Stormwater Management

By
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If we pollute the air, water and soil that keep us alive and well, and destroy the biodiversity that allows natural systems to function, no amount of money will save us. – David Suzuki

I. Introduction

Combined stormwater and sewer systems pose great environmental and health hazards during major storm events that cause overflow discharges into our waterways. Capital Region Water (CRW) has assumed responsibility for the City of Harrisburg's (the City) combined stormwater and sewer system. Before attempts to introduce an ordinance aimed at reducing the amount of stormwater entering the sewer system, thereby reducing discharges into the waterways, the City must first adopt an ordinance clearly delineating the responsibilities between the City, CRW, and the public. Section II of this paper will introduce the problems and opportunities currently facing the City in relation to the combined stormwater/sewer system and how to address those problems. This will include issues surrounding the current proposed ordinance and also future opportunities that can be seized upon in order to reduce overflow discharges. Section III will discuss why the new ordinance is needed and will also provide the legal authority for the ordinance. Section IV. will illustrate how other municipalities have taken measures to reduce overflow discharges into the public waterways. This section will provide sample best management practices and highlight the effectiveness that other cities have had while addressing this issue. Section V will discuss the key policy issues facing the City of Harrisburg in relation to the proposed ordinance and also future sustainability efforts. Section VI

will illustrate the economic feasibility of this proposed ordinance and future sustainability efforts that will reduce overflow discharges. Lastly, Section VII will conclude illustrating the importance of this ordinance and the need for future action in order to preserve our environment.

II. The Problems/Opportunities

The City's stormwater/sewer system combines stormwater and raw sewage containing human excrement among other toxic pollutants.[1] This waste is then treated at a sewage treatment facility.[2] During major storm events the treatment facility cannot handle the volume of the combined stormwater and sewage, thus resulting in waste being discharged into the waterways.[3] This water is dangerous to both human health and the environment.[4] In addition to polluting the waterways with this toxic combination of pollutants, overflows have the potential to raise water temperatures which can have devastating effects on the ecosystems which comprise the waterway.[5] The increase in temperature is the result of an urban area being what is described as a heat island.[6] Urban areas have less trees and more concrete and pavement thereby eliminating the possibility of shade to cool the area thus increasing the capacity to store and retain heat.[7] The stormwater is therefore heated and then discharged into the waterway during a major storm event in which the sewage treatment facility cannot handle the volume.[8] Recognition of these problems will give the City the ability to take measures to reduce overflows

[1] *See generally* Environmental Protection Agency, Combined Sewer Overflows (November 11, 2014) http://water.epa.gov/polwaste/npdes/cso/ (hereinafter: EPA, *supra* note 1).
[2] *See id*.
[3] *Id.*
[4] Stefanie Pennington Albright, *Emerging Trends in the Regulation of Stormwater*, 43 Tex. Envtl. L.J. 1, 2 (2012) (hereinafer: Ablright, *supra* note 4).
[5] Matthew P. Jones, *Effect of Urban Stormwater BMPs on Runoff Temperature in Trout Sensitive Regions*, 11th International Conference on Urban Drainage, Edinburgh, Scotland, UK, 2008 (hereinafter: Jones, *supra* note 5).
[6] Environmental Protection Agency, Heat Island Effect (November 11, 2014) http://www.epa.gov/heatisland/about/index.htm (Hereinafter: EPA, *supra* note 6).
[7] *Id.*
[8] *See* EPA, *supra* note 1 (Illustrating that the treatment facility will discharge into a waterway when sewer volume exceeds capacity); *see also* EPA, *supra* note 6 (showing that stormwater in urban areas often has heightened temperatures).

into the waterways. The reduction of adverse overflows will thereby reduce the effect of damage caused by elevated water temperatures caused by heat islands.[9]

III. New Ordinance

The ordinance that is attached as an appendix to this paper is needed to delineate the duties and responsibilities between the City, CRW, and the public. This is a necessary first step towards enacting future ordinances which would implement best management practices aimed at reducing stormwater entering the combined stormwater/sewer system. Reducing the amount of stormwater entering the system will greatly diminish the frequency of overflows discharged into the waterways.[10] Minimizing the frequency of these overflows is mandated by the Environmental Protection Agency and the Clean Water Act.[11] Eliminating the overflows will benefit the environment in that toxic waste will not be spilled into our waterways and it will also reduce the effect that elevated water temperatures have on the ecosystems contained within these waterways.[12] Currently the City and CRW are working on the details of how to best divide these responsibilities necessary for operating and maintaining the combined stormwater/sewer system and the sewage treatment facility. This model ordinance will serve as a guide to those discussions and will need revisions as the City and CRW, through mutual understandings and agreements, delegate those responsibilities. Another issue that will prevent the immediate implementation of this ordinance is the probability of a consent decree from the Environmental Protection Agency that may have implications on this ordinance and the mandates contained therein.

[9] *See generally* Jones, *supra* note 5.
[10] *See* Albright, *supra* note 4, at 2.
[11] EPA, *supra* note 1.
[12] Albright, *supra* note 4, at 2; Jones, *supra* note 5.

Though there are multiple statutes that need to be consulted when dealing with this type of ordinance. The two main statutes that will govern this ordinance are the Pennsylvania Water Management Act 167 and a Pennsylvania Municipal Authority formed under the Municipality Authorities Act, 53 Pa.C.S.A. § 5601 et seq.

IV. Other Jurisdictions

Many other jurisdictions have set up an authority such as CRW to handle their combined stormwater/sewer systems. This is not unique and the ordinance contained in the appendix will have provisions from a few of these jurisdictions delineating responsibility between the municipality and the authority. The real issue of environmental sustainability, however, is not contained in this ordinance but will need to be addressed in the future. Many municipalities have tackled the issue of reducing stormwater entering the combined stormwater/sewer system and have achieved great success. One of these municipalities, the City of Lancaster, is local and can readily be visited as an example of these best management practices in action. A few of the techniques being utilized by the City of Lancaster as well as private individuals in the city of Llancaster are:

1. Bioretention cells. Bioretention cells are more commonly referred to as rain gardens.[13] Raingardens are areas in which stormwater can collect. They use vegetation and other porous backfill materials to provide groundwater recharge.[14] Raingardens not only act as a means of infiltration but also as a means of filtration.[15] The vegetation and backfill help to eliminate toxic

[13] Environmental Protection Agency, Best Management Practices (November 11, 2014) http://www.epa.gov/greeningepa/stormwater/best_practices.htm (hereinafter: BMPs, supra note 13).
[14] Id.
[15] Id.

materials from the water.[16] Raingardens have the added benefit of providing beautification in addition to its stormwater management purposes.

2. Infiltration trenches. Infiltration trenches were used in the City of Lancaster to capture water running off of paved surfaces. The infiltration trenches act much in the same manner as the rain garden but are larger and deeper and can facilitate more water than a rain garden.[17]

3. Permeable pavement. Permeable pavement is a replacement for traditional asphalt. [18] This pavement allows water to seep through the surface and infiltrate back into the earth.[19] This provides groundwater recharge and also slows the amount of water running into the sewer system.[20] Permeable paving can make significant and substantial eliminations of stormwater entering the system by the sheer volume of area covered by the paving.

4. Rainbarrels and Cisterns. Rainbarrels and cisterns collect water during a storm event.[21] A single rainbarrel is not going to make much of a dent as the barrels are typically only fifty-five gallons. These are tools that can eliminate a significant amount of stormwater if employed on a widescale basis. One-thousand rainbarrels, deployed across the city, would be capable of eliminating 55,000 gallons of water that would have otherwise been carried to the treatment facility. Rainbarrels also allow individuals to repurpose and reuse the stormwater for gardening or other household chores, thereby conserving additional resources. Rainbarrels are also appealing in that they are easy to use and allow private individuals to make serious contributions in the field of environmental sustainability.

[16] Id.
[17] Id.
[18] BMPs, *supra* note 13.
[19] Id.
[20] Id.
[21] Id.

5. Vegetated roofs. Vegetated roofs, also known as green roofs, are another tool that can be used by private individuals to assist the City in eliminating stormwater entering the system. Green roofs reduce runoff by using a "lightweight planting mix with a high infiltration rate."[22] Green roofs, in addition to the stormwater management qualities, also act as good insulation during winter and summer months.[23] If all of that was not enough to make green roofs attractive, these roofs also have longer lifespans than tradition roofs, thereby reducing maintenance and replacement costs.[24]

As illustrated above, the City of Lancaster has taken a very progressive approach to reducing the volume of stormwater entering its combined stormwater/sewer system. It is estimated that they have eliminated millions of gallons of stormwater entering the system and have drastically reduced the number of overflow discharges into the waterways surrounding Lancaster. Lancaster is currently attempting to eliminate 750 million gallons from discharging into the local waterways.[25] Lancaster is not alone, however, in its efforts to reduce the effects that stormwater can have on the environment. Portland, Oregon has also taken an active and progressive approach to limiting the damaging effects that stormwater can have on the environment. Portland, has not only used many of the techniques described above, it has also began using streetscapes as a means of reducing stormwater entering the waterways.[26] Streetscapes have a multi-facet function in reducing stormwater.[27] The streetscape allows pervious surface for the water to infiltrate the ground. This slows the pace of water entering the storm system and

[22] Id.
[23] BMPs, *supra* note 13.
[24] Id.
[25] Stormwater Management, City of Lancaster (November 24, 2014) http://www.saveitlancaster.com/thecost/.
[26] American Society of Landscape Architects, Analysis and Planning Awards 2012 (November 11, 2014) http://www.asla.org/2012awards/572.html (hereinafter: ASLA, *supra* note 14).
[27] *Id.*

allows for groundwater discharge.[28] In addition to creating a pervious space, the streetscapes also include numerous trees.[29] Trees, like the pervious surface, slow the rate the stormwater enters the system. It is estimated that 30% of rainfall that comes in contact with the tree will be absorbed through the tree's leaf and root systems.[30] Trees provide shade which cools the entire area thereby reducing the warming effect that heat islands can have on stormwater.[31]

Both Lancaster and Portland have gone to great lengths to involve the public in the projects to reduce the damaging effects of stormwater overflows and of being overall environmentally conscious. As the result of public private partnership (P3) projects both cities have been able to enhance their ability to have an impact. These projects have resulted not only in environmental sustainability but also the beautification of both cities.

V. Key Policy Issues

Implementation of a lone best management practice may be insufficient in impacting to reduction of the adverese events caused by stormwater overflow discharges. But, when combined, these efforts have major impact and can help eliminate these harmful discharges, thereby protecting our waterways.[32] Our waterways are not only important for the environment, but for the health and wellbeing of the people of Harrisburg and its surrounding areas.[33] Many people depend on the waterways for their livelihoods and also as a form of recreation.

[28] *Id.*
[29] *Id.*
[30] Tetra Tech Architects and Engineers, Green Streetscapes Study, 2009 (hereinafter: Tetra Tech, *supra* note 18).
[31] *Id.*
[32] See EPA, *supra* note 1.
[33] Albright, *supra* note 4, at 2 (illustrating the importance of waterways).

The best management practices described in this paper also have the added benefit of beautifying the City. Adding trees, landscaping, and other vegetation that can serve to reduce stormwater entering the combined stormwater/sewer system will make the City's streets, walkways and parks more aesthetically pleasing.[34] It will also help reduce the impact of the "heat island" by providing shade and reducing temperatures.[35] As the result of the new and improved looks and the reduced heat, the City will then become more walkable.[36] As more and more people are encouraged to walk there will be less traffic thereby eliminating even more heat and other pollutants that contribute to overall environmental degradation. [37]

Ultimately, the EPA and pending consent decree will have an impact on the techniques that will be utilized and the timeframe in which the City can begin to implement strategies aimed at reducing overflow discharges. Beyond the EPA the City will also need to work with the CRW to assist in the implementation of best management practices (BMPs). Implementing BMPs will be mutually beneficial for both the City and CRW.[38]

VI. Financial feasibility

The proposed ordinance contained in the appendix is cost neutral. CRW has the ability to bill for services that will offset any cost contained in the ordinance. The best management practices recommended for future consideration will, however, take financial planning. The costs for the BMPs can be offset through grants and also through P3 projects in which the public shares the cost with the private entity to ensure that the

[34] BMPs, *supra* note 13.
[35] Tetra Tech, *supra* note 18.
[36] Id.
[37] Id.
[38] *See generally* BMPs, *supra* note 13.

project is completed. It is a win-win situation for both the public and the private sectors. Another technique, which should be an option of last resort, can include rate increases for sewer service in order to offset the cost of the BMPs. Lastly, the City would also see savings in treatment costs. Less water in the system means less water to treat. Recently capital region water needed to purchase nitrogen credits from other municipalities as the result of the volume of water that it must treat. Reducing the stormwater into the system would eliminate the need to purchase these credits from other municipalities. If enough water is removed from the system nitrogen credits would then be able to be sold to other municipalities.

VII. Conclusion

Waterways have broad impacts on humans and the ecosystems that are dependent on those waterways. The degradation of those waterways can have profound and lasting implications on the future of our environment, and our health and welfare. With that in mind, immediate action must be taken to preserve these waterways. As illustrated in this paper, eliminating overflow discharges from combined stormwater/sewer systems is one way that we, as a society, we can ensure the protection of this valuable resource. To not act is to ensure continued degradation of the waterways which may lead to irreversible damage.

APPENDIX

HARRISBURG CITY COUNCIL
ORDINANCE

No. OF SESSION 2014

Moved by:_____

By Agreement dated the 1st day of October, 2014, by and between Capital Region Water (CRW), a Pennsylvania Municipal Authority formed under the Municipality Authorities Act, 53 Pa.C.S.A. § 5601 et seq. and the City of Harrisburg (the City), a Third Class City in the Commonwealth of Pennsylvania located in Dauphin County.[39]

WHEREAS, prior to November 4, 2013, the City operated and maintained what is now known as the Capital Region Water Advanced Wastewater Treatment Facility (AWTF) and a conveyance system (Conveyance System);[40]

WHEREAS, on November 4, 2013, the City and CRW entered into an agreement to transition operation and maintenance of the AWTF and the Conveyance System from the City to CRW (the Transition Agreement) which resulted in CRW now owning, operating and maintaining the AWTF and Conveyance System;[41]

WHEREAS, prior to December 4, 2013, the City owned, operated, and maintained a collection system (Collection System) that collects combined storm water and wastewater from

[39] Intergovernmental Cooperation Agreement Between Capital Region Water and the City of Harrisburg (October 1, 2014) (hereinafter: *supra* note 27)
[40] Id.
[41] Id.

residential, commercial and industrial sources. Certain portions of the Collection System receive combined sewage and other portions receive separate sewage;[42]

WHEREAS, prior to December 4, 2013, the City owned and operated a small Municipal Separate Storm Sewer System (MS4), from which it was authorized to discharge and did discharge, pursuant to the MS4 General Permit to the Susquehanna River and its tributaries;

WHEREAS; on December 4, 2013, the city and CRW entered into an agreement to transfer ownership, operation, and maintenance of the Collection System and subsurface portions of the MS4 from the City to CRW (Transfer Agreement). As a result of the Transfer Agreement, commencing on December 4, 2013, CRW owns, operates, and maintains the Collection System and subsurface portions of the MS4 with the City maintaining ownership of the remained of the MS4; [43]

WHEREAS, in the interests of the public's safety and welfare, both parties have an interest in complying with the Clean Water Act (CWA), 33 U.S.C. §§1251-1387, Pennsylvania Clean Streams Law, 35 Pa. Stat. Ann. §§ 691.1-691.1001 9PCSL), and certain conditions of the National Pollutant Discharge Elimination system permit No. PA 0027197 (NPDES Permit);[44]

WHEREAS, after the Transfer and Transition Agreements, CRW is responsible for achieving and maintaining compliance with the terms and conditions of the NPDES Permit, and NPDES permit issued to CRW by PADEP (hereinafter, the MS4 Individual Permit), the

[42] Id.
[43] Id
[44] Id.

provisions of the CWA, 33 U.S.C. § 1281 et seq., and PCSL, 35 Pa. Stat. Ann. §§ 691.1-691.1001, and the rules promulgated thereunder;[45]

WHEREAS, the parties desire to ensure CRW'S legal authority to operate and maintain all portions of the systems which were the subjects of the Transfer and Transition Agreements, namely the water, wastewater and storm water systems, and which shall cover, at a minimum: (a) the legal authority to inspect grease traps from restaurants, schools, and other facilities with food services; (b) the legal authority to inspect businesses and/or other customers that may be contributing waste streams other than domestic sewage to the Conveyance and Collection systems; and (c) the legal authority to implement all Minimum Control Measures (MCMs) in the MS4, and any other requirements of the MS4 Individual Permit obtained by CRW, including specifically the authority to address the elimination of illicit discharges to the MS4 and the authority to implement and enforce a program for post-construction stormwater management in new development and redevelopment;[46]

WHEREAS, the Pennsylvania Intergovernmental cooperation Law, 53 PA.C.S.A. § 2301, et seq. (hereinafter the Act), endorses cooperative agreements for provision of public services, performance of government functions, and other government purposes by and between the Commonwealth and local governments of this Commonwealth;[47]

WHEREAS, in order to enable CRW, to the fullest extent possible under the law, to comply with the NPDES Permit, the MS4 Individual Permit, the provisions of the CWA, PCSL,

[45] Id.
[46] Id.
[47] Id.

and the rules promulgated thereunder and to properly effectuate its responsibilities under the Transfer and Transition Agreements, CRW and the City desire to confirm their responsibilities and delegate certain powers necessary for CRW to comply with its obligations in the operation of the water, stormwater, and wastewater systems;[48]

WHEREAS, the Council of the City recognizes the importance of establishing and clearly identifying the rights, duties and/or authority of both the CRW and its sanitary sewer, utility customers, and to strive to realize policies that are fairly and consistently applied for the benefit of CRW and its employees and customers; and[49]

WHEREAS, the Council of the City now desires in all respects to adopt and enact the City's Sanitary Sewer Use Ordinance embodied by the provisions immediately hereinafter contained and set forth.[50]

WHEREAS, the Nature of the Sanitary Sewer System. Proper disposal of wastewater contaminated by humans use is essential for the health and welfare of the human community and the environment. For that reason, the City has empowered CRW to own and operate facilities for collection and treatment of sewage. Those facilities consist of customer service lines, gravity collection sewers, pump stations, force mains, and a sewage treatment plant. The process of collecting and treating sewage begins with each individual customer and the manner in which they connect to and use the sewer system.[51]

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[48] Id.

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[51] CRW Agreement, supra note 27.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF HARRISBURG, AS FOLLOWS:

Section 1. Introduction

1. Purpose of the Ordinance. This ordinance establishes the parameters of the conditions which delineate responsibility between the City, CRW, and its customers. Sewage collection and treatment facilities are expensive to construct, maintain, and operate. These facilities require operation and maintenance by trained personnel. Improper use can cause severe harm to the facilities, render them ineffective in their performance, and can be hazardous to system personnel and the general public. Provisions of this ordinance are intended to establish the obligations and responsibilities of the City, CRW, and its customers in order to maximize the effectiveness and efficiency of CRW's sewage collection and treatment system.[52]

2. Definitions

a) Access Point – Any place in the sewage collection system where there is physical access to a buried sewer that allows, without excavation, observation of the pipe and the ability to insert tools into the pipe.

b) Capital Region Water (CRW)- Authority established by the City of Harrisburg to collect and treat sewer water

c) City Council – Governing body of the City of Harrisburg

d) Clean out – A small diameter access to a main line sewer, service line, or lateral which allows observation and maintenance of the sewer.

[52] Id.

e) Collection system – The network of service lines, collection sewers, interceptor sewers, pump stations, and force mains that transports wastewater from the property line of the customers to the treatment plant.

f) Customer – Any party that receives wastewater collection or discharge service from the utility.

g) Domestic wastewater – Wastewater contaminated with the type and quantity of pollutants typically found in wastewater discharged from a normal residential household including wastewater from bathrooms, kitchens, laundries, or other household functions.

h) Lateral – Sewer pipe which connects a customer's building plumbing to CRW's tap and service line. The lateral is the exclusive responsibility of the sewer customer.

i) MS4 Permit - Municipal Separate Storm Sewer System (MS4) Permits. Discharges from municipal separate storm sewer systems are regulated under the Pennsylvania Water Management Law.

j) NPDES Permit - National Pollutant Discharge Elimination System (NPDES) permit program controls water pollution by regulating point sources that discharge pollutants into waters of the United States.

k) Party – Any person, individual, business, organization, or any other body participating in an activity involving the CRW sewer system.

l) Pollutants – Any material, condition, or contaminate that makes water unsuitable for its intended purpose including discharge into a natural waterway.

m) Restricted wastewater – Any wastewater or pollutant in wastewater that does not meet the definition of domestic wastewater and which may require special monitoring or pretreatment prior to discharge into the sewer system.

n) Sanitary sewer – Any sewer transporting wastewater to the treatment plant.

o) Service line – Sewer pipe which connects to a main line sewer and runs to the customer's property line. It constitutes a sewer tap.

p) Sewage – Generally any wastewater and more specifically wastewater contaminated by human excrement.

q) Sewer system – The collection system, treatment plant, and all other ancillary equipment facilities that allow for collection, transport, treatment, and discharge of wastewater.

r) Tap – Part of the sewer system owned by CRW, which connects the individual customer to the sewage collection system. It includes the actual physical connection to a sewer pipe or manhole and the customer service line running to the customer's property line.

s) Transfer Agreement – Agreement between the City and CRW to transfer responsibility and authority from the City to CRW to manage, collect and treat water collected by the combined stormwater/sewer system.

t) Treatment plant – The facility used to treat collected sewage and wastewater to make it suitable for discharge into a natural waterway.

u) Wastewater – Water contaminated with any kind of pollutant that makes it unfit for its intended use including discharge back into a natural waterway.

SECTION 2. AREAS OF DELEGATION

1. To the fullest extent permitted by the law, CRW shall use its own powers, as stated in the Municipality Authorities Act, as well as powers delegated to it by the City, as stated in this Section A, to assure compliance with its responsibilities to comply with the NPDES Permit, the MS4 individual Permit, the provisions of the CWA, PCSL, and the rules promulgated

thereunder, as well as the Transfer and Transition Agreements, including, by way of example, but not limited to:

a. the legal power to inspect and regulate grease traps from restaurants, schools, and other facilities with food services;

b. the legal power to inspect and regulate businesses and/or other customers that may be contributing waste streams other than domestic sewage to the Conveyance and Collection systems;

c. the legal authority to implement all Minimum Control Measures and any other requirements of the Individual MS4 Permit, including specifically the authority to address the elimination of illicit discharges to the MS4 and the authority to implement and enforce a program for post-construction storm water management in new development and redevelopment

d. the legal power to inspect any other property which the City previously would have inspected, in order to enforce City ordinances and CRW Rules and Regulations and assure compliance with the NPDES Permit, the MS4 Individual Permit, the provisions of the CWA, PCSL, and the rules promulgated thereunder.

2. Powers of enforcement which CRW shall exercise under its own statutory powers, and which are subject to the delegation of powers by the City, stated herein, shall include:

a. The power to enforce ordinances and Rules and Regulations which permit entry on to private property for purposes of inspections, repairs, and matters of general public safety related to water, stormwater and wastewater, including CRW being permitted, either in its own right, or as a delegate of the city, to seek a court or administrative order compelling entry upon private property.

b. Any and all powers to compel a property owner, lessee or tenant to bring water, stormwater and wastewater systems into compliance with City Ordinances or CRW Rules and Regulations, including the ability to bill or assess fees upon property owners, lessees or tenants which are related to the costs of any repairs or improvements with subsequent enforcement measures including the ability to place a lien upon property for unpaid obligations.

c. Any and all powers to respond to matters of public or private nuisance which pertain to water, stormwater and wastewater such as illicit discharges or pollution. The powers to enforce this provision shall include the powers delegated above in sections (b) and (c) as well as any powers validly exercisable by CRW to the extent such matters involve an immediate threat to public safety.

3. City Ordinances: To the fullest extent permitted by the law, the City hereby delegates to CRW the enforcement power as to all City Ordinances which directly or indirectly pertain to water, stormwater and wastewater systems which were addressed in the Transfer and Transition Agreements.

4. CRW Rules and Regulations: In addition to enforcement of existing City ordinances, to the fullest extent permitted by the law, CRW shall be permitted to use any and all powers delegated by the City in the enforcement of its own Rules and Regulations, to the extent it does not already possess these powers under the Municipality Authorities Act.

5. City's Retention of Enforcement Powers: CRW shall be the primary party to assure compliance with the matters referenced above. To the extent the City and CRW mutually agree, or if a court or administrative body of competent jurisdiction were to so hold, that CRW's exercise of a power necessary to comply with the terms of the NPDES Permit, the MS4 Individual Permit, the provisions of the CWA, PCSL, and the rules promulgated thereunder,

would be violative of the law, and the City holds the power to enforce those obligations and, under such circumstances, the City will retain the power to enforce CRW's Rules and Regulations so as to ensure full compliance with the referenced laws. The City further agrees that CRW shall be able to refer to the City for summary prosecution, any matters which, by ordinance or regulation, mandate the imposition of penalties or fines, except to the extent CRW has the statutory power to, itself, impose penalties or punitive fines, or civilly prosecute, provided that in no event shall the City be obligated to prosecute any such referred matter when, in its sole judgment, (i) the information provided by or on behalf of CRW fails to establish a legal or evidentiary basis of the violation(s) alleged or (ii) the requested prosecution presents an unreasonable financial risk to the City.

The administrative costs and expenses of any prosecution shall be the obligation of CRW and shall be, to the extent allowed by law, taxable as costs to the offender. To the extent administrative costs and expenses are not taxable or an offending party does not pay them, and in the event the City is able to recover payment of a fine or penalty, the City shall pay CRW any administrative costs and expenses it has paid out of the proceeds of the fine or penalty.[53]

6. CRW will be responsible for the cost of construction, maintenance, repair, and upkeep of all sewer lines and facilities.

7. CRW will be responsible to fix and repair any roads, sidewalks, or land of any kind whatsoever that is disturbed as the result of CRW's operations.[54]

8. CRW will indemnify the City for any legal fees, monetary awards, or other costs/judgments of any kind whatsoever incurred by the City as the result of CRW. [55]

[53] CRW Agreement, supra note 27.
[54] This language was created to satisfy the City's goals.
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SECTION 3. MATTERS TO BE ADDRESSED JOINTLY

1. Ordinance Amendments: CRW and the City shall work cooperatively to amend and restate City ordinances as they pertain to issues of water, stormwater and wastewater to: (i) reflect any and all delegations of powers described herein; (ii) implement ordinances necessary to fully comply with the NPDES Permit, the MS4 Individual Permit, the provisions of the CWA, PCSL, and the rules promulgated thereunder; (iii) coordinate City Ordinances with CRW Rules and Regulations in order to maintain consistency and efficient administration of regulations involving city residents and businesses; (iv) clearly delineate responsibilities so as to maintain compliance with the NPDES Permit, the MS4 Permit, the provisions of the CWA, PCSL, and the rules promulgated thereunder. Nothing herein shall be construed to delegate the exclusive authority of the City to control or direct law enforcement officials or other enforcement personnel of the City in the performance in their official duties.

2. CRW rule and regulation development and amendment: CRW and the City shall work cooperatively to amend existing CRW Rules and Regulations and develop new CRW rules and regulations in the areas of water, stormwater, and wastewater to (i) reflect any and all delegations of powers described herein; (ii) implement rules and regulations necessary to fully comply with the obligations of the NPDES Permit, the MS4 Individual Permit, the provisions of the CWA, PCSL, and the rules promulgated thereunder; (iii) coordinate City Ordinances with CRW Rules and Regulations in order to maintain consistency and efficient administration of regulations involving city residents and businesses; and (iv) clearly delineate responsibilities so as to ensure and maintain compliance with the NPDES Permit, the MS4 Individual Permit, the provisions of the CWA, PCSL, and the rules promulgated thereunder.

3. The City and CRW shall freely and cooperatively exchange information in furtherance of their respective duties and obligations under this Ordinance and for purposes of compliance with the NPDES Permit, the MS4 Individual Permit, and the provisions of the CWA, PCSL, and the rules promulgated thereunder.

4. The City and CRW shall work cooperatively on matters of public outreach and education so as to maintain consistent and informative communications to the City's residents and businesses as to regulations applicable to them, permitting, inspections, reporting, and public involvement.

5. Nothing in this Ordinance shall be construed to compel the City or CRW to violate, or refuse compliance on the basis of this Ordinance, any federal, state or local law or regulation governing the operations, duties or conduct of the City or CRW.

6. The City and CRW shall be responsible for their own costs of compliance with this ordinance.

7. Nothing in this ordinance shall be construed to require the City or CRW to alter their organizational structure or to create, fund, merge or join any organization.

8. This Ordinance shall have no effect on the City's ability to exercise its police powers in the interests of preserving the safety, health and welfare of the residents and businesses of the City; the City's power to tax; the City's authority to govern construction and emergencies per the Construction Code Act, Act 45 of 1999, the Emergency Management Act, Act 165 of 1990 and similar legislation; or the City's power to plan development per the Pennsylvania Municipalities Planning Code, Act 247 of 1968, and similar legislation.[56]

[56] CRW Agreement, Supra note 27.

SECTION 4. PENALTIES[57]

1. Any customer, property owner, tenant or lessee, contractor, or any other party, business entity or corporation who fails to comply with any or all of the requirements or provisions of this ordinance or direction of CRW or any other authorized employee of the City shall, upon conviction, be guilty of a misdemeanor offense and shall pay a fine to the City of not less than Fifty and 00/100 dollars ($50.00) nor more than Five Hundred and 00/100 dollars ($500.00) for each such offense plus court costs, or, in the discretion of a court exercising proper jurisdiction, may further be imprisoned for a period not exceeding thirty (30) days, or may be both fined and imprisoned for each offense. Each day during which any violation of this ordinance continues shall constitute a separate offense. In addition to the above penalties all other actions are hereby reserved including an action in equity for the proper enforcement of this ordinance. The imposition of a fine or penalty for any violation of, or non-compliance with the ordinance shall not excuse the violation or non-compliance with the ordinance or permit it to continue; and all such persons shall be required to correct or remedy such violations or non-compliances within a reasonable time.

2. Notwithstanding the above penalties, any violation of this ordinance or act against CRW which violates any civil or criminal statute of the Commonwealth of Pennsylvania or the United States of America, or any administrative rule or regulation promulgated by any administrative agency acting thereunder, may be prosecuted by the City to the fullest extent of the law.

3. Failure of any customer to comply with any financial obligation established by CRW, may result, after notification in conformance with Pennsylvania Public Service Commission requirements, in termination of the customer's water service.

[57] Id.

SECTION 6. SEVERABILITY[58]

In the event that any section(s) or provision(s) of this Ordinance is determined to be unconstitutional or invalid by a court exercising competent jurisdiction, such determination shall not affect the validity of this ordinance as a whole or the sections and provisions thereof which are not specifically held to be unconstitutional or invalid other than that section(s) or provision(s) which is specifically determined to be unconstitutional or invalid.

SECTION 7. REPEALER[59]

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 8. EFFECTIVE DATE[60]

This ordinance shall take effect in accordance with the law.

[58] Harrisburg Ordinance No.1, Residency Repealed (2014)
[59] Id.
[60] Id.