

**CITY OF NEWARK  
STORMWATER UTILITY PROGRAM****POLICY: PUBLIC ROADWAYS****DISCUSSION:**

Public roadways and rights-of-way are significant contributors of stormwater runoff volume and of stormwater-borne pollutants. They also act as stormwater conveyances, carrying stormwater to the nearest curb inlet or waterway. Public roads are owned and/or maintained by any of several public entities which may cause problems with the collection of the stormwater fee. Jurisdictional disputes may arise from one public entity attempting to charge a fee to another entity.

Four possible scenarios for disposition of public roads within the stormwater fee structure are: 1) exempt them; 2) give them full credit; 3) define them as part of the stormwater drainage system and thus not contributors to that system; and 4) billing them as regular customers according to their ERU equivalence. There are advantages and disadvantages to each of these alternatives.

**Exemptions**

Exempting public roadways from the stormwater fee removes the problem of how to collect the fee from other governmental entities such as the state and federal highway agencies, but how to collect it also sets a potentially problematic precedent. In the Exemptions Policy Paper (Billing Policy Paper # 9), the Project Team argued against giving exemptions of any kind because it **opens the door to continual claims that another given property is close enough in characteristics to** also be granted the exemption. The Utility could find itself in a position of continually having to evaluate properties against the established precedent and make rulings on these appeals. It might be possible to limit this burden by defining the limitations of the exemption narrowly and with certainty.

**Credits**

Credits carry much the same advantages and disadvantages as exemptions in terms of eliminating the collection problem but setting a precedent. Credits, however, differ in that they assume that the Utility is receiving some benefit from the property for which a credit is given. Public roads may actually help the Utility as a stormwater conveyance mechanism, which is persuasive particularly if the road maintenance is being done by the other entity requesting a credit. **A problem arises when the Utility must establish the value of the benefit versus the costs incurred** because of the runoff received from roadway impervious cover. Added to this cost is the responsibility for the significant pollutant loads that are discharged from roadway surfaces. With credits, the precedent that is set is as nearly clear as with exemptions. Exemptions can be granted as a matter of policy, in an all or nothing

dichotomy. **Credits add the uncertainty of having to weigh benefits versus costs, which could lead to even more difficult appeals.**

### **Include by Definition**

Public roads could be defined as part of the drainage system as opposed to sources to that system. There are valid reasons for excluding public roads on this basis such as the fact that public road design specifications generally require that the roads, curb and gutter be designed to carry a minimum amount of stormwater. Also, the Federal NPDES stormwater permit application requirements provide the following definition of a Municipal Separate Storm Sewer System, which would seem to include some if not all public roads:

*Municipal separate storm sewer* means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

- (i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;
- (ii) Designed or used for collecting or conveying storm water;
- (iii) Which is not a combined sewer; and
- (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2. <sup>1</sup>

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<sup>1</sup> United State Congress / Environmental Protection Agency – Clean Water Act - NPDES Phase II Final Rule – January 1999.

The main disadvantage to including public roads by definition is that they cause significantly more runoff to be collected within the drainage system, and they are significant

contributors to the pollutant load being discharged via the Municipal Separate Storm Sewer System to waters of the United States. Including public roads for the purpose of avoiding fee collection problems could lead to difficulties in complying with water quality requirements of the NPDES Stormwater Discharge Permit. Provisions have been made in the NPDES regulations for requiring state and federal highway systems to become co-permittees with local municipalities so that both entities can work together to reduce or control pollutant load discharge from road surfaces. This relationship could be jeopardized legally if the City has taken the step of including state and federal roads within its own drainage system. Also, if the City includes federal and/or state roadways as part of its drainage system, this may place the City in weaker position when attempting to require or obtain the cooperation of the responsible state or federal agency in managing water quantity or water quality problems which may be caused by the roadways? However, as a part of the stormwater system they are subject to regulations by the local municipality.

### **Bill According to ERU Equivalence**

The fourth option is to consider public roads just like any other impervious cover and bill the responsible party based upon the number of Equivalent Residential Units. These would likely be sizable bills. Past experience has shown that in many cases state and federal entities do not consider themselves subject to local fees and taxes and do not pay. Since the stormwater will have to be conveyed through the City's stormwater system anyway, the added incremental cost due to the roadway runoff will simply increase the burden on the residential and non-residential customers of the Utility's system.

Billing all properties including public roads has the advantage of treating all properties alike and setting no precedent for others to use as an excuse to appeal to the Utility because of perceived similar conditions or characteristics. On the adverse side, however, **the Utility would be carrying a large unpaid debt, which could affect its ability to issue bonds, for example.**

### **RECOMMENDATION:**

The Project Team believes that unsubstantiated exemptions and credits without a clear stormwater-related benefit to the City and the Utility are the least attractive of the four alternatives presented above. Unless they are very narrowly defined and such definition holds up under legal scrutiny, they pose too significant a threat of leading to commonplace, time consuming appeals from other property owners, and could lead to an appreciable erosion of the fee base. Also, credits for public roads would have to be determined based upon its worth to the system in terms of stormwater conveyance versus their contribution of increased stormwater runoff. Billing according to ERU equivalence may cause harm to the City's bonding capability by carrying a large unpaid debt if the bills are not paid.

Exclusion by definition seems to be a neat and clean method of managing the problem, but this could lead to difficulties in the future if the roadways cause either water quantity or water quality problems. Such a concern may be moot in the case of state and federal roads

in that these governmental entities may not pay the fee anyway. **The Project Team recommends that the City include public roadways, sidewalks located in the right-of-way, driveway aprons located in the right-of-way, and bike paths/trails by defining them as part of the stormwater conveyance system,** but limits this inclusion such that it leaves open the avenue to enforce water quality regulations against State and Federal agencies for water quality impacts as allowed by the Clean Water Act, and to establish co-permittee status for State and Federal roads under the NPDES Phase II stormwater permit program.

### **ACTION:**

The Technical Advisory Committee reviewed, discussed and approved this Billing Policy Paper on April 26, 2005.

Approved: \_\_\_\_\_

Date: \_\_\_\_\_