



April 16, 2021

Via electronic mail (waterrateboard@phila.gov)

Water Rate Board
1515 Arch Street
17th Floor
Philadelphia, PA 19102-1595

**Re: Comments to the Water Rate Board on Philadelphia Water Department's
2021 Rate Proceeding.**

Dear Members of the Water Rate Board,

On behalf of Citizens for Pennsylvania's Future (PennFuture) I write to provide comments on the above-referenced Philadelphia Water Department (PWD) rate proceeding.

PennFuture is a statewide environmental nonprofit advocacy group invested in protecting and improving water quality in Philadelphia and across Pennsylvania. PennFuture intervened in the PWD rate proceedings in 2008, 2012, and 2016 in support of a stormwater management plan that protects and enhances our waterways through the use of green infrastructure, and PennFuture commented on the 2018 PWD rate proceedings. PennFuture has submitted numerous comments on the development and implementation of PWD's Combined Sewer Overflow Long Term Control Plan Update (LTCPU), draft Clean Water Act permits related to Philadelphia's water pollution control plants and municipal separate storm sewer system, and PWD's assessment of its financial capability to implement the LTCPU.

PennFuture strongly supports Philadelphia's green stormwater infrastructure program. However, PennFuture must oppose the proposed rate increase at this time for the following reasons.

A. Given the Impacts of the Ongoing Pandemic and the Federal Government’s Recent Stimulus Plan, the Current Rate Proceeding Should be Suspended or Stayed.

As a preliminary matter, the current rate proceeding should be suspended or stayed. The American Rescue Plan Act of 2021 will result in substantial amounts of federal dollars flowing to the City of Philadelphia, including some sums destined specifically for PWD and/or PWD-related consumer expenditures. As all participants in this rate proceeding have acknowledged, there are many uncertainties regarding the timing and amounts of funds that will be available to PWD. PWD has indicated that it is evaluating the potential availability of the impact of Rescue Plan dollars, and the Hearing Officer has found that “this issue has the potential to represent a material factor for the Rate Board to consider in making its decision.” Hrg. Officer Decision, Mar. 21, 2021.

As a result of the uncertainty surrounding this influx of funds, it is inefficient to continue with a rate proceeding that is missing critical information that may affect whether the proposed increase is necessary. While this evaluation takes time, the City of Philadelphia as a whole and PWD specifically have every incentive to work through the uncertainty and make the funds available as quickly as possible. A suspension or stay would therefore not be indefinite.¹

Determining whether federal dollars may offset some of the claimed need for a rate increase is particularly important given the context. This is not an ordinary time – we remain in a global pandemic that has disproportionately impacted low-income Philadelphians. The impacts of the pandemic are further set forth in the testimony of Roger Colton on behalf of the Public Advocate. While PWD’s Tiered Assistance Program (TAP) is an important program and remains a critical component of an equitable rate structure, there will be many Philadelphians still struggling to pay their bills. The rate board should have all the information available to it about all potential sources of funding before it makes a determination whether to raise those bills.

B. We Applaud *Green City, Clean Waters*, but PWD Must Consider a Holistic Approach to Funding Its Compliance.

1. Compliance with *Green City, Clean Waters* is Not Only Important, But Required.

The stormwater fee funds, to a large extent, PWD’s efforts to support green stormwater infrastructure. This is a critically important program, compliance with which is necessary to meet PWD’s legal obligations.

¹ PWD asserts that the Rate Board has the statutory authority to extend the amount of time it takes to render a decision on a rate proceeding beyond 120 days. *See*, PWD Response to Motion for Continuance, *available at* <https://www.phila.gov/media/20210319161321/RESPONSE-TO-MOTION-FOR-CONTINUANCE.pdf>. The Hearing Officer declined to rule on this issue, and it remains an open question.

The Pennsylvania Department of Environmental Protection (PADEP) and PWD entered into a Consent Order and Agreement (CO&A) to address Philadelphia’s combined sewer overflows on June 1, 2011. The CO&A requires PWD to implement the LTCPU, which is a first-of-its-kind CSO compliance approach based primarily on green stormwater infrastructure, such as roadside plantings, rain gardens, permeable pavement, and green roofs that soak up rainwater before it can overwhelm the city’s sewers, reducing the need to invest in costly expansion of the wastewater collection and treatment system itself.

The program, known as *Green City, Clean Waters* and now about to start its tenth year, binds PWD to enforceable deadlines to create enough green infrastructure to manage runoff from 9,564 impervious acres across Philadelphia’s combined sewer areas (referred to as “greened acres”) and to eliminate the amount of pollution that otherwise would be removed by the capturing and treating 85% of the baseline annual wet weather flow in the sewer system. *Green City, Clean Waters* was chosen through a process designed to select the most cost-effective and technically feasible alternative to reduce sewage pollution in Philadelphia’s rivers and streams and achieve compliance with the federal Clean Water Act, while providing a wide range of additional benefits to the city and the Department’s ratepayers.

Further, *Green City, Clean Waters* will achieve many tangible benefits beyond Clean Water Act compliance that other approaches would not. Implementation of green stormwater practices has the potential to realize substantial triple bottom line benefits—economic, environmental, and social.² Implementation of the practices *Green City, Clean Waters* prioritizes is expected to enhance recreational use and aesthetic enjoyment (reflected in property values), decrease heat stress and energy use while improving air quality, and decrease poverty through job creation. These benefits are of paramount importance, particularly in communities subject to historic disinvestment.

Green stormwater infrastructure is also helping to improve the economy of Philadelphia. As Sustainable Business Network outlines in their 2016 assessment of the economic impact of *Green City, Clean Waters* in its first five years, sixty of the assessed local green stormwater infrastructure business represented an annual economic impact of almost \$60 million within the Philadelphia area, supporting 430 local jobs, and generating nearly \$1 million in local tax revenues.³

Not only is *Green City, Clean Waters* offering these environmental, economic, and social benefits to the City of Philadelphia, it is also preventing potential financial penalties that would result from violating binding settlement agreements with government agencies. Philadelphia is

² *Green City, Clean Waters* Supplement Documentation, vol 2 (A Triple Bottom Line Assessment of Traditional and Green Infrastructure Options for Controlling CSO Events in Philadelphia's Watersheds, (Aug. 24, 2009)), available at http://www.phillywatersheds.org/lcpcu/Vol02_TBL.pdf.

³ Sustainable Business Network, *Economic Impact of Green City, Clean Waters: The First Five Years* (Jan. 29, 2016), available at https://www.sbnphiladelphia.org/wp-content/uploads/2021/04/Local-Economic-Impact-Report_First-Five-Years-GCCW_full-downloadable-web2.pdf.

bound not only by the CO&A entered into with PADEP in 2011, but also a parallel Administrative Order on Consent entered into with the Environmental Protection Agency (EPA) in 2012. Along with these enforcement actions comes increased oversight and monitoring by both EPA and PADEP. Should Philadelphia fail to comply with these agreements, the City is subject to significant penalty amounts. Penalties start at \$25,000 per month for each violation (for the first 6 months) and increase up to \$100,000 monthly for uncured violations of 13 months or more.⁴ Avoiding the cost of these violations is in the best financial interest of Philadelphians and can only be achieved through proper implementation of *Green City, Clean Waters*.

2. PWD Should be Evaluating Ways to Reduce the Amounts it Needs to Generate Through Residential Rates in Order to Achieve Greened Acres as Required by *Green City, Clean Waters*.

PennFuture continues to support stormwater fees as a method for funding the necessary costs of stormwater management, including *Green City, Clean Waters*. However, PWD should also be evaluating other ways of achieving its requirements under *Green City, Clean Waters* – and therefore achieving the benefits of green stormwater infrastructure for Philadelphians – that reduce the direct costs to PWD and therefore reduce the amount needed to be generated through residential rates. PennFuture and other groups elaborated on these issues (among others) in the 2019 A Common Green Stormwater Agenda for Philadelphia, available at <https://www.pennfuture.org/common-agenda>.

From its beginning, *Green City, Clean Waters* contemplated the necessity of private development and investment in the success of the program. Philadelphia’s stormwater regulations, for example, impose requirements on private property which shift some of the cost of compliance with the state and federal enforcement orders away from PWD and its ratepayers and onto private property developers. By successfully administering this regulatory program, PWD receives “credit” towards its own Clean Water Act compliance obligations – every “greened acre” created by development projects counts towards the 9,564 greened acres required under the CO&A.

PWD also invests directly in green infrastructure retrofits on already-developed private properties. This provides a cost-savings to ratepayers, as compared to investing only in green infrastructure on public property, because many of the most cost-effective areas to site green stormwater infrastructure projects remain on privately owned land. For these private landowners, stormwater charges on impervious surfaces do not create a sufficient incentive for developers to invest in building green infrastructure.⁵ To address this problem, PWD launched the Stormwater Management Incentive Program (SMIP) in 2011 to provided low interest loans to non-residential property owners for the construction of stormwater retrofit projects on privately owned property. In the first five years of *Green City, Clean Waters*, SMIP resulted in 163.7

⁴ Consent Order and Agreement with PADEP (hereinafter CO&A) ¶ 8.d.iii; *see also* 2018 Rate Proceeding, PWD Statement No. 1, Direct Testimony and Schedules of Debra McCarty, 1-21:19-22 (March 14, 2018).

⁵ *See* NRDC, et. al., *Financing Stormwater Retrofits in Philadelphia and Beyond* (Feb. 2012), available at <https://www.nrdc.org/sites/default/files/StormwaterFinancing-report.pdf>.

greened acres managed.⁶ Subsequently, to incentivize implementation of green stormwater infrastructure on large industrial and commercial properties, PWD developed the Greened Acre Retrofit Program (GARP) in 2014.⁷ GARP provides grant funding to companies or contractors to construct stormwater projects across multiple properties in Philadelphia's combined sewer area. In the first two years of implementing the program, GARP incentivized the construction of 62.8 greened acres.⁸ In the first five years of *Green City, Clean Waters*, greened acres as a result of private investment accounted for 658 greened acres—almost 80% of the total 837 greened acres achieved.⁹ The SMIP and GARP programs accounted for 235 of the total greened acres achieved in the first five years.¹⁰

In order to continue to advance *Green City, Clean Waters* and meet its requirements to achieve greened acres through the next ten years of the program, PWD should look for additional methods to reduce its own direct costs and to therefore reduce the amount it needs to generate through stormwater fees, particularly stormwater fees on residential ratepayers. For example, PWD should be evaluating improvements to the SMIP and GARP incentive programs, considering expanding the applicability of stormwater regulations to new development, looking for lower-cost financing options, and improving its leveraging of resources in collaboration with other agencies. There are many organizations working on answers to the question of effective and equitable funding of green infrastructure, and PWD should continue to engage with and incorporate their findings.

Thank you for your consideration of these comments.

Sincerely,



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⁶ *Green City, Clean Waters*, Evaluation and Adaptation Plan, 2016 (hereinafter 2016 EAP), at 4-17, available at http://phillywatersheds.org/doc/Year5_EAPBody_website.pdf.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 2-15.

¹⁰ *Id.*