



OFFICE OF THE MAYOR

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Testimony of Mayor Sherry Capello Presented to the
Joint House ERE and Local Government Committees
Public Hearing 6/19/19

Good morning, Chair Moul and Chair Metcalfe. I appreciate the opportunity to share Lebanon City's experience with our implementation of a storm water fee, how this fee was accepted by our residents and the overall impact on the City. The City of Lebanon is a Home Rule Charter municipality with a Strong Mayor.

In 2003, PADEP determined that Lebanon City was a small Municipal Separate Storm Sewer System (MS4) located in an urbanized area and thus, required an NPDES permit for storm water discharges. The initial requirements dealt mainly with educational outreach to employees and the public, along with inspection of catch basins and outfalls.

In September of 2015, the City was required to submit a Pollutant Reduction Plan, which outlined how the City was going to further reduce pollutants in its storm water discharges. Although, these new mandates greatly increased annual costs, the City was able to comply with these



unfunded mandates using revenue from normal tax collection or our General Fund Revenue.

In June of 2016, DEP established stricter stormwater rules, setting a near-term target of 10 percent reduction in sediments, 5 percent reduction in phosphorous and 3 percent in nitrogen. Unfortunately, the money expended for the initial PRP did not meet the rigorous new standards set by DEP. The City was given until September of 2017 to develop a stricter Pollutant Reduction Plan to meet that target. The rules had changed and so a lot of the assumptions and some of the projects, best management practices, that we had incorporated into the original Pollution Reduction Plan had to be expanded and augmented and we tried to look at adding new projects. Then we received notification that DEP changed their interpretation of how effective street sweeping was in the reduction of sediment pollution and thus, they changed the amount of the credit they were going to apply for street sweeping from 85 percent to 9 percent. This was a significant decrease and caused some stressful brainstorming and additional engineering costs to re-write the plan. The City's two largest natural creeks were converted into concrete channels to assist with flooding and loss of property after the Agnes Flood of 1972. By not having earthen stream banks for best management improvement projects makes it

extremely difficult to create projects that could be completed in an urbanized area that would be able to replace the loss of this credit.

The stricter plan had to outline how the City would reduce pollutant loads carried by stormwater runoff to impaired waterways including the Quittapahilla Creek, Susquehanna River and the Chesapeake Bay so that these waters would be safe for their cold-water fish habitat, trout stocking and exceptional value stream. We are required to reduce sediment pollution by 10% through the construction of new stormwater Best Management Practices (BMPs) such as detention basins, retention basins, wetlands, infiltration trenches, pervious pavement, vegetated swales and streambank restorations, and/or by the upgrading of existing BMPs.

With the amount of impervious coverage in existence on our urban properties, the City would not have been able to arrive at enough projects to comply with this reduction. After discussion with other municipalities in the County, the City partnered with five other adjacent municipalities: Annville Township, Cleona Borough Authority, North Cornwall Township, North Lebanon Township, and South Lebanon Township to be able to jointly share in the costs and credits. Compliance with these unfunded mandates is expected to cost the City alone over \$3.5 million over a period of 5 years. Each municipalities' share is based on a calculation that takes

into consideration the municipalities' miles of impaired streams, population and acres of impervious coverage. Tax revenue alone is no longer enough to pay for these costs of compliance, so a dedicated storm water management fee became necessary.

The partners contracted with Steckbeck Engineering. The engineer provided six scenarios outlining a combination of potential rates which was shared with the public at a December 2017 Council meeting. We determined that the most widely used model is the Equivalent Residential Unit (ERU) method. This model establishes an ERU as the average impervious area on a single family residential (SFR) parcel, and the fee charged to property owners is set per ERU. Each SFR parcel is charged the fee for one ERU. For a non-SFR parcel, the impervious area on the parcel is measured, and the fee charged to that parcel is determined by dividing the impervious area on the parcel by the average impervious area per ERU. Based on the information presented, the method was determined to be the most equitable and fair because it is based on the impervious area of a parcel where most of the parcel's storm water runoff is generated. Impervious areas were measured from aerial imagery for a sample of 10% of the City's SFR properties, and the average impervious area was 1,780 square feet. The concept of an ERU is closely related to the concept of the

Equivalent Dwelling Unit (EDU) that is used for determining sanitary sewer bill amounts. Both are based on the average characteristics of a single-family residence: ERUs are based on the average impervious area and EDUs are based on the average sewage flow.

An ordinance was created and considered at the January and February 2018 Council meetings. The fee was calculated off of the average base of 1,780 square foot of impervious area per ERU. The initial ERU was assessed at a \$60.00 rate and each additional ERU was \$12.56. All SFR properties are charged for one (1) ERU and are billed \$60.00 per year. All non-SFR properties are billed \$60.00 per year for the first ERU and \$12.56 per year for each additional ERU. For example, a Non-SFR property charged for ten (10) ERUs would be billed \$173.04 per year ($\$60.00 + 9 \times \12.56).

The primary reason for assessing the stormwater fee instead of raising taxes is to link the amount that each property pays to the amount of storm water that is generated on the property. There is not necessarily a correlation between the tax-assessed value of a property and the amount of stormwater that the property generates. Two properties that have the same amount of impervious area may have very different assessment values of property taxes. The stormwater management fee ensures that

those two hypothetical properties would pay the same amount for storm water management since they have the same amount of impervious area. Another advantage of the fee-based system is that the City can offer credits to property owners who operate and maintain Best Management Practices (BMPs) that help manage storm water and reduce pollution to surface waters. These credits could not be given under a tax-based system.

All properties that possess 300 square foot of impervious coverage must pay the fee, including non-profits. This includes homeowners, business owners, schools, farms, churches, industrial sites, warehouses, stores, malls, etc. Tax-exempt properties are required to pay for other utility charges including electric, water and sewer and the storm water fee is no different.

The City provided educational outreach, including direct mailings, holding public meetings and a hearing. Most residents and business owners that we heard from were upset with the implementation of “another fee” when they felt they paid enough in taxes.

The implementation of the fee will allow the City to:

- Improve the health of the local waterways
- Operate and maintain the City’s MS4 program

- Comply with Federal and State requirements
- Equalize a fair share payment program for all parcels located within the City limits, and
- Control development and impervious surface increases contributing to the rate and volume of stormwater runoff, leading to the erosion and degradation of local waterways.

Although the City of Lebanon is an urbanized area, many of the municipalities in the Consortium are not built-out and therefore have large numbers of farm fields and other open spaces within the Urbanized Area that are traversed by municipally-owned roads without curb and gutter systems. Storm water generally discharges from these roads to adjacent farm fields or other open spaces via sheet flow. These roads and areas upstream of these roads were parsed out of the Planning Area in the PRP because they do not produce point-source discharges of storm water to waters of the United States.

Since the submission of our revised PRP, 5-year permit application and implementation of the fee, it was brought to our attention that the Department considers all municipally-owned roads and all areas upstream of those roads to be a part of the Planning Area; that is, the area for which load reductions are required under the terms of the 2018 NPDES permit for

small MS4s. We disagree with this interpretation, as have other municipalities and consultants across Pennsylvania. We do not agree with the assertion that storm water discharges from municipal roads without curb and gutter systems to adjacent open spaces constitute point source storm water discharges to waters of the United States. Revising the Consortium's PRP to include these roads and areas upstream of these roads will dramatically increase the baseline loading, required pollutant reductions, and compliance costs. Many of us have enacted storm water management fees based on the cost projections provided in our fee rate studies. These cost projections do not account for projects that would achieve pollutant reductions in the parsed out areas, because they were not included in the baseline loading calculation. All of our partners have worked hard over the past couple years to implement these funding sources against strong public opposition, and we cannot simply raise rates to add projects that will address pollutant reductions from these areas. The 5-year timeframe in which these pollutant reductions are required to be achieved did not allow Consortium members to wait for review comments or PRP approval from the Department before investigating and implementing user fees.

Additionally, some municipalities have already received waivers from the Department, which waivers depended, in part, on the size of the planning area of the waived municipality. These municipalities that received waivers may have used the same methodology for computing their planning area that our partners have used. This would present a scenario in which the Department is applying different definitions of the planning area to different MS4 permittees, further adding to the confusion regarding the delineation of the planning area and the calculation of baseline loads.

This recalculation will result in a 40-42% increase to our base reduction amounts and more than likely result in a comparable financial increase to our property owners who we advised that the fee would remain constant for the duration of the 5-year permit cycle. We hope that the Department reconsiders its view and allows the Consortium to comply with our original PRP submitted. We further hope that the Department clarifies this matter for future permit cycles beginning with the 2023 MS4 permit.

Lastly, the City recently attended a steering committee public meeting for the Chesapeake Bay Watershed Implementation Plan (WIP), Phase III Program. Interestingly, the University of Maryland indicated that MD can

only regulate those that are already regulated. Those regulated are MS4 Programs and the research the University conducted indicated that those regulated only account for approximately 4% of nitrogen runoff. This program is another layer of enforcement with a 257 million funding gap. Our suggestion is that this program should be looked at per watershed as a whole and not piecemealed.

To summarize, the City struggles financially like most 3rd Class Cities in our Commonwealth. We have expended approximately 1 million dollars on storm water pollution improvements in the City since designated as a MS4, have transferred \$1.4 million to the Consortium for improvements outside the City over the last 2 years, and have committed 2.1 million over the next 3 years. We potentially are facing a 40%+ increase in fees that most likely will have no significant impact on the improvement of water quality and with the WIP, we may be looking at a \$257 million dollar funding gap in our region for a mirrored project.

We understand our end goal is to be a good steward of our environment, but we should also be smart about it. Let's put our money in areas where we will have the most beneficial outcome and use everyone's dollars wisely. Thank you again for this opportunity....