure.

18 THE HEARING OFFICER: Let's go with  
19 Sunoco.

20 MR. DELANEY: Your Honor, we call  
21 then Richard Goracy and James Disario to  
22 the stand as the Sunoco witnesses.

23 THE HEARING OFFICER: State your  
24 full names and business address for the  
25 record, please.

1 PHASE II - TECHNICAL HEARING

2 MR. DISARIO: James Disario, Sunoco  
3 Philadelphia Refinery, 3144 Passyunk  
4 Avenue.

5 MR. GORACY: Richard Joseph Goracy,  
6 area process manager, 3144 Passyunk  
7 Avenue, Philadelphia.

8 THE HEARING OFFICER: Swear the  
9 witnesses in, please.

10 - - -

11 ...JAMES DISARIO and RICHARD J.  
12 GORACY, sworn...

13 - - -

14 MR. DELANEY: Your Honor, Sunoco has  
15 circulated to the parties and given to  
16 the court reporter copies of its Sunoco  
17 Statement No. 1 with attached Exhibits A  
18 through G. I would ask that this  
19 document be identified in the record as  
20 it's currently marked, which is Sunoco  
21 Statement No. 1 and the attachment,  
22 Exhibits A through G.

23 THE HEARING OFFICER: So marked.

24 - - -

25 (Whereupon the document was marked,

1           PHASE II - TECHNICAL HEARING  
2           for identification purposes, as Sunoco  
3           Statement 1.)

4                           - - -

5                           DIRECT EXAMINATION

6                           - - -

7 BY MR. DELANEY:

8           Q.   Mr. Disario and Mr. Goracy, let me  
9           direct your attention to the document that has  
10          been identified in the record as Sunoco  
11          Statement No. 1. Does this document represent  
12          your direct testimony in this matter?

13          A.   (Goracy) Yes, it does.

14          A.   (Disario) Yes, it does.

15          Q.   Was this document prepared by you or  
16          under your supervision?

17          A.   (Goracy) Yes.

18          A.   (Disario) Yes.

19          Q.   Is the information presented in  
20          there true and correct to the best of your  
21          knowledge, information, and belief?

22          A.   (Goracy) Yes.

23          A.   (Disario) Yes.

24          Q.   Do you have any corrections or  
25          modifications you wish to make to the

1 PHASE II - TECHNICAL HEARING

2 testimony?

3 A. (Goracy) No.

4 A. (Disario) No.

5 Q. Is this testimony true and correct  
6 to the best of your knowledge, information,  
7 and belief?

8 A. (Goracy) Yes.

9 A. (Disario) Yes.

10 Q. If I were to ask you these  
11 questions, would the answers be the same as  
12 contained in this Direct Testimony?

13 A. (Disario) Yes.

14 A. (Goracy) Yes.

15 MR. DELANEY: Your Honor, I would  
16 like to ask Mr. Goracy to just briefly  
17 identify and explain the maps that are  
18 attached as Exhibit E to the testimony  
19 just to orient everyone as to how the  
20 refinery is organized geographically.

21 THE HEARING OFFICER: That would  
22 certainly be fine.

23 MR. GORACY: I'm not sure how good  
24 your maps are, the drawings. But if you  
25 look at the first one, it's identified as

1           PHASE II - TECHNICAL HEARING  
2           6300 West Passyunk Avenue. What you have  
3           here is a photo of what we call the West  
4           Yard. Again, this is in the Point Breeze  
5           area. It's the area just to the left of  
6           the river. This is really kind of an  
7           out-of-service area. It's mostly  
8           vegetation covered with brush.

9           The next picture is more of an  
10          overall picture. I guess I will give you  
11          the 3144 West Passyunk Avenue/Moore  
12          Street as the identification. This gives  
13          you a view of basically the facility from  
14          above.

15          If you look at Passyunk Avenue, up  
16          above to the right is what we would call  
17          the North Yard. As you progress down  
18          past Passyunk, that is considered the  
19          South Yard. And, again, the West Yard  
20          would be off to your left right under the  
21          6000 Passyunk Avenue address.

22          The next picture, which is 6900  
23          Essington Avenue, that is a photograph of  
24          what we call the Schuylkill River Tank  
25          Farm and, again, that is just across the

1 PHASE II - TECHNICAL HEARING

2 river from what we'll see as the Girard  
3 Point area.

4 The next photo has the address of  
5 3404 Penrose Avenue. This is on the  
6 Girard Point side of the facility and the  
7 picture in this is what we consider the  
8 South Tank Field again in the Girard  
9 Point portion of the refinery.

10 Those are the parcels that we have.

11 MR. DELANEY: Your Honor, with that  
12 I would move for the admission of Sunoco  
13 Statement No. 1 and the attached exhibits  
14 into the record.

15 THE HEARING OFFICER: So admitted  
16 with the point that the pictures are kind  
17 of hard to discern for record purposes.  
18 Is there any way we can improve the  
19 quality of those for the record?

20 MR. DELANEY: Sure. We can provide  
21 better copies of them to you.

22 And anyone else that would like to  
23 have better copies, just tell us and we  
24 will send them. Everybody wants them?

25 MR. DASENT: Yes.

1 PHASE II - TECHNICAL HEARING

2 MR. BERTOCCI: Yes.

3 MR. DELANEY: Then we will send out  
4 another set to everyone and to Your  
5 Honor.

6 - - -

7 (Sunoco Statement 1 admitted in  
8 evidence.)

9 - - -

10 MR. DELANEY: Mr. Goracy and  
11 Mr. Disario are available for  
12 cross-examination, Your Honor.

13 THE HEARING OFFICER: Mr. Dasent?

14 MR. DASENT: Thank you, Your Honor.

15 - - -

16 CROSS-EXAMINATION

17 - - -

18 BY MR. DASENT:

19 Q. Mr. Disario, I assume I am  
20 addressing most of the questions to you based  
21 upon a conversation with counsel.

22 A. (Disario) Okay, if you must.

23 Q. And just sort of chime in since it's  
24 a panel if you want to answer differently.

25 Now, the Sunoco plant is obviously

1 PHASE II - TECHNICAL HEARING

2 located in the City of Philadelphia; isn't  
3 that correct?

4 A. (Disario) Yes.

5 Q. And you have a number of parcels you  
6 have identified in the record, Point Breeze,  
7 Girard Point, the Tank Farm, and the West  
8 Yard?

9 A. (Disario) Yes.

10 Q. Two of those parcels drain into your  
11 own wastewater treatment plants?

12 A. (Disario) That's correct.

13 Q. And one of the parcels drains into  
14 the Water Department's treatment plant?

15 A. (Disario) It actually gets pumped.

16 Q. It's pumped, okay. And then you  
17 have the West Yard, which I take it is an  
18 undeveloped --

19 A. (Disario) Undeveloped area.

20 Q. And the Tank Farm is the parcel that  
21 is pumped to the Water Department's facility;  
22 isn't that correct?

23 A. (Disario) The Schuylkill River Tank  
24 Farm, that's correct.

25 Q. Now, we've talked a lot about your

1                   PHASE II - TECHNICAL HEARING  
2 treatment plants and things that are going on  
3 that are unique to your facility, but I have  
4 not seen Sunoco in a Water Department case  
5 previous to now. I have represented the  
6 Department since about 1980 and I don't  
7 remember Sunoco ever intervening. Do you ever  
8 recall, during your tenure with Sunoco, that  
9 you have participated in a Water Department  
10 rate case?

11           A.    (Disario) Not to my knowledge.

12                   MR. DELANEY: Can I have a  
13 correction? I believe they were in the  
14 Customer Coalition in the 2005 case.  
15 They were a member of that group.

16                   MR. DASENT: Okay.

17 BY MR. DASENT:

18           Q.    So you have participated in the  
19 past, okay, at least as a participant in the  
20 Coalition.

21                   Now, you are aware, I take it then,  
22 that Sunoco, as all customers, pay a  
23 stormwater charge as a part of your payments  
24 to the Philadelphia Water Department for  
25 service?

1 PHASE II - TECHNICAL HEARING

2 A. (Disario) I was just made aware of  
3 that late last week.

4 Q. And that's a component of your due  
5 charge for wastewater service?

6 A. (Disario) Yes.

7 Q. And what we're doing in this  
8 particular proceeding is allocating the cost  
9 for the stormwater treatment a little  
10 differently than in the past. We have a new  
11 regime for allocating those costs. Are you  
12 aware of that?

13 A. (Disario) Yes.

14 Q. And moving them from a meter-based  
15 system, based upon our conversations today, if  
16 you've heard any of the discussions on the  
17 record, to now a parcel-based system is  
18 causing a change in your bill?

19 A. (Disario) Yes.

20 Q. And the reason that you're here, I  
21 guess, sort of singularly, not necessarily as  
22 a part of a larger coalition, is because that  
23 bill has grown exponentially in size?

24 A. (Disario) Yes.

25 THE HEARING OFFICER: Estimated to

1 PHASE II - TECHNICAL HEARING

2 be about \$470,000 a month.

3 MR. DASENT: Roughly \$5 million is  
4 the number that I have seen so far.

5 THE HEARING OFFICER: His testimony  
6 talks about, on Page 7, \$469,395 a month.

7 MR. DISARIO: Yes.

8 BY MR. DASENT:

9 Q. Now, in a gross respect, and we're  
10 here to talk about sort of the financial  
11 impact of moving from the current regime of a  
12 meter-based system now to a parcel-based  
13 system, you haven't, in fact, questioned the  
14 propriety or reasonableness of moving from one  
15 system to another.

16 You're more concerned, as I  
17 understand it at least, in terms of sort of  
18 the jurisdiction of the Department to do what  
19 it's doing, the benefit you're getting, and  
20 what's sort of the bottom line in terms of the  
21 financial impact on you. Those three  
22 components seem to be a part of your  
23 testimony.

24 A. (Disario) Generally so, yes.

25 Q. Okay. Now, when I talk about the

1                   PHASE II - TECHNICAL HEARING  
2 bottom line, I'm talking about not the  
3 \$5 million or so that we've talked about in  
4 terms of the annual impact upon you for  
5 various stormwater costs, but what about the  
6 credits that might be due; have you heard  
7 about the Department's applying credits to  
8 offset your exposure for the overall  
9 stormwater costs?

10           A.    (Disario) Yes.

11           Q.    And have you, in fact, had site  
12 visits and had the Department out to see what  
13 credits you might be eligible for?

14           A.    (Disario) Yes, we have.

15                   THE HEARING OFFICER: Have you  
16 gotten any estimates of what the credits  
17 will be?

18                   MR. DISARIO: No.

19 BY MR. DASENT:

20           Q.    Have you provided the drainage maps  
21 that have been requested to be eligible or for  
22 a determination as to what these credits might  
23 be?

24           A.    (Disario) I don't believe we have  
25 at this time.

1 PHASE II - TECHNICAL HEARING

2 Q. Do you plan to provide those  
3 drainage maps?

4 A. (Disario) Yes.

5 Q. Do you plan to also have whatever  
6 site visits from the Department to make  
7 yourself eligible for any other offsets or  
8 discounts?

9 A. (Disario) Yes, we do.

10 Q. And you recognize that \$5 million  
11 charge is before any determination of either a  
12 NPDES credit, before any other credits are  
13 applied?

14 A. (Disario) Yes.

15 Q. Now, do you have any violations of  
16 your NPDES permit as of right now?

17 A. (Disario) What do you mean by  
18 "violations"?

19 Q. Do you have any interaction with the  
20 Department of Environmental Resources  
21 concerning any problems with the operation of  
22 your wastewater treatment plants?

23 A. (Disario) Yes.

24 Q. Could you describe that briefly for  
25 the record?

1 PHASE II - TECHNICAL HEARING

2 A. (Disario) I can describe, to the  
3 best of my knowledge, recent events. In  
4 December during the large rainstorm with a  
5 very high flow through the plant we had an  
6 exceedance for TSS, would be an example.

7 THE HEARING OFFICER: Explain what  
8 that is.

9 MR. DISARIO: Total suspended  
10 solids.

11 THE HEARING OFFICER: Can you tell  
12 us a little bit about what that means?

13 MR. DISARIO: Basically what it  
14 says, it's solid particles that are  
15 suspended in the water that you can  
16 filter out, let's say.

17 BY MR. DASENT:

18 Q. All right. Now, in years past you  
19 never questioned the stormwater allocation to  
20 you because of the size of the bill basically?

21 A. (Disario) I haven't. That's not my  
22 area.

23 Q. Have you looked at any potential  
24 benefit that there may be in terms of the  
25 administration of a stormwater program by the

1 PHASE II - TECHNICAL HEARING

2 City to you, whether it has to do with keeping  
3 Passyunk Avenue from being flooded or  
4 Essington Avenue or any of the other  
5 surrounding streets --

6 A. (Disario) No.

7 Q. -- for your trucks coming out?

8 A. (Disario) I have not.

9 Q. Do your trucks use those streets and  
10 the surrounding area where the plants are?

11 A. (Disario) Yes.

12 Q. In terms of if it were a problem,  
13 like years and years ago, when I think the  
14 Mayor at that time went out to a fire at the  
15 Tank Farm over in your area, wouldn't you have  
16 to be able to access the plant --

17 A. (Disario) Yes.

18 Q. -- and have the necessary city  
19 services, whether it's just draining the whole  
20 area or making sure stormwater is handled in  
21 such a way that you can get to the plant on  
22 any given day in a storm event, for example?

23 A. (Disario) Yes.

24 Q. Have you had any other permit  
25 violations other than the one we just

1 PHASE II - TECHNICAL HEARING

2 discussed concerning the problem with the  
3 facility, your wastewater treatment facility?

4 A. (Disario) Yes, we have had several.

5 Q. When did those occur? Give me an  
6 idea of over the last five years.

7 A. (Disario) Over the last five years  
8 we've had maybe -- again, just an estimation,  
9 I can't think back that far -- probably seven  
10 or eight, in that range. Maybe as high as  
11 ten, maybe as low as six, in that range.

12 Q. And these are tied to storm events?

13 A. (Disario) Some are; some aren't.

14 Q. Does anything have to do with  
15 discharging directly to the river as opposed  
16 to flowing through/draining through your  
17 wastewater treatment plant?

18 A. (Disario) No.

19 Q. Give me an idea then of what they  
20 were about.

21 A. (Disario) We had a high ammonia  
22 reading one time. There was a TDS, total  
23 dissolved solids, issue and that was due to  
24 rainfall. They're the ones I can recall  
25 recently.

1 PHASE II - TECHNICAL HEARING

2 MR. DASENT: If Your Honor please,  
3 we would like to make a transcript  
4 request that we get a summary of the  
5 various NPDES violations at the  
6 wastewater treatment plant over the five  
7 years just because the witness can't be  
8 expected to recall everything and if  
9 there are records that he can provide us  
10 with, just a summary, it would help us  
11 understand at least the operation of the  
12 wastewater treatment plant for which a  
13 credit is going to be asked for at some  
14 point in the future.

15 MR. DELANEY: Your Honor, I am going  
16 to ask for an offer of proof, though,  
17 because what Mr. Katz testified to this  
18 morning, he admitted the Department has  
19 no jurisdiction over the operation of  
20 Sunoco's NPDES permit. So, I'm sorry, I  
21 don't see how this is relevant.

22 The witness can testify to what he  
23 has knowledge of, but I don't know what  
24 the history of the operations of the  
25 permit when it's subject to, as Mr. Katz

1           PHASE II - TECHNICAL HEARING  
2           admitted today, EPA and DEP jurisdiction,  
3           I'm not sure how that's relevant evidence  
4           in this proceeding.

5           MR. DASENT: If we can stipulate  
6           that this is purely a cost allocation  
7           matter and has no bearing on  
8           environmental matters, I can agree with  
9           Mr. Delaney. But since his premise in  
10          bringing forth this testimony has to do  
11          with the nexus between sort of  
12          environmental/NPDES-related matters and  
13          enforcement matters and what we have been  
14          talking about, which we believe is purely  
15          cost allocation, we would like to have  
16          the record full on both points.

17          MR. DELANEY: I don't think it's  
18          relevant.

19          THE HEARING OFFICER: I agree with  
20          Mr. Delaney. Objection sustained.

21          You do not have to provide any  
22          documents.

23          MR. DASENT: We have nothing  
24          further.

25          THE HEARING OFFICER: Any other

1 PHASE II - TECHNICAL HEARING

2 counsel?

3 - - -

4 (No response.)

5 - - -

6 THE HEARING OFFICER: Do you have  
7 some further redirect, Mr. Delaney?

8 MR. DELANEY: I have some short  
9 redirect.

10 - - -

11 REDIRECT EXAMINATION

12 - - -

13 BY MR. DELANEY:

14 Q. Mr. Disario, I think you answered  
15 most of the questions. Let me address them to  
16 you.

17 Mr. Goracy, you can also answer if  
18 you wish to.

19 Mr. Dasent asked you about whether  
20 you were aware that Sunoco was already paying  
21 a stormwater charge in its bills and I think  
22 you indicated that you had recently become  
23 aware of that.

24 A. (Disario) That's correct.

25 Q. Why is it that you just became aware

1 PHASE II - TECHNICAL HEARING

2 of that in the last week or so?

3 A. (Disario) Because it is not  
4 delineated out on the current sewer bills.  
5 There's no way to know that a stormwater  
6 charge is part of the sewer bill charge.

7 Q. So you would understand that just  
8 examining the bills?

9 A. (Disario) That's correct.

10 Q. And had you examined the bills to  
11 determine that previously?

12 A. (Disario) Just recently.

13 Q. To your knowledge, what is the  
14 reputation that Sunoco has with the DEP  
15 concerning its NPDES operations and permits?

16 A. (Disario) DEP regards us as a very  
17 proactive facility. It regards us very highly  
18 and uses our facility as an example to others  
19 in their jurisdiction.

20 Q. How are potential permit violations  
21 known to the DEP?

22 A. (Disario) They are self-reported.

23 Q. Self-reporting.

24 Can you describe a little bit to us  
25 how the product that's produced at the

1 PHASE II - TECHNICAL HEARING

2 refinery is actually transported to customers?

3 A. (Disario) The majority of the  
4 product is transported via either pipeline or  
5 waterborne transportation. There's a small  
6 amount that is transported via truck.

7 Q. So the motor transportation of  
8 product produced at the Sunoco Refinery, what  
9 percentage of the production do you think that  
10 would amount to?

11 A. (Disario) Less than 5%.

12 MR. DELANEY: Okay. That's all the  
13 questions I have, Your Honor. Thank you.

14 THE HEARING OFFICER: Any further  
15 questions?

16 MR. DASENT: Just briefly.

17 - - -

18 RECROSS-EXAMINATION

19 - - -

20 BY MR. DASENT:

21 Q. Mr. Disario, when you receive a  
22 bill, do you ever look at the bill to find the  
23 various brochures that explain what's in the  
24 bill, what the components of the bill are?

25 A. (Disario) I don't receive the

1 PHASE II - TECHNICAL HEARING

2 bills.

3 Q. Okay. Does anyone in your  
4 organization have responsibility for reviewing  
5 the bills and making sure that you know what  
6 you're paying for?

7 A. (Disario) I'm sure there is. I  
8 don't know who that would be, though.

9 Q. When you receive brochures or  
10 whoever receives the bills with the applicable  
11 brochures that explain the bill, they don't  
12 translate that to any conversation with you?

13 A. (Disario) No. I have no bearing on  
14 the bills. I'm not involved with them  
15 whatsoever.

16 Q. Or Mr. Goracy?

17 A. (Goracy) Our bills are typically  
18 sent to our accounts payable office and then  
19 basically it's handled through the accounts  
20 payable as far as getting the bills paid.

21 Q. So neither one of you sees those  
22 bills?

23 A. (Goracy) I see one bill.

24 Q. Now, in the administration of the  
25 stormwater program for the Department,

1 PHASE II - TECHNICAL HEARING

2 Mr. Disario, are you aware that you have to be  
3 in compliance with your NPDES permit to be  
4 able to get the 7% credit under the new regs?

5 A. (Disario) Yes, I believe so.

6 MR. DASENT: I'd ask Your Honor to  
7 revisit your ruling because their  
8 violation or nonviolation -- I mean, if  
9 they're conceding that they're in  
10 violation, I suppose it's a moot issue.  
11 But their violation has everything to do  
12 with their getting a credit and I think  
13 it is relevant to the proceeding.

14 MR. DISARIO: Can I clarify?  
15 They're not really considered violations.  
16 They're exceedances of permit limits.  
17 And by self-reporting those we are in  
18 compliance with our permit, because we  
19 self-report those. They are exceedances;  
20 not violations.

21 THE HEARING OFFICER: Have you ever  
22 been under any proceeding where your  
23 permit has been questioned?

24 MR. DISARIO: Never.

25 THE HEARING OFFICER: Any regulatory

1           PHASE II - TECHNICAL HEARING  
2           proceeding where you've had notice with  
3           regard to your permit?  
4           MR. DISARIO: No.  
5           THE HEARING OFFICER: So you can get  
6           a self-reporting violation without  
7           affecting your permit status?  
8           MR. DISARIO: Absolutely.  
9           THE HEARING OFFICER: How often is  
10          your permit renewed?  
11          MR. DISARIO: Every five years.  
12          THE HEARING OFFICER: And when was  
13          the last time it was renewed?  
14          MR. DISARIO: The official renewal  
15          was in 2006 and the amendment was in  
16          2008.  
17          THE HEARING OFFICER: And did the  
18          amendment change the flows or capacities?  
19          MR. DISARIO: No.  
20          THE HEARING OFFICER: What was the  
21          amendment?  
22          MR. DISARIO: It was basically we  
23          changed chemical vendors and as part of  
24          the NPDES permit for Pennsylvania, you  
25          have to get their approval any time you

1 PHASE II - TECHNICAL HEARING

2 bring new chemicals into the plant.

3 THE HEARING OFFICER: And when you  
4 make an amendment or get a new permit, is  
5 there an investigation done or some  
6 administrative proceeding?

7 MR. DISARIO: Yes. The State  
8 reviews the whole permit.

9 THE HEARING OFFICER: And how long  
10 have you held the permit altogether?

11 MR. DISARIO: I've been there 21  
12 years, so every five years.

13 THE HEARING OFFICER: I will hear  
14 your request again based upon that  
15 testimony and re-rule on that if you  
16 still want to make that request.

17 MR. DASENT: Yes, Your Honor.  
18 Basically I need to establish a couple  
19 things and perhaps you would let me renew  
20 my request at the end of the day, if you  
21 would, because I am going to re-call  
22 Mr. Katz and then I think you will have a  
23 little fuller record to make your  
24 determination on.

25 THE HEARING OFFICER: Okay. We'll

1 PHASE II - TECHNICAL HEARING

2 give you leave to do that.

3 MR. DASENT: Okay.

4 MR. DELANEY: I have no further  
5 questions of the witnesses.

6 THE HEARING OFFICER: A couple  
7 questions. Turn to your testimony,  
8 please, Page 15.

9 MR. DISARIO: Okay.

10 THE HEARING OFFICER: 15.1., you are  
11 asking that I direct or recommend that  
12 the staff modify the gross area and  
13 impervious area. What do you mean by  
14 that?

15 MR. DISARIO: Well, the calculations  
16 we received from the Department list our  
17 properties as having roughly a 98%  
18 impervious area. That is untrue.

19 THE HEARING OFFICER: Have you  
20 provided to them differing information,  
21 engineering studies?

22 MR. DISARIO: No, we have not to  
23 this point.

24 THE HEARING OFFICER: Is it your  
25 intention to do so?

1 PHASE II - TECHNICAL HEARING

2 MR. DISARIO: I don't know.

3 THE HEARING OFFICER: Has the  
4 Department made itself available and told  
5 you they'll discuss with you their  
6 calculations and make themselves open to  
7 discussions in that area?

8 MR. DISARIO: Yes, they have.

9 THE HEARING OFFICER: So if you want  
10 them to change this calculation, I would  
11 expect that you would have to give them  
12 some information to base that upon.

13 MR. DISARIO: Yes.

14 THE HEARING OFFICER: And you are  
15 going to do that also with the  
16 calculations for the runoff, the  
17 drainage?

18 MR. DISARIO: Yes.

19 THE HEARING OFFICER: You say in  
20 No. 2. that "...as to the West Yard, the  
21 property is undeveloped and has no inlets  
22 capable of discharging to PWD and  
23 therefore should be excluded..." Does  
24 that say every property that's  
25 undeveloped in the City shouldn't have a

1 PHASE II - TECHNICAL HEARING

2 stormwater charge?

3 MR. DISARIO: I don't know anything  
4 about that.

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

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

12 THE HEARING OFFICER: Well, an  
13 undeveloped property can have runoff for  
14 stormwater.

15 MR. DISARIO: Yes, it can.

16 THE HEARING OFFICER: And that's the  
17 basis -- well, okay.

18 And in 3. you ask that the PWD staff  
19 be directed to provide gross area and  
20 impervious area credits. They have  
21 advised you that they are willing to  
22 provide credits to you, haven't they?

23 MR. DISARIO: Yes. But the  
24 Schuylkill River Tank Farm is a little  
25 bit different because all of our



1           PHASE II - TECHNICAL HEARING  
2           hearing the idea of a confidentiality  
3           agreement. I think it had been raised  
4           earlier in this proceeding as well.

5           We would just ask that counsel  
6           follow up on that request because that's  
7           really what we've been waiting for,  
8           recognizing the sensitivity of some of  
9           the information on the maps that we're  
10          going to provide.

11          THE HEARING OFFICER: Why don't you  
12          state for the record the confidentiality  
13          that you want and we will get all counsel  
14          to agree to it of record?

15          MR. DUNLEAVY: We can do that.

16          THE HEARING OFFICER: We'll take a  
17          little break and you can write out a  
18          little statement and we can have that of  
19          record. We'll take five minutes.

20   - - -

21           (Whereupon there was a recess in the  
22           proceedings.)

23   - - -

24          THE HEARING OFFICER: The next  
25          witness?

1 PHASE II - TECHNICAL HEARING

2 MR. BERTOCCI: Yes.

3 Mr. Mierzwa, would you state your  
4 name and address for the record, please?

5 MR. MIERZWA: My name is Jerome D.  
6 Mierzwa. My last name is spelled  
7 M-I-E-R-Z-W-A. My business address is  
8 5565 Sterrett Place, Columbia, Maryland  
9 21044.

10 THE HEARING OFFICER: You were sworn  
11 previously in the prior hearing --

12 MR. MIERZWA: Yes, I was.

13 THE HEARING OFFICER: -- when you  
14 were subject to that burning  
15 cross-examination back then. I hope it's  
16 not as difficult this time as it was last  
17 time.

18 MR. MIERZWA: I heard it was going  
19 to be easier.

20 THE HEARING OFFICER: In any event,  
21 you remain under oath, sir. Do you  
22 understand that?

23 MR. MIERZWA: Yes, I do.

24 THE HEARING OFFICER: Fine.

25 MR. BERTOCCI: We have distributed

1           PHASE II - TECHNICAL HEARING  
2           to the parties and the court reporter a  
3           document entitled "Supplemental Direct  
4           Testimony of Jerome D. Mierzwa on Behalf  
5           of the Public Advocate." The statement  
6           is premarked PA Statement 4. We ask that  
7           it be so marked for identification.

8                                 - - -  
9           (Whereupon the document was marked,  
10          for identification purposes, as PA  
11          Statement 4.)

12                                - - -  
13          MR. BERTOCCI: I take it as so  
14          marked hearing no response.

15                                - - -  
16                                DIRECT EXAMINATION

17                                - - -  
18          BY MR. BERTOCCI:  
19                 Q.   Mr. Mierzwa, is that your prepared  
20          testimony for this proceeding?  
21                 A.   Yes, it is.  
22                 Q.   Was it prepared by you or under your  
23          supervision and direction?  
24                 A.   Yes, it was.  
25                 Q.   Are there any additions and/or

1 PHASE II - TECHNICAL HEARING

2 corrections that you would like to make to  
3 this statement?

4 A. Yes, there are a couple of minor  
5 changes I would like to make.

6 First of all, on Page 2 there is a  
7 chart that's called Table 1-S, which set forth  
8 the proposed monthly stormwater and sewer  
9 service charges by meter size for fiscal year  
10 2010.

11 In its Rebuttal Testimony the  
12 Department has indicated that I inadvertently  
13 used the fiscal year 2009 sewer rates. So I  
14 am revising my Page 2 to reflect the correct  
15 rates and I believe that they are being marked  
16 as Exhibit PA 5, which has been distributed.

17 Q. You have with you Exhibit PA 5 which  
18 has been premarked and distributed to the  
19 parties --

20 A. Yes.

21 Q. -- and you are proposing that  
22 Exhibit PA 5 be substituted for Page 2 in your  
23 testimony?

24 A. Yes, I am.

25 - - -

1 PHASE II - TECHNICAL HEARING

2 (Whereupon the document was marked,  
3 for identification purposes, as PA  
4 Exhibit 5.)

5 - - -

6 BY MR. BERTOCCI:

7 Q. Incorporating that correction, are  
8 there any other changes that you would make  
9 today?

10 A. Yes, there are. On Page 9, at Lines  
11 11, 16, and 21, there is a cite to Regulation  
12 305.1(i)(2). It's my understanding that the  
13 (2) in that regulation should become (1) at  
14 those cites that I mentioned due to the  
15 issuance of the revised regulations or the  
16 regulations that were filed on October 21,  
17 2008.

18 Q. Okay. Are there any other  
19 corrections?

20 A. Just one other correction and that's  
21 on Page 10. The first question and answer had  
22 to do with the inclusion of phased-in rates by  
23 fiscal year 2012. At the time I prepared that  
24 testimony, the in-service date was going to be  
25 fiscal year 2010. It has now been changed to

1           PHASE II - TECHNICAL HEARING  
2   2011. So this testimony is no longer  
3   applicable and Lines 1 through 10 should be  
4   deleted.

5           Q. Thank you.

6           Those corrections having been made,  
7   would you testify the same way today as your  
8   testimony is in this Direct Testimony?

9           A. I would.

10           MR. BERTOCCI: Mr. Mierzwa is  
11   available for cross-examination.

12           THE HEARING OFFICER: Mr. Dasent?

13           MR. DASENT: No questions.

14           THE HEARING OFFICER: Okay.

15           MR. DELANEY: No questions.

16           THE HEARING OFFICER: I have some  
17   questions.

18           MR. BERTOCCI: I also move that this  
19   be entered into evidence --

20           THE HEARING OFFICER: So admitted.

21           MR. BERTOCCI: -- the Direct  
22   Testimony and the exhibit.

23                                   - - -

24           (PA Statement 4 and PA Exhibit 5  
25   admitted in evidence.)

1 PHASE II - TECHNICAL HEARING

2 - - -

3 THE HEARING OFFICER: Let's go to  
4 your conclusions and recommendations at  
5 Page 13.

6 MR. MIERZWA: I have them.

7 THE HEARING OFFICER: The second  
8 recommendation says that "The  
9 individualized parcel based method should  
10 be phased-in over a period of time."  
11 What's your opinion of the proposed time  
12 period that the Philadelphia Water  
13 Department has suggested?

14 MR. MIERZWA: I have no objection to  
15 a three-year period.

16 THE HEARING OFFICER: You recommend  
17 further down in I guess the fourth  
18 recommendation that a current public  
19 record of all stormwater credits be  
20 maintained. Have you done any  
21 investigation as to whether or not the  
22 City is capable of doing that and what  
23 problems would be involved with regard to  
24 that?

25 MR. MIERZWA: No, I have not.

1 PHASE II - TECHNICAL HEARING

2 THE HEARING OFFICER: Do you know if  
3 other communities do that as a matter of  
4 general course?

5 MR. MIERZWA: I am not aware of  
6 whether they do or do not.

7 THE HEARING OFFICER: What was the  
8 basis of your recommendation?

9 MR. MIERZWA: Just to make the  
10 process as transparent as possible to see  
11 if the credits are being done as they  
12 have been proposed.

13 THE HEARING OFFICER: With regard to  
14 the discontinuance of water permit, the  
15 person that gets a discontinuance of  
16 water permit still owns a piece of  
17 property in the City, don't they?

18 MR. MIERZWA: Yes, they do, it's my  
19 understanding, of course, from counsel.

20 THE HEARING OFFICER: And they have  
21 runoff and stormwater usage, don't they?

22 MR. MIERZWA: Yes, they do.

23 THE HEARING OFFICER: So why should  
24 you think that they should not pay a  
25 stormwater charge?

1 PHASE II - TECHNICAL HEARING

2 MR. MIERZWA: It's strictly a legal  
3 issue on advice of counsel to make that  
4 recommendation.

5 THE HEARING OFFICER: Which counsel  
6 is that?

7 MR. MIERZWA: (Indicating.)

8 MR. BERTOCCI: Let the record show  
9 that he is pointing to me.

10 THE HEARING OFFICER: So you are  
11 making a recommendation that's basically  
12 based upon a legal conclusion that's been  
13 given to you by the party that's retained  
14 you in this matter?

15 MR. MIERZWA: That's correct.

16 THE HEARING OFFICER: Nothing with  
17 regard to your area of expertise?

18 MR. MIERZWA: Correct.

19 THE HEARING OFFICER: Do you agree  
20 that the collection rates can't be  
21 evaluated because of lack of experience?

22 MR. MIERZWA: That's correct.

23 THE HEARING OFFICER: You asked that  
24 they document that. What's your  
25 suggestion for documentation?

1 PHASE II - TECHNICAL HEARING

2 MR. MIERZWA: It's nothing special.

3 I mean just keep track of how much is  
4 billed out, how much is paid on time or  
5 over what period of time, and how much is  
6 collected through liens.

7 THE HEARING OFFICER: And do you  
8 have any suggestions for the pilot  
9 educational and demonstration program  
10 that you did recommend for the Hearing  
11 Officer?

12 MR. MIERZWA: No. I am relying on  
13 PennFUTURE and the Next Great City  
14 Stormwater Subcommittee for that.

15 THE HEARING OFFICER: Thank you.

16 Any further questions?

17 - - -

18 (No response.)

19 - - -

20 THE HEARING OFFICER: The witness  
21 may be excused.

22 MR. BERTOCCI: Thank you.

23 - - -

24 (Witness excused.)

25 - - -

1 PHASE II - TECHNICAL HEARING

2 THE HEARING OFFICER: All right.

3 The foursome is back.

4 - - -

5 ...JOSEPH S. CLARE, III, DAVID KATZ,

6 JOANNE DAHME, J. ROWE MCKINLEY, and

7 PRABHA KUMAR, resumed...

8 - - -

9 THE HEARING OFFICER: Mr. Delaney,  
10 you had some further cross-examination?

11 MR. DELANEY: Sure.

12 Let me ask Mr. Dasent, are you  
13 presenting them for my  
14 recross-examination on the rebuttal to  
15 the original cross this morning or are  
16 they going to do rebuttal to the Sunoco  
17 witnesses or what?

18 THE HEARING OFFICER: This is  
19 getting pretty complicated. That's for  
20 the engineers to answer.

21 MR. DASENT: We are going to do all  
22 of the above. I do have some questions  
23 also of the panel and you can do it in  
24 whatever order you would like.

25 MR. DELANEY: Why don't you go ahead

1 PHASE II - TECHNICAL HEARING

2 and do your questions and I will do all  
3 mine together.

4 MR. DASENT: Okay.

5 BY MR. DASENT:

6 Q. Mr. Clare, earlier today Mr. Disario  
7 referred to the fact that he was unaware of  
8 whether brochures came with new bills when new  
9 rates are implemented. Could you speak to  
10 that issue and what those brochures tell  
11 customers with respect to stormwater charges?

12 A. (Clare) Sure. I have for the  
13 court, I guess you would call it, every time  
14 we do a rate change, we do what we call a bill  
15 stuffer, which is essentially a brochure that  
16 explains how the bill is laid out, what's in  
17 the bill, what a customer is paying, et  
18 cetera. This is the latest one that came out  
19 of the first part of this rate case.

20 Over in the far right-hand corner,  
21 towards the top, they're talking about what's  
22 in a typical bill and, you know, basically  
23 breaking down all of the costs that are in  
24 both the service charge and the usage charges.  
25 One of the line items there, stormwater

1           PHASE II - TECHNICAL HEARING  
2 collection and treatment, basically identifies  
3 that a significant portion of the bill goes to  
4 the stormwater collection and treatment.

5           This is mailed with every bill that  
6 we mail out that has the first rate change in  
7 it. It's available on our website as well.

8           THE HEARING OFFICER: Are you going  
9 to mark that as an exhibit?

10          MR. DASENT: If we could mark it as  
11 Exhibit 49 and I move its admission into  
12 the record, Your Honor.

13   - - -

14           (Whereupon the document was marked,  
15 for identification purposes, as PWD  
16 Exhibit 49 and admitted in evidence.)

17   - - -

18 BY MR. DASENT:

19          Q. Mr. Katz, Mr. Disario also testified  
20 earlier that exceedances at Sunoco's  
21 wastewater treatment plants were not  
22 violations under its NPDES permit. Do you  
23 agree with that testimony?

24          A. (Katz) No, I don't. I believe I  
25 heard Mr. Disario testify that he had effluent

1                   PHASE II - TECHNICAL HEARING  
2 parameters in his permit, which we all do, and  
3 reporting obligations. And he said, well --

4                   THE HEARING OFFICER: Wait a minute.  
5 He just stepped back into the room and I  
6 want him to hear this.

7                   MR. DISARIO: Are you talking about  
8 me?

9                   THE HEARING OFFICER: Why don't you  
10 come up here so you make sure you can  
11 hear the witness and I want you to be  
12 able to consult with your counsel.

13                  MR. KATZ: I will start again. I  
14 understood Mr. Disario to testify --

15                  THE HEARING OFFICER: Ask the  
16 question again, please, Andre.

17 BY MR. DASENT:

18                  Q. Mr. Disario testified earlier that  
19 exceedances at the Sunoco wastewater treatment  
20 plant were not violations under his NPDES  
21 permit. Could you testify as to whether you  
22 agree or disagree with that?

23                  A. (Katz) No, I do not agree with that  
24 statement. NPDES permits, among other things,  
25 have specific effluent limits that people

1                   PHASE II - TECHNICAL HEARING  
2 have, they have specific reporting obligations  
3 and many other obligations regarding  
4 monitoring, allowing for inspections,  
5 recordkeeping.

6                   If you have an effluent violation of  
7 your permit, if you violate the number that's  
8 in your permit, whether it's a monthly average  
9 or daily average or weekly average, that is a  
10 permit violation.

11                  You have a separate obligation to,  
12 in a monthly report, report that obligation.  
13 If you don't report it, you have two  
14 violations. If you do report it, you only  
15 have one. But the reporting of an exceedance  
16 of a numeric discharge standard does not  
17 excuse it and it is still a NPDES permit  
18 violation.

19           Q.    Is this relevant in any way under  
20 the new regime of stormwater regulations in  
21 terms of their eligibility for a NPDES credit?

22           A.    (Katz) Right. It would be relevant  
23 under that 7% NPDES credit that we're  
24 suggesting that they ask for. One must be in  
25 compliance with their NPDES permit in order to

1           PHASE II - TECHNICAL HEARING  
2 be eligible for that 7% additional credit,  
3 which would be over and above any IA or GA  
4 credits they could apply for.

5           THE HEARING OFFICER: Well, does a  
6 violation mean they're forever  
7 noncompliant? What is the effect of a  
8 violation?

9           MR. KATZ: Well, I think the  
10 regulation just says now in compliance.  
11 Now, could you argue that if someone only  
12 had one violation over five years, that  
13 that's de minimis? Yes, you could argue  
14 that.

15           So what we would like to do is we  
16 would like to see their NPDES permit  
17 history over the past five years, did  
18 they have one technical violation or did  
19 they have lots of effluent violations.  
20 That would be, I think, relevant for our  
21 decision as to whether they qualify for  
22 the 7% reduction.

23           THE HEARING OFFICER: Well, how is  
24 that relevant to this rate hearing?

25           MR. DASENT: Well, in this

1           PHASE II - TECHNICAL HEARING  
2           particular instance, if the testimony  
3           already has established that there is a  
4           violation and they're not worried about  
5           correcting or curing that for purposes of  
6           getting the credit, I suppose that has no  
7           relevance. The admission has already  
8           been made. But in terms of the  
9           longer-term eligibility, we would like to  
10          have that information.

11           MR. DELANEY: Well, Your Honor, let  
12          me respond then. We haven't applied for  
13          the credits yet. I mean, you heard their  
14          witnesses this morning saying we haven't  
15          heard from them on this, we haven't had a  
16          communication, we haven't had the  
17          material submitted.

18                 This is all an irrelevant line at  
19          this point and I object to it and I would  
20          ask that it be stricken from the record  
21          because we have not requested the  
22          credits. We are not at that point yet.

23                 I think when I cross-examined the  
24          Deputy Commissioner this morning, we  
25          talked about the timeline for the

1           PHASE II - TECHNICAL HEARING  
2           credits. My recollection was he said,  
3           well, we're informally having  
4           discussions, but it's next year. So I  
5           don't think any of this is relevant and I  
6           ask that it be stricken.

7           THE HEARING OFFICER: Do you want to  
8           be heard any further?

9           MR. DASENT: Sure. Your Honor, you  
10          should recognize that the whole thesis of  
11          the argument from Sunoco is that they  
12          should be eligible or one major argument  
13          of theirs at least is they should be  
14          eligible for a 100% credit because they  
15          treat at their wastewater treatment plant  
16          and they have a NPDES permit, and I think  
17          it makes a difference as to whether  
18          they're in violation under that permit as  
19          to how far we take that argument; and if  
20          you are going to consider at all their  
21          argument that they should have a 100%  
22          credit, then we should at least be able  
23          to indicate in the record that they're  
24          not in compliance under their NPDES  
25          permit.

1 PHASE II - TECHNICAL HEARING

2 MR. DELANEY: Can I ask you, where  
3 is that statement in our testimony?

4 THE HEARING OFFICER: Wait a minute.  
5 They do request a 100% credit.

6 But the Hearing Officer is not here  
7 to pass on credits. The Hearing  
8 Officer's responsibility is to make a  
9 recommendation with regard to the  
10 regulations. I will make a  
11 recommendation with regard to the  
12 regulations. The credit is for the  
13 administrative process and not for this  
14 hearing process.

15 So based upon that fact I think it's  
16 irrelevant and the objection is  
17 sustained, although I won't strike that  
18 part of the record. The request is  
19 sustained.

20 MR. DASENT: Thank you, Your Honor.

21 MR. DELANEY: All right.

22 I can do some redirect on the prior  
23 testimony unless you have additional  
24 questions for the witnesses.

25 MR. DASENT: No additional

1 PHASE II - TECHNICAL HEARING

2 questions.

3 MR. DELANEY: Okay. I would like to  
4 ask some questions on some of the  
5 redirect we had earlier this afternoon  
6 before we took the public witnesses.

7 THE HEARING OFFICER: Dan, up the  
8 volume a little, please.

9 - - -

10 RECROSS-EXAMINATION

11 - - -

12 BY MR. DELANEY:

13 Q. The first thing I want to ask about  
14 was, Deputy Commissioner Clare, I think you  
15 clarified when you took the stand again about  
16 the inclusion in the sewer cost of service  
17 study of actual expenses related to remedial  
18 actions that the Department was taking. Do  
19 you recall that testimony?

20 A. (Clare) Sure.

21 Q. Okay. Can you just repeat again  
22 briefly what you said?

23 A. (Clare) I said there's basically  
24 capital and operating costs that we incur that  
25 relate to stormwater collection and treatment.

1 PHASE II - TECHNICAL HEARING

2 The capital portion, much of which  
3 is not in service yet but we've already  
4 incurred debt service for, are things like  
5 dams and tunnels, wetlands, stream bank  
6 mitigation, acquisition of our skimmer boat,  
7 you know, those kinds of expenses.

8 On the operating side, we have inlet  
9 cleaning. We have the treatment of the  
10 stormwater. We have the conveyance of the  
11 stormwater, the conveyance system. We have  
12 the operation of the skimmer boat. We have  
13 whatever we're spending from our own crews in  
14 terms of waterway restoration and greening  
15 initiatives.

16 Q. So those costs, I think what your  
17 testimony was, were already considered in the  
18 prior part of the case, and I think my prior  
19 question really to Mr. McKinley was how they  
20 were allocated because they seemed to be  
21 related to requirements in specific NPDES  
22 permits or other programs that are fairly  
23 specific in their application to parts of the  
24 Department, I thought.

25 And my prior question was did your

1                   PHASE II - TECHNICAL HEARING  
2 cost of service study reflect the fact that  
3 some may be tied to, say, the long-term plan  
4 on the combined sewer outflows or the fact  
5 that some were incurred in the separate sewer  
6 stormwater system. My question really was to  
7 how you have treated that in terms of your  
8 study because they seem to be related to  
9 different parts of the sewer system. That was  
10 my prior question.

11           A. (McKinley) I would just say that we  
12 have included in the stormwater cost revenue  
13 requirement capital costs and maintenance  
14 costs associated with the stormwater portion  
15 of the collection system. We have in there  
16 capital costs and maintenance costs and  
17 operating costs associated with treating what  
18 we identify as stormwater flow at the  
19 treatment plants.

20                   Some of the costs that Mr. Clare  
21 mentioned, particularly some of those  
22 capital-related costs, may be underway, under  
23 construction, have not perhaps resulted in a  
24 plant in service, a fixed asset that is on the  
25 books, and accordingly we would not have

1                   PHASE II - TECHNICAL HEARING

2 allocated costs associated with that to  
3 stormwater because they're still in progress,  
4 not in service.

5                   We haven't been able to identify,  
6 let's say, a dam that is constructed. When  
7 that's placed into service, we can identify an  
8 asset with that and we can allocate capital  
9 costs associated with that and we can allocate  
10 that to the stormwater function.

11                  But until such facilities become, as  
12 a part of the record, a capital asset for the  
13 utility, we can't identify those costs for  
14 stormwater allocation. Those are costs that  
15 likely in the future will be certainly  
16 identified and identifiable and included as a  
17 part of the numerator for the costs associated  
18 with stormwater.

19           Q.     So not all of those costs are  
20 currently in the study then?

21           A.     (McKinley) I would say likely many  
22 of the specific line items that Mr. Clare  
23 mentioned are not in there yet because we  
24 haven't captured them in our accounting system  
25 as identifiable specifically for stormwater.

1 PHASE II - TECHNICAL HEARING

2 Q. Okay. This morning's discussion I  
3 think indicated that some of those costs were  
4 tied to certain assets used for the stormwater  
5 collection. Did your study attempt to  
6 allocate those costs, say, to the separate  
7 stormwater sewer system that the Department  
8 has as compared to charges that would be  
9 incurred for stormwater in the combined  
10 system, say like the fact that you're treating  
11 the stormwater in the combined system and not  
12 in the separate system?

13 A. (McKinley) We don't make such an  
14 identification between combined sewer flows or  
15 separate sewer flows. As we talked about this  
16 morning, the separate sewer stormwater flows  
17 go to the rivers and are not treated.

18 Q. Right. So would the cost of  
19 treating the stormwater in the combined system  
20 be allocated under your study to all sewer  
21 assets?

22 A. (McKinley) They would be allocated  
23 to the stormwater system and the customers  
24 that use the stormwater system.

25 Q. And then the customers using the

1 PHASE II - TECHNICAL HEARING

2 separate stormwater system would be paying  
3 those treatment costs also --

4 A. (McKinley) We make no distinction  
5 about --

6 Q. -- even though the stormwater is not  
7 treated?

8 A. (McKinley) Excuse me. We make no  
9 distinction in our cost recovery and rate  
10 structure for the location of a customer,  
11 whether they're in the Northeast or the  
12 Northwest or Center City. All customers pay  
13 the same stormwater rates.

14 What I'm saying that for is because  
15 typically in the outer reaches of the City,  
16 the Northeast and Northwest, is where you find  
17 these separate systems. But those people pay  
18 the same rates as someone located in Center  
19 City. There's no geographic rate  
20 differential.

21 Q. The consequence of that, if I  
22 understand your prior response, is some  
23 customers living in parts of the City that  
24 have separate stormwater sewers would be  
25 paying a rate that included the cost of the

1 PHASE II - TECHNICAL HEARING

2 treatment of stormwater through the  
3 Department's waste treatment plants that their  
4 local stormwater discharges were not  
5 receiving?

6 A. (McKinley) They're paying the same  
7 rates that somebody else would be in another  
8 part of the City. Part of the CAC  
9 recommendation and part of what we recognized  
10 in our rate design is there's no location  
11 advantage to customers located in the City,  
12 whether it's residential or nonresidential  
13 customers.

14 Q. And it's the same rate is what you  
15 said, right.

16 Okay. Mr. Katz, can I ask you a  
17 question about some comments you had on the  
18 NPDES permits this morning or earlier this  
19 afternoon?

20 A. (Katz) Yes.

21 Q. I think you were drawing a  
22 distinction in the permits in terms of the  
23 quality of the discharge as compared to the  
24 quantity of the water that's actually  
25 discharged as stormwater. Do you remember

1 PHASE II - TECHNICAL HEARING

2 that discussion?

3 A. (Katz) Yes.

4 Q. Now, earlier I think, when I was  
5 talking to Deputy Commissioner Clare, we had  
6 gone and reviewed with him a policy paper that  
7 had been reviewed by the CAC and actually  
8 proposed at the adoption of the stormwater  
9 allocation methodology, and I won't burden you  
10 with reading the whole thing, but the point of  
11 it, which I think the Deputy Commissioner  
12 agreed with, was the fact that the industrial  
13 customers incur the cost of having the permits  
14 and the beneficiaries of the permits are the  
15 downstream people plus the City itself. Would  
16 you agree with that?

17 A. (Katz) Sure. When people comply  
18 with their permit, it benefits the environment  
19 so it benefits everyone in the City of  
20 Philadelphia, and industry does pay costs in  
21 order to comply with a NPDES permit. Sure,  
22 that's a fair statement.

23 Q. Okay. Thank you.

24 Ms. Kumar, I wanted to ask you a  
25 little bit about the survey you did, which I

1 PHASE II - TECHNICAL HEARING

2 think has been marked as PWD Exhibit 48.

3 Now, if I understood, the purpose of  
4 your testimony was that you had collected this  
5 data and used it to consider the 7% credit.  
6 Is that what we were talking about?

7 A. (Kumar) No. This was not to  
8 consider the 7% credit. This was really to  
9 validate where our 7% registered because the  
10 CAC really determined the 7% credit and what  
11 we did was to do a survey of the NPDES credit  
12 utilities to figure out what kind of credits  
13 they are giving and how does the 7% relate to  
14 what is out there in the industry right now.

15 Q. Let me ask you a question. When did  
16 you actually perform this survey?

17 A. (Kumar) This was done actually over  
18 a period of the last two months.

19 Q. Last couple months.

20 A. (Kumar) Right. This was actually  
21 done between October and December. That's  
22 when the data was gathered.

23 Q. You seem like a very intelligent  
24 person and you certainly did a job collecting  
25 all this information. What's your personal

1                   PHASE II - TECHNICAL HEARING  
2   opinion of the value of determining whether a  
3   survey indicates that something is in the  
4   midpoint in terms of deciding whether it was  
5   the right decision to do something, to give a  
6   7% credit? How does that validate it by doing  
7   a survey and seeing what other municipalities  
8   have done? Do you think that's a qualitative  
9   examination of the idea of having the 7% in  
10  the first instance?

11           A.   (Kumar) This is really not a  
12  numerical validation. This really tells you  
13  what other utilities are doing in the industry  
14  and whether something that we are doing is  
15  completely out of line with what is out there  
16  in the industry. That's really what this  
17  does.

18                   Also, this also looks at whether all  
19  utilities are giving NPDES credits because  
20  NPDES credits is relatively a new phenomenon.  
21  There's a biannual survey that Black & Veatch  
22  does every two years and in that survey this  
23  is one of the questions we do ask, what kind  
24  of credits do you give. And actually 68% of  
25  the utilities do not give any credits at all

1 PHASE II - TECHNICAL HEARING

2 and only 32% of the utilities that we surveyed  
3 nationwide actually give credits.

4 So out of the 71 utilities that were  
5 surveyed by Black & Veatch, only 68% don't  
6 give any credits whatsoever and then 32% give  
7 credits. So it just tells you what is  
8 happening in the industry, whether they give  
9 credits or not; if they do give credits, what  
10 kind of credits do they give.

11 Q. So would you agree with me that -- I  
12 think you called this a numerical survey a  
13 moment ago in your response?

14 A. No. This was just a survey we did.  
15 We call it the NPDES survey.

16 Q. Would you agree with me that the  
17 survey, although it shows what other cities  
18 are doing, does not respond at all to the  
19 issue of whether 7% is the right figure for  
20 the City of Philadelphia to be applying to  
21 NPDES permitholders?

22 A. Right. This does not say that  
23 because other utilities do this, that  
24 Philadelphia should give 7%.

25 Q. Very good. Thank you.

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2 MR. DUNLEAVY: Your Honor, would you  
3 mind if I ask a few questions directly?

4 THE HEARING OFFICER: I welcome  
5 them.

6 BY MR. DUNLEAVY:

7 Q. Ms. Kumar, referring to the same  
8 exhibit, PWD-48, Mr. Delaney was asking you  
9 about, if you turn to the second page, it  
10 lists one for Bloomington, Illinois, and it  
11 says 100% credit is given, and I will read  
12 from the comments. It says: "If 100% of the  
13 flow from the property goes through a NPDES  
14 permitted Wastewater Treatment Process  
15 approved by the City's Director of  
16 Engineering. No surface flows from any part  
17 of the property should discharge directly to  
18 the surface water."

19 Did you ever recommend from Black &  
20 Veatch to the City to implement such a credit  
21 for Philadelphia?

22 A. (Kumar) No. We were not involved.  
23 Black & Veatch was not involved in the NPDES  
24 credit examination process. That was done by  
25 the CAC with Ogden.

1 PHASE II - TECHNICAL HEARING

2 Q. Do you know if CAC ever recommended  
3 such a credit similar to Bloomington,  
4 Illinois?

5 A. (Kumar) Based on the CAC reporting,  
6 the CAC reporting indicates a 7% credit, so  
7 Black & Veatch is not aware of the CAC ever  
8 recommending 100% for anybody.

9 Q. Do you think it's reasonable to  
10 offer such a credit for properties that treat  
11 100% of the stormwater on site?

12 THE HEARING OFFICER: I think that's  
13 a managerial decision from the Water  
14 Department. She is providing information  
15 with regard to a survey she prepared.  
16 That's a managerial decision.

17 You can answer if you can.

18 MS. KUMAR: The NPDES credit really  
19 is a policy decision that is taken by  
20 different utilities at different points  
21 in time.

22 And just a point about the NPDES  
23 permit, the industry gets a NPDES permit  
24 not because of a stormwater program that  
25 may or may not be in effect. They get a

1           PHASE II - TECHNICAL HEARING  
2           NPDES permit because it is required for  
3           them to do their business in that  
4           particular environment. And the credit,  
5           some utilities give a NPDES credit just  
6           as a recognition of the fact that they  
7           have a NPDES permit and they are  
8           complying with their requirements.

9 BY MR. DUNLEAVY:

10          Q.    Perhaps this next question should be  
11               directed to Mr. Clare. Do you know if the  
12               Philadelphia Water Department ever considered  
13               such a credit that's offered in Bloomington,  
14               Illinois?

15          A.    (Clare) We talked about whether or  
16               not the 7% was the right number, yes, and I  
17               think we tried not to stray far from the CAC  
18               report because there was kind of a collection  
19               of various interests in that report, both  
20               within and without the Department.

21               Also, we're interested in  
22               maintaining our competitiveness in terms of  
23               other jurisdictions and we try to keep our  
24               rates as low as possible. We want to attract  
25               industry. So we looked at the NPDES credit in

1                   PHASE II - TECHNICAL HEARING  
2   that respect as well to see basically if we  
3   were far from what, say, Sunoco could find in  
4   Chicago or New York or wherever you might also  
5   locate your refinery. So certainly it was  
6   discussed.

7                   I would say we felt compelled to  
8   stick with the CAC recommendations and we  
9   actually even talked about getting rid of the  
10  7% because there really wasn't anything  
11  compelling that would require us to offer a  
12  NPDES credit.

13                  So we did the whole gamut. We  
14  looked at certainly throwing out the NPDES  
15  permit credit. We looked at the 7%. We  
16  looked at 100%. But I think we felt pretty  
17  comfortable where we were.

18                 Q. I guess my question was: Did you  
19  ever consider the similar credit that's  
20  offered in Bloomington, Illinois, the 100% for  
21  properties that are subject to NPDES permits  
22  that treat 100% of their stormwater on site?

23                 A. (Clare) Well, like I said, we did  
24  have the discussion that certainly the  
25  argument has been made in other jurisdictions

1 PHASE II - TECHNICAL HEARING

2 and certainly by some of our consultants that  
3 one could argue for 100% credit, and we did  
4 not feel convinced after hearing all the  
5 arguments that that was the right decision.

6 Q. What's the reasoning behind that,  
7 disqualifying that or not permitting such a  
8 credit?

9 A. (Clare) Well, I think that  
10 basically it's an element of equity. We are  
11 trying to get to the fairest possible  
12 allocation between all of the interested  
13 parties in allocating our stormwater costs.

14 If we, say, exempted NPDES  
15 permitholders, then those stormwater costs  
16 would fall to others that may or may not be  
17 fair. So it was basically our opinion that  
18 the 7% versus 0% or 100% was kind of the most  
19 equitable distribution of cost.

20 Q. I believe your testimony was that  
21 you had considered not even offering a NPDES  
22 credit and/or getting rid of it after it was  
23 originally in the regulation. Why did you  
24 ultimately decide to offer a NPDES credit?

25 A. (Clare) Well, I think mainly

1                   PHASE II - TECHNICAL HEARING  
2   because it was in the CAC report. That's the  
3   main thrust, that, again, we had a large blue  
4   ribbon panel of people that we brought  
5   together and we respected their advice. There  
6   were people from all walks of life, both from  
7   industry and from commercial organizations and  
8   from parking lots. And I didn't think it  
9   appropriate after they had done all that work  
10  to try to second-guess what might be a  
11  different outcome.

12           Q.    Would the Department at this time  
13  consider a credit that's similar to the  
14  Bloomington, Illinois, credit, which is the  
15  100% of the stormwater on a given property is  
16  treated on site?

17           A.    (Clare) No, I don't believe we  
18  would.

19           Q.    Mr. Katz, maybe this is for you, or  
20  Mr. Clare. We had talked about the  
21  exceedances in the Sunoco NPDES permit. Am I  
22  to read into your testimony that if a property  
23  has even one exceedance, they're not available  
24  or they're not eligible for the NPDES credit  
25  that's being offered by the Philadelphia Water

1 PHASE II - TECHNICAL HEARING

2 Department?

3 A. (Katz) Well, currently the  
4 regulation says in compliance with your NPDES  
5 permit. It doesn't specifically say 100%.  
6 Could a company that has over a five-year  
7 permit history, if it has one minor violation,  
8 could we overlook that? Possibly.

9 But the way the regulation is worded  
10 now, it simply says in compliance. I think  
11 we'd be willing to discuss creating like a de  
12 minimis exception to that. I mean, I think  
13 there is room to argue.

14 Q. My further question is this: It  
15 seems like you testified earlier that the  
16 stormwater rate has nothing to do with the  
17 quality of the water, it has to do with the  
18 quantity of the water. Given that statement,  
19 why would the NPDES exceedance even come into  
20 the equation in determining whether a credit  
21 should be eligible?

22 A. (Katz) Well, again, it's because of  
23 this 7%. I mean, I can tell you my position  
24 as the Deputy Commissioner. I understood what  
25 the CAC recommended, the 7% DEP NPDES credit,

1                   PHASE II - TECHNICAL HEARING

2   and we went with it exactly for the reasons  
3   that Mr. Clare testified to, because this blue  
4   ribbon panel recommended it.

5                   From a purely sort of rational nexus  
6   basis, it really doesn't make much sense.  
7   Your impact is based on your parcel, how big  
8   your land is and how much impervious land it  
9   is. That's the impact that comes off of it.

10                  If you manage that parcel well by  
11   doing BMPs, you can get a full 100% credit  
12   through the IA and GA credit. So that simple  
13   mechanism of parcel-based and credits from  
14   managing properly really is the logical nexus  
15   on how we should allocate costs.

16                  This 7% NPDES credit is really just  
17   a benefit over and above that. It's to reward  
18   people who have NPDES permits for their good  
19   environmental stewardship. But in terms of  
20   being directly related to allocation of rates,  
21   it really doesn't have much of an impact.

22                  So I was never a big fan of it. CAC  
23   recommended it. Okay, it's an additional  
24   benefit to you, and that's fine. We want to  
25   work with Sunoco. We want to see what we can

1 PHASE II - TECHNICAL HEARING

2 do for you. But stormwater rate allocation is  
3 tied to impact. Impact is tied to land,  
4 impervious, and whether you engage in BMPs to  
5 minimize that runoff.

6 Q. Would you agree with me that NPDES  
7 permit holders such as Sunoco not only provide  
8 a treatment function with a wastewater  
9 treatment plant on site but also provide a  
10 stormwater quantity reduction that would  
11 otherwise be going to the Department?

12 A. (Katz) Well, not necessarily. I  
13 don't know the particular situation at Sunoco.  
14 But if you do that, there are ways to get the  
15 credit through the GA and IA credit. In fact,  
16 from what I understand of your situation,  
17 although I haven't seen your drainage plans,  
18 you should be eligible for some substantial  
19 credits because you do get that benefit. Once  
20 you submit the documentation, we can look at  
21 it and make our determination.

22 Q. Mr. Katz, the Philadelphia Water  
23 Department has its own NPDES permits; correct?

24 A. (Katz) Correct.

25 Q. Has the Philadelphia Water

1 PHASE II - TECHNICAL HEARING

2 Department ever had any exceedances in those  
3 permits?

4 A. (Katz) Yes. In fact, I was just  
5 saying, generally all our plants get all gold  
6 or platinum awards through our trade  
7 organization. Over the past maybe ten years,  
8 operating 24/7, I think we've had maybe two  
9 violations at each plant in the past ten  
10 years.

11 MR. KATZ: In the past five years  
12 were two of our plants platinum?

13 MS. McCARTY: For eight years, seven  
14 and eight years, two of our plants have  
15 full compliance.

16 THE HEARING OFFICER: You are still  
17 under oath.

18 MS. McCARTY: What?

19 THE HEARING OFFICER: You are still  
20 under oath.

21 MS. McCARTY: Oh, yes.

22 MR. KATZ: This is Deputy  
23 Commissioner Debbie McCarty.

24 Go ahead, Debbie.

25 MS. McCARTY: This past calendar

1           PHASE II - TECHNICAL HEARING  
2           year that we just finished, 2008, all  
3           three facilities had zero violations,  
4           full compliance with their NPDES permit  
5           for effluent violations.

6           And two of our facilities have had  
7           five years in a row of full compliance  
8           plus I think it's one's seven and one's  
9           eight. Off the top of my head I can't  
10          remember. The other plant is coming back  
11          with shooting for what is five years or  
12          four years of compliance also. So if  
13          that answers your question.

14 BY MR. DUNLEAVY:

15          Q. And you have self-reported these  
16          exceedances; right?

17          A. (Katz) Correct.

18          MS. McCARTY: As every NPDES  
19          permitholder does.

20 BY MR. DUNLEAVY:

21          Q. Would you state that you have been  
22          out of compliance with regard to those  
23          permits?

24          A. (Katz) Sure. When we violate an  
25          effluent standard, we are out of compliance

1 PHASE II - TECHNICAL HEARING

2 and we have to report it and address it.

3 MR. DUNLEAVY: All right. That's  
4 all I have.

5 MR. DASENT: One further question  
6 for Mr. Clare.

7 BY MR. DASENT:

8 Q. Mr. Clare, are credits additive? In  
9 other words, when we talk about the NPDES  
10 credit and the other credits you could apply  
11 for if you are Sunoco or any other customer,  
12 are those additive?

13 A. (Clare) They are.

14 Q. So you can add the 7% to let's say  
15 you get 100% on the impervious area, so you  
16 are at 87%, you are almost up to Bloomington,  
17 Illinois?

18 A. (Clare) Correct.

19 THE HEARING OFFICER: If you get  
20 over 100, do you get money back?

21 MR. CLARE: No.

22 MR. KATZ: Don't get any ideas.

23 MR. CLARE: Although the watershed  
24 parks probably will get over 100; right,  
25 Joanne?

1 PHASE II - TECHNICAL HEARING

2 MS. DAHME: Right. Not that they  
3 will get money back.

4 MR. CLARE: They won't get money  
5 back, but they will be handling more  
6 stormwater.

7 MR. DASENT: Now, we have one more  
8 witness, Mr. Palladino, to clean up some  
9 regulations when we are finished with the  
10 panel.

11 THE HEARING OFFICER: Yes. I have a  
12 couple more questions for the panel.

13 You talked about the Office of  
14 Watershed has a strategic plan. Is that  
15 a written document?

16 MS. DAHME: Yes. We have integrated  
17 watershed management plans, which is a  
18 written document.

19 THE HEARING OFFICER: Tell me about  
20 the strategic plan, what kind of document  
21 that is.

22 MS. DAHME: We have created  
23 integrated watershed management plans for  
24 each of our stream and river watersheds.  
25 So we're working in the Delaware, in the

1           PHASE II - TECHNICAL HEARING  
2           Schuylkill, in the Cobbs, Tacony,  
3           Wissahickon, Pennypack, Poquessing, each  
4           of them in various stages, but they each  
5           have a strategic vision, how to attain  
6           fishable, swimmable rivers and streams at  
7           the end of a 20- to 25-year period. So  
8           we certainly have outlines for them all.

9           For some of those watersheds we have  
10          completed plans so we have the strategic  
11          plan and we have created implementation  
12          plans for those that have been completed.  
13          That includes the Cobbs Watershed, the  
14          Tacony Watershed. We're midway in the  
15          Wissahickon and midway in the Pennypack.  
16          We have just started an implementation  
17          plan for the Delaware and the Schuylkill  
18          and we will be moving on to the  
19          Poquessing. So various stages, but the  
20          strategic vision is the same for all  
21          those watersheds.

22          THE HEARING OFFICER: You talked  
23          about the outreach to the customers who  
24          have large increases. Was there any  
25          outreach done with regard to the entities

1 PHASE II - TECHNICAL HEARING

2 who are not customers at this point in  
3 time?

4 MS. DAHME: We met with the ones we  
5 thought would be most impacted, the  
6 parking lot customers. We met with the  
7 Philadelphia Parking Corporation. And  
8 actually the parking lot owners were  
9 representatives on the original CAC.

10 We were pleased to find that after  
11 we met with them again, provided them  
12 with the information, we had information  
13 about how we thought they would  
14 potentially be impacted, they were still  
15 supportive.

16 They had some concerns because some  
17 of the parking lot costs, certainly those  
18 that did not have a meter, were going to  
19 go up because they had no costs prior to  
20 that. But a lot of the parking lot  
21 owners also saw decreases because some of  
22 them have large meters and they are  
23 associated with another facility, like  
24 the Bourse, which has a parking facility  
25 but also is a highrise building. So we

1 PHASE II - TECHNICAL HEARING

2 have had a number of meetings with them.

3 THE HEARING OFFICER: And will they  
4 get 60 days' notice of their billing  
5 before the bill goes out?

6 MS. DAHME: Yes. All impacted  
7 customers, which is certainly all the  
8 nonresidential and our new stormwater  
9 only customers, will receive that notice.

10 And as Joe mentioned a little  
11 earlier, since we have another year to  
12 go, we certainly plan to start doing that  
13 outreach, providing them with the  
14 information, not just to meet that  
15 deadline, but so we have a lot of time to  
16 sort of clean up our own database if need  
17 be over the next year.

18 THE HEARING OFFICER: In your  
19 testimony on Page 6 you say the City of  
20 Providence has raised rates four times in  
21 four years to get their stormwater  
22 problems resolved.

23 MS. DAHME: That's correct. You  
24 will see something like that for many  
25 other cities.

1 PHASE II - TECHNICAL HEARING

2 THE HEARING OFFICER: Is it an  
3 unusual happenstance, raising rates four  
4 times in four years?

5 MS. DAHME: I think it's an  
6 implication of what cities are facing  
7 under the requirements imposed by the  
8 Clean Water Act. Cities are finding they  
9 have huge obligations, capital  
10 obligations, in order to meet those  
11 requirements within a short period of  
12 time.

13 THE HEARING OFFICER: How many times  
14 has the Philadelphia Water Department  
15 raised its rates in the last ten years?

16 MS. DAHME: Twice within the last  
17 ten years. Usually we're on a sort of  
18 every-four-year cycle.

19 MR. CLARE: Are you talking about  
20 rate proceedings or rate raises?

21 MR. DASENT: Rate proceedings, two.

22 THE HEARING OFFICER: No; raised  
23 rates.

24 MS. DAHME: Well, we phased them in.

25 MR. CLARE: We had 2001, '02, '03.

1 PHASE II - TECHNICAL HEARING

2 Then we did '04, '05, '06, '07. Then we  
3 had one in '08. Since 2001 we've raised  
4 rates eight times.

5 THE HEARING OFFICER: And between  
6 now and 2012 we are going to raise it  
7 three more times.

8 MR. CLARE: At least.

9 MS. DAHME: Unfortunately that's the  
10 cost of doing stormwater business.

11 MR. DASENT: It's a staring contest  
12 now. This is great.

13 MR. CLARE: Ask your question if you  
14 want. I explained the doomsday scenario  
15 in the last hearing.

16 THE HEARING OFFICER: The sky is  
17 falling.

18 MR. CLARE: Much of it has fallen,  
19 believe me. Much of it has fallen.

20 MS. DAHME: But we're surviving.

21 MR. CLARE: Just barely.

22 THE HEARING OFFICER: If we have a  
23 four-unit apartment building, how is that  
24 going to affect the stormwater charge?

25 MS. DAHME: Four units and under,

1           PHASE II - TECHNICAL HEARING  
2           depending upon the property, is treated  
3           as a residential property. Above that  
4           it's considered a nonresidential  
5           property.

6           THE HEARING OFFICER: Say six units.

7           MS. DAHME: So that will be based on  
8           we'll take a look at that nonresidential  
9           property, look at the parcel information,  
10          how big is it, how impervious is it.

11          THE HEARING OFFICER: So who will  
12          get the bill?

13          MS. DAHME: The property owner,  
14          whoever owns that BRT. So it goes back  
15          to who the property owner is. The  
16          tenant, not necessarily. The tenant  
17          sometimes pays the bills on behalf of the  
18          property owner. But the property owner  
19          will be responsible for that stormwater  
20          cost.

21          THE HEARING OFFICER: With regard to  
22          the appeal process for the credits, how  
23          will that work in the Department?

24          MR. CLARE: Primarily it would be  
25          self-contained in the credit and appeals

1           PHASE II - TECHNICAL HEARING  
2           unit for the first decision, call it  
3           initial decision. The second layer of  
4           appeal would be an administrative appeal  
5           to the Water Commissioner.

6           THE HEARING OFFICER: Has any  
7           consideration been given to having  
8           outside hearing officers deal with those  
9           appeals to give more due process to the  
10          property owners?

11          MS. DAHME: Maybe that's not  
12          necessary.

13          MR. CLARE: We didn't think about  
14          it, to be honest with you.

15          MR. KATZ: They get that at the Tax  
16          Review Board. So if they don't like the  
17          Commissioner's decision, they go through  
18          the full City appeal process with the Tax  
19          Review Board and then above.

20          THE HEARING OFFICER: So it was your  
21          thought that you didn't need any further  
22          due process there?

23          MR. CLARE: Well, I mean, the  
24          thought was that if the Commissioner felt  
25          uncomfortable making an independent

1           PHASE II - TECHNICAL HEARING  
2           decision, that we would certainly look to  
3           strengthen that process, either with  
4           independent hearing officers or whatever  
5           is appropriate.

6           MS. DAHME: I think we feel like  
7           there's a rigorous engineering analysis.  
8           The team that will be doing that review  
9           is also the team that is currently  
10          reviewing any time a new development  
11          comes in and triggers their stormwater  
12          regulations, so that the same team that  
13          is ensuring there is adherence to the  
14          regulations that make you capture that  
15          first 1", control flooding, protect our  
16          stream banks, will be the same team  
17          that's going to be reviewing these  
18          parcel-based charges and the applications  
19          for credit.

20          THE HEARING OFFICER: Certainly  
21          there could be relatively high amounts  
22          with regard to these appealed amounts  
23          that are involved. The people making the  
24          initial decision are employed by the  
25          Water Department. The people determining

1           PHASE II - TECHNICAL HEARING  
2           the appeal are at the Water Department.  
3           The Commissioner is at the Water  
4           Department level. And at the Tax Review  
5           Board there is a limited scope of review  
6           that the Tax Review Board has.

7           I'm concerned about the due process  
8           rights of individuals with regard to  
9           matters which can be somewhat subjective  
10          with regard to analysis of them and  
11          that's something I would like to have  
12          further comment on in your brief because  
13          it's certainly something that I am going  
14          to think about recommending in connection  
15          with the process.

16          MR. KATZ: If I may, we are not  
17          taking away any due process rights. We  
18          are sort of adding an additional appeal  
19          to the Commissioner. Normally we would  
20          send out a bill; if you disagreed with  
21          it, you would go right to the Tax Review  
22          Board. We are trying to create a system  
23          inside the Department to make an  
24          expedited settlement happen prior to a  
25          more formal appeal.

1 PHASE II - TECHNICAL HEARING

2 THE HEARING OFFICER: In the billing  
3 department there are not many items that  
4 have a lot of discretion, have a lot of  
5 analysis.

6 With regard to drainage, with regard  
7 to the areas that are involved, with  
8 regard to the credit, there have to be  
9 opinions and conclusions, expert analysis  
10 done by various parties. Those  
11 conclusions are clearly subject to  
12 differing opinions with regard to that.

13 How much water you use is not an  
14 issue and that's basically the bills are  
15 to the owner or other types of things.  
16 The decisions that are involved with  
17 regard to the credit process I think are  
18 wholly different than the issues that are  
19 probably before that and I just ask the  
20 Department to take a look at that and  
21 revisit that and make further  
22 recommendations in their brief that they  
23 file in this matter.

24 MR. DASENT: We will do that.

25 THE HEARING OFFICER: I appreciate

1 PHASE II - TECHNICAL HEARING

2 that.

3 - - -

4 (Witnesses excused.)

5 - - -

6 THE HEARING OFFICER: Anything  
7 further for the hearing today?

8 MR. DASENT: Yes. We have one  
9 clarification from Mr. Palladino as to  
10 minor changes he and the Public Advocate  
11 have discussed but have not gotten into  
12 the record yet and it will help, I think,  
13 in just making sure we have a foundation  
14 for any future changes.

15 THE HEARING OFFICER: Welcome,  
16 Mr. Palladino.

17 MR. PALLADINO: Thank you, sir.

18 THE HEARING OFFICER: You are under  
19 oath as before; yes?

20 MR. PALLADINO: Yes, sir, so  
21 advised.

22 THE HEARING OFFICER: Mr. Dasent.

23 MR. DASENT: If Your Honor, please,  
24 we have some minor changes concerning the  
25 stormwater regulations based on input

1           PHASE II - TECHNICAL HEARING  
2           from the Public Advocate and we would  
3           start with I guess Section 305.2.  
4           MR. PALLADINO: Yes.  
5           THE HEARING OFFICER: Is it easier,  
6           can we handle this maybe in a written  
7           exhibit that we can submit?  
8           MR. DASENT: Yes, we can.  
9           THE HEARING OFFICER: That's the  
10          best way to handle that. We will handle  
11          that in a written exhibit.  
12          MR. DASENT: We will just submit  
13          that to Your Honor.  
14          THE HEARING OFFICER: By  
15          stipulation. As I said before, we are  
16          going to have a post-hearing conference.  
17          At that time we will clean up the record  
18          with regard to that and any other items  
19          with regard to it. If there's a  
20          stipulation, there's a stipulation. The  
21          witness need not be present.  
22          Mr. Delaney, did you say you still  
23          had some further questions or comments?  
24          MR. DELANEY: No. I just have a  
25          correction on an exhibit.

1 PHASE II - TECHNICAL HEARING

2 THE HEARING OFFICER: Okay. Can we  
3 do that at the conference as well?

4 MR. DELANEY: I can say it right  
5 now. Mr. Dasent agrees. It's Exhibit  
6 47, which is the top 500 increases in the  
7 monthly stormwater charge. Sunoco is  
8 No. 1, but I think it doesn't include --  
9 the numbers are here, which only reflect  
10 the one parcel of the four at the site.

11 THE HEARING OFFICER: I agree  
12 wholeheartedly. I looked through it and  
13 No. 36 is Chevron. I think that's also  
14 the Sunoco property as well, 6900  
15 Essington.

16 MR. DASENT: That's correct. And  
17 the information is also dated. So it's  
18 more provided to give you the top 500 as  
19 opposed to specific numbers or amounts.

20 THE HEARING OFFICER: It was for  
21 informational purposes, not with regard  
22 to specificity.

23 MR. DELANEY: Just noting that the  
24 numbers are not correct.

25 THE HEARING OFFICER: I think we had

1           PHASE II - TECHNICAL HEARING  
2           that number. 490-some-thousand is what I  
3           thought was in the record.

4           MR. DELANEY: 469, I believe. It  
5           was corrected in the discussion. I am  
6           just noting that this uses the old  
7           number.

8           THE HEARING OFFICER: Right.

9           MR. DELANEY: Thank you.

10          THE HEARING OFFICER: Okay. We'll  
11          adjourn the proceedings. The Hearing  
12          Officer will be in communication with  
13          everyone. We will set the time for the  
14          post-hearing conference timely.

15          Thank you, all.

16                                   - - -

17          (Whereupon the hearing adjourned at  
18          4:45 p.m.)

19                                   - - -

20          Reported By: Susan Marie Migatz, RMR, CRR

21                                   - - -

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