



SUBMITTED TESTIMONY:

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Capital Region Water**

**Marc Kurowski, Chairman of the Board
Capital Region Water**

**House Environmental Resources and Energy Committee
Public Hearing on MS4 Compliance and H.B. 2153 and H.B. 2331
9:30 a.m. Monday, June 13, 2022
Room 515, Irvis Office Building, Harrisburg**

Majority Chairman Metcalfe, Minority Chairman Vitali, members of the committee: Thank you for the opportunity to submit remarks related to the challenges that authorities like ours face regarding federal- and state-mandated stormwater requirements.

Capital Region Water formed as a municipal authority in 2013 when Harrisburg 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, which is governed by a five-member board.

Our focus is on improving, maintaining, and operating the water and wastewater systems of the greater Harrisburg area, which includes the entire city as well as portions of surrounding municipalities, including Penbrook, Paxtang, and Steelton boroughs, and Susquehanna, Swatara, and Lower Paxton townships.

Our main challenge, like so many cities across the country, is our outdated and undersized combined sewer system (CSS) and our separate storm sewer system (MS4).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 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. After three formal public hearings, dozens of community meetings and forums, and meetings with some of the largest and most affected property owners, including the commonwealth, CRW enacted a new stormwater fee that took effect Oct. 1, 2020.

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.

We want to focus our remarks here on stormwater fees that authorities like ours rely on to finance stormwater-specific projects to meet our clean water requirements.

You may not be aware, but the Commonwealth of Pennsylvania is refusing to meet its legal financial obligation to pay stormwater fees to dozens of municipalities across the state, a defiant action that hampers clean water efforts and unfairly burdens residential and commercial ratepayers who have to make up the difference.

A hearing convened by the Senate Environmental Resources and Energy Committee in January 2022 finally shined a public light on the issue, as several authorities and organizations testified about non-payment and the challenges it brings to stormwater program implementation. The issue came up again during recent budget hearings. I encourage the House Environmental Resources and Energy Committee to study the issue further.

In Capital Region Water's jurisdiction alone — an area that encompasses the entire state Capitol Complex and several other state-owned properties throughout Harrisburg — the state is refusing to pay \$32,246 per month, or \$386,956 per year, in stormwater fees assessed on 22 accounts totaling nearly 5.4 million square feet of impervious area.

That means residential and commercial customers are paying the state's share for capital improvement projects designed to upgrade outdated and undersized water and wastewater infrastructure, which commonwealth buildings rely on, and fulfill state and federal clean water requirements to prevent runoff from entering the Susquehanna River and Paxton Creek.

Capital Region Water is by no means alone here. Municipal authorities throughout the state are finding their legally adopted stormwater fees ignored by the commonwealth. Despite the Senate hearing and budget questioning, it is still a mystery just how much the state is refusing to pay to municipalities statewide. But the cost is high.

Like other municipal authorities, Capital Region Water does not earn a profit. We invest our limited revenue into operating and improving the area's water and wastewater systems. So, the

commonwealth's failure to pay leaves a huge gap in our budget and puts a terrible strain on our stormwater operations. **Roughly one-in-three residents here lives below the poverty rate, so the state's refusal to pay hits them hardest.**

What makes Capital Region Water different from other municipal authorities, however, is the high percentage of state properties within our jurisdiction — about 10 percent of our stormwater billings are related to government properties.

The state contends it has no obligation to pay stormwater fees for its 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. But the assessment is flawed and counter to established case law.

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 specifically for stormwater projects. In fact, a decision handed down recently by Pennsylvania's Commonwealth Court makes clear that a stormwater fee imposed by the City of Chester Stormwater Authority is not an impermissible tax. Still, the commonwealth refuses to pay.

The commonwealth's continued refusal to pay also is in stark contrast to 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 commonwealth's refusal to pay conflicts with other entities that pay as well. After all, if churches and school districts can pay their stormwater fee, as they do, why can't the state pay its fair share? People want to know how the commonwealth can get away with this when others are stepping up to meet their obligations.

Capital Region Water's stormwater fee is projected to 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, fulfill their obligation.

At Capital Region Water, we are working to meet our obligations for federal clean water requirements, improve water quality, reduce localized flooding 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.

As part of our joint testimony, we are including as an attachment for the committee an analysis of the state's legal financial obligation to pay the user fee. This white paper explains the current situation and highlights several of the legal opinions and rulings that make the case for the commonwealth to fulfill its payment responsibility.

Majority Chairman Metcalfe, Minority Chairman Vitali, members of the committee: We appreciate your time and attention to this matter. Thank you.