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## Considering a Stormwater Authority? 12 Steps to Help Townships Make the Decision

BY RUSSELL F. McINTOSH / VICE PRESIDENT, FINANCIAL SERVICES,  
HERBERT, ROWLAND & GRUBIC, INC.

Since the signing of Senate Bill 1261 (Act 68 of 2013) last September, many townships have been discussing the benefits and feasibility of using an authority to address stormwater issues versus continuing to use their established policies, practices, and funding sources. As you might imagine, there is no single, simple answer to this question. Like many other aspects of township administration, each community's needs are unique, and any one-size-fits-all approach seldom does.

One reason for this is that stormwater management is a function of each township's location in the watershed, its unique topography and land use, and its demographics. Often, the existing stormwater facilities are passive, sitting idle much of the time until a large rain event occurs. Unlike water or wastewater utilities, where most people can see a direct benefit, stormwater management is seldom seen as a service. Also, stormwater issues are often addressed through the land development process and are not perceived to have any ongoing maintenance costs, which can make separate billing for this service much more difficult.

There is no doubt that Act 68 was designed to expand the funding choices available to municipalities for stormwater management and better distribute the costs among those who are most responsible for creating issues. One challenge that townships will encounter is the amount of preplanning required to decide exactly what service the stormwater authority is to provide, who will benefit, the types of facilities that are needed, and how costs will be calculated and apportioned.



**A new law allows townships to create stormwater authorities and charge user fees to offset stormwater management costs. Townships should make sure to consider all of the factors involved before establishing an authority.**

Determining benefits and costs can be especially tricky in townships that have multiple drainage basins, privately owned stormwater facilities or those located on private property, a large number of tax-exempt properties, or stormwater that originates in a neighboring municipality. Successful stormwater management will include a blend of fees, inspections, ordinance enforcement, and community education and support. The exact combination of measures that's right for your township will require evaluation, analysis, and sorting through a lot of data.

### Evaluating stormwater management needs

As you help your township clients decide how

# STORMWATER AUTHORITIES

best to address their stormwater management needs, the following 12 steps will guide you in asking the right questions, organize your thinking, and help you collect the necessary data to make an informed decision.

1) **Conduct, review, and update an inventory of township-owned stormwater facilities.** Your township needs to know what it owns now and how much it is spending to maintain existing facilities.

2) **Identify facilities located on private property that are directly connected to township-owned facilities.** While the township may not be spending money on privately owned facilities, it has a vested interest in their proper operation and maintenance. The township needs to determine whether it has sufficient power under existing ordinances to ensure that these facilities are being maintained properly and will operate effectively when needed.

3) **Identify facilities located on private property that are not directly connected to township-owned facilities and evaluate the ability of the owners to properly maintain them.** Again, does the township have sufficient power under existing ordinances to make sure these facilities are being maintained properly and will operate effectively if needed?

4) **Review and revise existing policies and ordinances that require private owners of stormwater facilities to properly maintain them, and establish fines for noncompliance.** For example, if facilities are owned by a private entity, such as a corporate landlord or a property owners' association, and are not properly maintained, should the renters or residents be asked to pay a stormwater fee if the township does not assume ownership of these facilities? This may take the form of a separate charge to individual homeowners whose property is served by such facilities.

5) **Revise the inventory as needed to include any facilities for which the township has or will assume responsibility.**

6) **Regularly review your inventory and assess the general condition of stormwater facilities to determine fu-**

ture projects. This will provide the basis for the township's stormwater management capital plan.

7) **Estimate the timing and cost of future projects and identify the need for financing.** If a substantial amount of debt must be incurred to finance additions or upgrades, does the township have sufficient borrowing capacity to incur that amount of debt?

8) **Identify the township's current operating costs for existing stormwater management facilities, including labor, materials, and services.**

9) **Estimate future annual operating costs and any annual debt service costs associated with existing or planned stormwater facilities.**

10) **Discuss the public's perception of stormwater management's benefits and any negative impacts of using general tax revenue versus a dedicated user fee.** One of the important elements here is the percentage of "uncollectable" fees versus the amount of revenue that may be lost due to tax-exempt properties.

11) **Determine the benefit of a separate stormwater authority and what form it will take — operating or lease-back (see the box at right).** One factor to consider is the regulatory environment. The township will always remain responsible for the proper enactment and enforcement of state and federal regulations, so its relationship with an authority must be cooperative. It is also likely that, given the relatively short history of stormwater user fees in Pennsylvania, the township may be asked to guarantee the authority's debt.

12) **Be prepared to advance funds to accomplish many of these steps before an authority can begin generating revenue.** Act 68 of 2013 amended the Municipality Authorities Act to include under the purposes and powers of a municipal authority "stormwater management planning and projects." No other sections of the act were amended.

Consequently, stormwater authorities have the same powers and limitations placed on all authorities. Charges must be uniform and reasonable, meaning that before any billing can occur, the creating body must identify the scope of service and the facilities that are included; determine their costs of acquisition, operation, and maintenance; and adopt a basis for billing.

Also, authorities may only bill for

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service they render; they have no power to “tax” for the general good. Therefore, the township may have to put up funds initially to get the ball rolling.

### Tailor the steps to your township

The steps presented above are simply guidelines, and not all steps may be necessary for all townships. Some townships, for example, may find that a great deal of time will be necessary to complete some of the steps. In other cases, it may not be necessary to conduct the complete

inventory if a township already has a stormwater facilities capital plan or if all such facilities are privately owned.

Township engineers and their municipal clients should carefully consider the benefits and risks involved in establishing a stormwater authority, and these steps may help them to do so. Remember that the intent is not to expend more time and money on stormwater analysis, but simply to ask basic questions and decide what direction looks most beneficial in the long term. ❖

## Think carefully about type of authority, fairness of rates

Townships that are considering the development of a stormwater authority should consider what type of authority they want, either leaseback or operating, and then determine whether a cost study is necessary for setting rates.

### Authority types differ

An **operating authority** is totally responsible for the issuance and payment of debt and, most important, the operation of stormwater facilities. A **financing or leaseback authority**, however, borrows money to finance the construction or acquisition of the project and then leases it back to the township to maintain and operate.

The township may use revenue collected through a stormwater fee to pay this rental. If that revenue is insufficient to cover the cost, the township may use other revenue, including taxes. When the lease expires and the bonds are paid off, the authority may return ownership of the project to the township.

### Use caution when setting rates

A question that often arises involving leaseback authorities is what role the Pennsylvania Public Utility Commission plays when setting rates. Municipal authorities and the service they provide, including their rate structures, are not subject to PUC control when operating within the boundaries of the incorporating municipality.

This is not the case for municipalities where services are provided to

properties outside their boundaries. Nor is it true where authority projects are leased back to a municipality, which then establishes the rates. In these instances, the rate may be subject to PUC approval if challenged.

Therefore, when establishing rates, the municipality and the authority should conduct a cost-of-service study, which should be done by a consultant with recognized expertise in rate making. This will provide evidence to support the rates if they are challenged by customers in the courts or in the PUC review process. The criteria for rate approval for the private sector are rigorous and largely based on cost-of-service studies.

Authorities that are challenged on their rates can expect the same degree of scrutiny by the courts or the PUC. This is more likely to occur with large authorities that have large-volume users. Courts recognize that for most small authorities, rate calculation is based on authority management experience and general cost knowledge. This is usually sufficient because most are never challenged. In the rare instances that they are challenged, the authority's rates must be supported by a formal cost-of-service analysis.

Member engineers who want to help their township clients develop efficient and effective stormwater management authorities should attend an upcoming webinar on the subject. Stay tuned in the coming weeks for registration information.

## A MESSAGE FROM THE EXECUTIVE DIRECTOR

### Do Your Homework Before Establishing a Stormwater Authority



DAVID M. SANKO

Stormwater management is a significant part of many townships' budgets, and state and federal regulations continue to increase the burden. With the signing of Act 68 of 2013, townships were given an additional tool

to offset some of the costs involved by establishing a stormwater authority. This will allow municipalities to charge user fees for stormwater facilities.

The decision to develop a stormwater authority is not one to be taken lightly, however. Many factors must be considered, including what kind of authority to establish, how much autonomy it will have, and how fees will be determined and apportioned.

Harrisburg-based Herbert, Rowland & Grubic, Inc. has developed a 12-step program of sorts, detailed in this edition of the newsletter, to help engineers and their municipal clients sort through the many issues when weighing the benefits and risks of establishing a stormwater authority. These steps will help townships determine what facilities they have, how much it is costing them, and what they will likely need in the future.

Stormwater authorities may offer the first real opportunity for townships to offset the costs of complying with federal and state stormwater regulations. Therefore, townships should make sure to cover all their bases and choose the best option that will serve the needs of the township and its residents for years to come.

To stay up to date on stormwater and other engineering-related topics for municipalities, make sure to register for the Spring Engineers Seminar, held in conjunction with PSATS' 92nd Annual Educational Conference and Trade Show, April 13-16 in Hershey. See the back page for more details.

A handwritten signature in black ink that reads "David M. Sanko".

# CALL FOR ENTRIES

## Encourage Your Township Clients to Enter the Road and Bridge Safety Contest

Township engineers should encourage their clients to enter the 32<sup>nd</sup> Annual Road and Bridge Safety Improvement Contest. The deadline is **March 7**.

Sponsored by PSATS, the Pennsylvania Highway Information Association, and the state Department of Transportation, the contest recognizes townships for their extensive contributions of time and effort to making roads and bridges safer.

Eligible projects include safety improvements initiated and completed in 2013 or ongoing projects begun in 2013. Entries must involve visible improvements, such as the installation of guide rails, stop signs, or other safety features; road widening and resurfacing; traffic rerouting; bridge repair or replacement; or sight distance improvement.

Education programs, stricter speed limit enforcement, and drunk driver programs are not eligible for this contest.

Brochures with entry forms are enclosed with this newsletter. The completed form must be sent to Bonnie Fields, PennDOT Bureau of Municipal Services, P.O. Box 8211, Harrisburg, PA 17105 by **March 7**. You may also email entries to [bfields@pa.gov](mailto:bfields@pa.gov).

Winners will be presented with a plaque at PSATS' Annual Educational Conference in April and will be the subject of a *Township News* article.

For more information or to download an entry form, go to [www.psats.org](http://www.psats.org), click on the "Programs & Services" tab, and choose "PSATS Awards Programs" from the drop-down menu.



## PSATS' 92<sup>nd</sup> Annual Educational Conference Offers Training Opportunities for Township Engineers

PSATS' 92<sup>nd</sup> Annual Educational Conference and Trade Show promises plenty of educational sessions for township engineers, including the 2014 Spring Engineers Seminar.

**DATE:** April 13-16, 2014

**LOCATION:** Hershey Lodge

Because township engineers are busy people, we offer two ways to attend the conference:

### Option I — Seminar-Only Package

Register to attend the Spring Engineers Seminar *only* from 8:30 to 11:30 a.m. Monday and Tuesday, April 14 and 15, at the Lodge.

The registration fee is \$165 for members of the Township Engineers Association and \$195 for nonmembers.

### Option II — Seminar and Conference Package

Sign up for the entire conference. By choosing this option, you will receive admission to:

- **The Spring Engineers Seminar** — 8:30 to 11:30 a.m. Monday and Tuesday, April 14 and 15. (*Requires an additional \$25 fee for registered delegates who are Township Engineers Association members and a \$95 fee for registered delegates who are non-members.*)

- **The Monday and Tuesday afternoon workshops** — Topics include such engineering-related subjects as roadside springs, driving surface aggregate, aboveground and underground storage tanks, Google Earth, road maintenance programs, sinkholes, traffic signs and signals, brownfield redevelopment, green infrastructure, water obstruction and encroachment permits, and much more.

- **The exhibit show**, which features close to 300 vendors and agencies and is the largest municipal show in the state.

Attendees of the Engineers Seminar will also be eligible to receive professional development hours.

**REGISTRATION:** Conference attendees who register online will save with a reduced rate this year, and those who register online and by March 31 will save even more:

	<u>By 3/31</u>	<u>After 3/31</u>
<b>Online:</b>	\$150	\$175
<b>Mail/fax:</b>	\$175	\$200

To register, go to [www.psats.org](http://www.psats.org) and click on the "Annual Conference" tab. Detailed information about the Engineers Seminar will be sent directly to Township Engineers Association members in the coming weeks.



Register for the conference online to get a reduced rate!