



**Testimony Presented by
J. Marc Kurowski, P.E., Chairman
Capital Region Water Board of Directors
before the
Senate Environmental Resources & Energy Committee
at
10 a.m. Tuesday, Jan. 25
Room 8-EB
East Wing, Capitol Complex
Harrisburg, Pa.**

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**Capital Region Water
Combined Testimony
Part 1 of 2**

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Majority Chairman Yaw, Minority Chairwoman Comitta, members of the committee:
Thank you for the opportunity to testify today. On behalf of Capital Region Water and the residents of Harrisburg, we appreciate the opportunity to discuss with you some of the implementation challenges authorities like ours are facing regarding federal- and state-mandated stormwater requirements.

My name is Marc Kurowski, principal at K&W, a full-service site design firm comprised of civil engineers, landscape architects, planners and land surveyors based right here in Harrisburg. I'm also a longtime resident of the city and chairman of the board for Capital Region Water.

For those who may not be familiar with us, Capital Region Water formed as a municipal authority in 2013 when the city was in financial distress, taking over operation and maintenance of water and wastewater systems and related infrastructure from the Harrisburg Authority, assuming all administrative, financial, and customer-service functions. We are governed by a five-member board comprised of Harrisburg-area residents who have a community focus, because we understand the decisions we make affect our ratepayers, services, and staff.

With a commitment to operating openly and transparently, and in a fiscally responsible, proactive, and sustainable manner, our focus is on improving, maintaining, and operating the water and wastewater systems of the greater Harrisburg area. That includes the entire city as well as portions of surrounding municipalities, including Penbrook, Paxtang, and Steelton boroughs, and Susquehanna, Swatara, and Lower Paxton townships.

In June 2019, as part of our City Beautiful H2O Program, Capital Region Water advanced a Stormwater Fee Proposal and Implementation Plan to meet federal and state clean water requirements.

Our main challenge, like so many cities across the country, is our outdated and undersized combined sewer system (CSS) and our separate storm sewer system (MS4). In the CSS, the same pipes that carry away household sewage and wastewater also carry stormwater from rooftops and pavement. When the combined system reaches capacity, the mixture of sewage and stormwater overflows into the Susquehanna River and Paxton Creek.

These combined sewer overflow events are a symptom of our aged infrastructure, most of it circa early 1900s, and not an operational choice. There is no easy solution or cheap fix to the problem, especially for a financially distressed city where one of every three residents live in poverty.

In addition to the combined sewer system, Capital Region Water also is responsible for Harrisburg's MS4 network. The entire system (combined and separate) requires stormwater management practices to comply with regulatory requirements, and to meet our Total Maximum Daily Load (TMDL) clean water goals for Paxton Creek, the Susquehanna River, and Chesapeake Bay. The TMDL for Paxton Creek is similar to the pollution reduction plans set by the U.S. Environmental Protection Agency (EPA) for the Chesapeake Bay but is established by the Pennsylvania Department of Environmental Protection (DEP).

We recognize our responsibility to improve the health of local waterways, address neighborhood needs such as localized flooding and beautification, rehabilitate failing infrastructure, and meet state and federal regulatory clean water requirements. We also appreciate the unique socioeconomic challenges of most of our ratepayers.

From the moment we unveiled the Stormwater Fee Proposal and Implementation Plan, we engaged the community to gather their input so we could design a plan that was responsible and equitable for all ratepayers.

After three formal public hearings; dozens of community meetings and forums over the course of a year; direct meetings with some of the largest and most affected property owners, **including the Commonwealth of Pennsylvania and the state Department of General Services' executive and legal teams**; and feedback from nearly 100 residents and businesses, Capital Region Water formally and unanimously adopted an equitable fee structure in November 2019 and implemented the plan on Oct. 1, 2020. (The original July 1 start date was delayed due to the pandemic.)

Capital Region Water explored various funding alternatives with the goal of creating an equitable approach that considers the financial capability of city residents and takes into account those properties that contribute the greatest volumes of stormwater to both systems that we manage. Our stormwater plan, which imposes a modest fee on impervious surfaces, does just that, because the fee is connected to the source of the problem. This may be why the majority of formal comments we received during our public hearings endorsed the plan, as did most of the businesses and large landowners with whom we met. The methodology is fair and equitable, which is why some 1,800 municipalities nationwide have adopted similar rate structures.

Without the fee, the ever-increasing costs to manage and treat stormwater would have to be recovered through increasing sewer rates, as has been done historically. But the practice of funding stormwater expenses based on water consumption isn't equitable. Sewer billing based on water consumption does not correlate to the amount of stormwater runoff from an individual property. In other words, it's simply not fair because residential and small businesses are subsidizing the large, impervious property owners.

In the Capital Region Water service territory, residential customers --- again, many on the lower end of the socioeconomic scale --- were funding half of wastewater and stormwater costs but creating only a quarter of the stormwater. We needed a plan that charged a stormwater fee separate from wastewater --- one that made responsible

parties pay their fair share --- otherwise we would have to raise the additional revenue needed using our past practice of increasing sewer rates.

Of course, as equitable as this plan is, it only succeeds if everyone pays their fair share --- and that includes the Commonwealth of Pennsylvania.

Harrisburg faces unique challenges as the Commonwealth's capital. The problem isn't so much that most of the land in the city is privately owned; the biggest problem is who owns the land. Harrisburg has a high density of state government property within Capital Region Water's jurisdiction. The Commonwealth and its agencies hold deeds on 41 percent of the city's tax-exempt land, and many of these government properties are the source of a significant volume of stormwater runoff. Failure of state government to pay its fair share of the stormwater user fee only increases the financial burden on the city and its residents. That's exactly what's happening.

Almost immediately after we rolled out our stormwater plan, the Commonwealth of Pennsylvania issued notices to us that it would not pay the user fee on any of its properties within Harrisburg. **That means, based on impervious surfaces and monthly billings, the Commonwealth's failure to pay its fair share ultimately is costing city ratepayers \$32,246 per month, or \$386,956 per year.**

Although the work to be done and the cost to do it continues to increase, Capital Region Water has been in the stormwater business for years, increasing wastewater rates to fund street sweeping and limited infrastructure upgrades. Ironically, the Commonwealth did not take issue with paying for stormwater-related expenses in the past when these costs were included in sewer rates --- so it clearly recognizes the importance of our work. It is only now that we have implemented a fair and equitable way of paying for these services that the Commonwealth is refusing to pay for the work being done in the city where its primary operations are situated.

I can tell you firsthand that residents and business owners in Harrisburg are not happy about what the Commonwealth is doing. It is hard to ignore the giant domed complex that sits right in the heart of this city. People want to know why the Commonwealth is doing what it is doing when other tax-exempt properties, including our local school district, other tax-exempt property owners, and the city itself, are stepping up to meet their obligations. And, honestly, I am at a loss about what to tell them.

Think about it this way: The Commonwealth issues a mandate to address stormwater runoff. Capital Region Water puts in place a plan to address stormwater runoff. The

state then refuses to pay for the mandate it imposed and the problems to which it contributes.

The financial burden doesn't just hit our residents. It also inhibits Capital Region Water's ability to make necessary upgrades to our systems and meet clean water requirements, and it puts a terrible strain on our operations, as Capital Region Water CEO Charlotte Katzenmoyer will discuss in just a bit.

At Capital Region Water, we are working to meet our obligations for federal clean water requirements, improve water quality locally for our residents and those downstream, and address polluted runoff. Our residents and businesses are doing their part, too. All we are asking for is the Commonwealth of Pennsylvania to do the same.

Majority Chairman Yaw, Minority Chairwoman Comitta, members of the committee: Thank you for your time and attention to this matter. I would be happy to take any questions you may have, but I first want to introduce Capital Region Water CEO Charlotte Katzenmoyer to discuss some of the legal and operational challenges related to the state's failure to pay.

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CAPITAL REGION

WATER

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Thank you, Marc. And thank you, Majority Chairman Yaw, Minority Chairwoman Comitta, and members of the committee.

My name is Charlotte Katzenmoyer, CEO of Capital Region Water. I have more than 20 years of experience in the water industry and came to CRW in March 2019 after nearly 18 years in the City of Lancaster, where I served as Director of Public Works overseeing the state Public Utility Commission-regulated water, wastewater and stormwater utility there with similar challenges to Capital Region Water. While there, I oversaw the modernization of Lancaster's water and sewer infrastructure and developed a nationally recognized green stormwater infrastructure program.

For those who may not be familiar with green stormwater infrastructure, or GSI, it is a community-based approach to designing natural systems that allows stormwater to slowly infiltrate into the soil as well as using vegetation to manage and prevent excess stormwater from overloading our combined sewer system and flowing into local waterways from our MS4 areas.

These projects --- transforming vacant lots into green spaces to manage runoff from surrounding streets, installing raingardens and other stormwater infiltrating features in community parks, and managing stormwater with street-level planters to provide traffic calming --- not only help us meet our clean water goals and government requirements, but they also help to rebuild our communities in the most cost-efficient manner.

In other words, they provide social, economic, and environmental benefits --- and they work. You have probably seen some of the projects in action as you walk or drive around downtown Harrisburg and surrounding neighborhoods. Finding creative ways to manage stormwater and polluted runoff is a priority, and part of our larger strategy to upgrade and maintain wastewater and sewer infrastructure that was built decades ago.

Approximately 80 percent of our collection system was installed before 1940, meaning most of Harrisburg's stormwater infrastructure is over 80 years old. Nearly 40 percent of our sewer and stormwater infrastructure needs be repaired or replaced, largely because of decades of deferred maintenance prior to the formation of Capital Region Water.

About 60 percent of Harrisburg's sewer pipes are part of a combined sewer system, where stormwater and sewage are conveyed in the same pipe for treatment. As Marc explained, that is a problem that nearly 800 communities are facing around the country. And Pennsylvania has the most combined sewer communities of any state in the country. Capital Region Water, like these other communities, is required by law to control and reduce the overflows of untreated combined sewage flowing into local creeks and rivers.

Since 1994, the U.S. Environmental Protection Agency (EPA) has been negotiating consent decrees with cities big and small to address the issue. In 2013, Harrisburg entered into an agreement with state and federal regulators that requires the city to create a long-term control plan to reduce sewer overflows and prevent polluted runoff from entering local streams. In July 2020, Capital Region Water was issued a National Pollutant Discharge Elimination System (NPDES) permit for the separate portion of the stormwater system, the 40 percent of our sewer infrastructure that uses separate stormwater piping from those pipes that carry sanitary flow.

But, whether combined or separate, the entire stormwater system requires significant investment to ensure clean water here in Harrisburg and downstream. **Capital Region Water's response: City Beautiful H2O.**

Since its inception in 2013, Capital Region Water has invested more than \$170 million in capital projects. Over 20 years, we will spend several hundreds of millions of dollars more as part of our City Beautiful H2O plan to restore failing infrastructure, improve the health of local waterways, and beautify neighborhoods through community greening. Over the next 10 years alone, more than \$200 million is allocated specifically for wet-weather control projects and rehabilitation and replacement of aged and undersized infrastructure that long ago exceeded its useful life.

Despite all we have done to date, wet weather events remain a unique challenge --- and climate change will exacerbate these challenges. While we continue to rehabilitate existing infrastructure and install new systems that collect and convey stormwater and wastewater, limiting overflows into the Susquehanna River and Paxton Creek, more needs to be done.

To finance these efforts, Capital Region Water implemented its stormwater user fee on impervious surfaces. **The fee will raise about \$5.3 million annually in dedicated funds specifically for stormwater upgrades and operations --- but only if all ratepayers, including the Commonwealth of Pennsylvania, pay their fair share.**

Capital Region Water does not earn a profit and invests its revenue into operating and improving the Harrisburg area's water and wastewater systems. So, the Commonwealth's failure to pay leaves a huge gap in our budget.

About 10 percent of our stormwater billings are related to government properties. The Commonwealth alone is responsible for nearly 5.4 million square feet of impervious area. To put into perspective: In a typical year, rainfall totals 40.6 inches here, with a runoff coefficient of 0.95. That means that 5 million square feet of impervious area generates about 120 million gallons of stormwater a year. That is enough to fill 15,000 tanker trucks, with each measuring 42 feet and carrying 8,000 gallons. Placed end to end, that is enough tanker trucks to stretch from Harrisburg to Washington, D.C.

If the Commonwealth of Pennsylvania refuses to pay its legal obligations related to the fee for its impervious surfaces on the 22 accounts within our jurisdiction, then residential and commercial ratepayers in the city of Harrisburg ultimately will be on the hook for an extra \$32,246 per month, or \$386,956 per year.

That payment is larger than the sum of its parts, too. For example, \$32,246 per month is enough for us to finance a \$7 million PENNVEST loan, which would enable us to make significant progress in meeting our regulatory obligations and in reducing the impact of stormwater runoff.

No one denies the challenges of maintaining and upgrading infrastructure that is more than a century old in some places, or in finding ways to pay for the work in a city where nearly one of every three residents lives below the poverty line. But the state's failure to acknowledge its role is confounding ... and without merit.

The state contends it has no obligation to pay stormwater fees for its Harrisburg-based properties within Capital Region Water's jurisdiction --- or those in the jurisdictions of other municipal authorities --- because stormwater fees, unlike water and sewer fees, are a tax to which the Commonwealth is immune. We disagree.

As part of our joint testimony, we also have submitted to the committee an analysis of the state's legal financial obligation to pay the user fee.

To summarize quickly, taxes finance general government operations. A fee is distinctly limited to the costs of a specific service and must be reasonably proportional to the charge. As opposed to generating revenue for an array of uses as a tax would, the stormwater fee is raising dedicated revenue that will be redirected back into the system for stormwater projects. It will cover only the costs associated with improving existing stormwater systems, such as cleaning and repairing storm drains and sweeping streets; capital improvements, such pipe and treatment plant upgrades; and green infrastructure, such as planting trees, disconnecting downspouts, installing rain gardens, and providing rain barrels.

Case law supports this approach. By way of example, Norfolk Southern Corp. challenged the City of Roanoke's stormwater fee in a lawsuit that claimed tax discrimination. The majority opinion concluded that the fees were kept in a segregated fund for a specific purpose, rather than general government activity that benefits the entire community, and incentivized decisions (either through improvements or credits) to advance the Roanoke program's regulatory obligations. Thus, the court rejected the claim that the fee was a tax and confirmed that impervious area is the best and most accurate measure for the fee and any related benefits it derives.

I should also note that the Commonwealth of Pennsylvania's refusal to pay is in stark contrast to the position of the federal government, which pays stormwater fees. The

Clean Water Act, Section 313 (c), was amended in 2010 to make clear the responsibility of federal agencies to pay fees for stormwater programs.

The legal opinions and rulings for these cases are included in our submitted analysis.

Pennsylvania courts also have considered the question of whether a stormwater charge is a tax or fee. Commonwealth Court recently reinforced the Norfolk Southern court's guidance when delineating between taxes and fees. In July 2019, Commonwealth Court highlighted three factors that should be considered when determining whether a stormwater charge is a tax or fee: 1) whether the stormwater system provides a distinct benefit to the assessed property; 2) whether the value provided is reasonably proportional to the charge; and 3) how the municipality, or authority, uses the generated funds.

Capital Region Water's stormwater program satisfies each of these factors, indicating clearly that the charge is a valid fee and not a tax.

The Commonwealth's opposition to the fees affects many communities, as you will hear from others today. But it creates a significant challenge for Harrisburg, which is home to so many Commonwealth properties. We are committed to meeting our clean water requirements. And to do that, we are not asking anything more of the Commonwealth than we are asking of every other ratepayer within Capital Region Water's jurisdiction.

Majority Chairman Yaw, Minority Chairwoman Comitta, members of the committee: We would be happy to answer any questions you may have. Thank you.

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