

Stormwater Billing

QUESTION

The following question was emailed to members of the Legal Affairs Committee on October 21, 2008:

“We are writing to you as a member of the NACWA Legal Affairs Committee with a request for information from a NACWA public agency member. The member is in the process of setting up a stormwater utility and is examining ways to charge for stormwater services. The member would like to bill its stormwater utility bills monthly along with its water/sewer bills utilizing software it already has, and be able to cut-off water service for nonpayment of the stormwater fee. However, the utility is concerned that because the stormwater fee has no direct nexus to water usage, shutting off water service for failure to pay the stormwater fee is subject to a potentially successful legal challenge.”

RESPONSES

The following responses were received from members of the Committee:

Response 1: We have recently instituted an impervious charge for our stormwater utility. Unlike many impervious charges that use average values for residential bills, we have aerially mapped all of our 500,000 parcels and have calculated the impervious area individually. Our current charge is \$0.12/100 sf of impervious area. This unit charge will escalate over 7 years to \$0.29/100 sf.

We do not have water shutoff for any of our services because we are not the water provider. Shutoff is definitely the best collection tool available but I see the point they are concerned about. We utilize collection agencies, legal action and liens presently. We have gotten good but not great results with these methods. We continue to look for better methods to collect these user charges.

I believe the state of Ohio has a law that provides for past due user charges to be placed on the property tax bill as a collection method. Other utilities have utilized lien sales where they in essence put the property on the auction block with the minimum bid being the amount owed, in general the bill gets paid before the auction occurs. A utility could always deny service when the delinquent customer calls but this is probably not very effective because most customers don't have service problems.

Response 2: Raleigh and numerous other NC cities have organized their stormwater utility to achieve the described result. However, we have express statutory authority for the method of billing. For that reason, I am not aware of any challenges to such a billing enforcement system in NC. It can be found in NC Gen Stat § 160A-314(b).

Response 3: Takoma, Washington has a provision in its code (see below) that allows water to be shut-off if a surface water bill is unpaid. I haven't been asked to address it and don't know if the City has ever applied it to shut-off water for non-payment of a surface water bill. As far as setting up a surface water utility is concerned, I recently hired Pam Lemoine, P.E., of Black & Veatch (636) 236-8358 (Chesterfield, MO) to assist the City in a challenge to its City's surface water rates. If the jurisdiction is looking for help, Pam has experience in the area and she is someone they could call.

12.08.600 Billing periods, payments, and collections.

A. All bills for wastewater and surface water service charges as set forth herein shall be rendered monthly or bimonthly as shall be determined by the City Manager and shall become due and payable at the office of the City Treasurer or such other places as

approved by the City Treasurer on or before the 10th day after the statement has been mailed and shall become delinquent thereafter.

B. For any service charge which becomes delinquent, the party shall be charged a late payment fee as set forth in TMC 12.01. Any service charge which becomes delinquent, together with interest, also shall immediately become a lien against the premises served under RCW 35.67.200. Such lien may be foreclosed by the City in the manner provided by Chapter 35.67 RCW. In the event that the City files the lien with the County Auditor, a \$75 processing fee shall be added to the delinquent amounts owed. The \$75 processing fee will be allocated to Wastewater Management or Surface Water Management Funds, as appropriate, and, for City tax purposes, recorded as revenue. **In addition to such foreclosure, a customer whose said Wastewater Management or Surface Water Management account is delinquent shall also be subject to having City water utility services terminated for the subject premises (or other premises owned or rented by the customer), which termination shall continue until satisfactory arrangements are made to satisfy the delinquency.** (Ord. 27538 § 28; passed Oct. 24, 2006; Ord. 27285 § 16; passed Nov. 2, 2004; Ord. 27003 § 21; passed Nov. 19, 2002; Ord. 26729 § 15; passed Nov. 7, 2000; Ord. 25587 § 36; passed Sept. 20, 1994; Ord. 23337 § 4; passed Sept. 10, 1985) **(Emphasis added.)**

Response 4: Usually the authority to shut off water service for non-payment is authorized by statute. In this case, I would guess that the statute limits the cut-off right specifically to non-payment of water (and, maybe, sewer). Thus, they would not be authorized to shut off the water for non-payment of the storm water utility fee UNLESS that was authorized in the enabling statute for the storm water utility.

Response 5: Please refer the interested member to the Sewerage and Water Board website at www.swbno.org. Once there, they can go to the customer information link and "SWB billing rates". The information is directly on point. All billing rates should be established by a nationally recognized rate consultant. Our termination for non-payment is associated with a due process notification, in writing, and an option for a hearing on bill disputes, all prior to discontinuance of service.

Response 6: By far, the most common methods of billing for stormwater services is through the property tax or by attaching the bill to an existing utility bill as the public agency member is considering. The choice between these two methods typically depends on such factors as geographic coverage of the existing utility and property tax billing systems, user-friendliness of the existing billing databases, and timing of billing system inputs to get into the queue for billing (e.g., annual property tax vs. monthly or quarterly billing for water or sewer). We've found that the legal situation (who gets the money if a customer makes only a partial payment on a bill, ability to shut off service if the stormwater fee is attached to a utility bill or put a lien on a property if the stormwater fee is attached to the property tax bill) varies from state to state, because enabling legislation on taxing and fee powers varies considerably (both in strength and clarity).

Response 7: We are still in the process of setting up our stormwater program, so we're not actually billing anyone for stormwater services right now, that is still about a year in the future. We have discussed this issue, but actual resolution is something that will need to be worked out in our billing agreement with the City of Cleveland, and that task is in the hands of our Director of Finance.

You might want to try contacting Charlotte-Mecklenburg Storm Water Services. Since they are not a wastewater agency, they may not be a NACWA member, but they have some information on their web site that indicates that they can turn water service off if customers don't pay their stormwater bill:

<http://www.charmeck.org/Departments/StormWater/Storm+Water+Fee/What+happens+if+I+don%27t+pay+m+y+SW+fee%3f.htm>.

Also, on page 8 of the Black & Veatch 2007 Stormwater Utility Survey, they indicate that 47% of the utilities surveyed enforce stormwater fees by shutting off water, so there are obviously a number of utilities that are using this means of enforcement.

Response 8: The largest municipality that connects to the Metro Denver District's system bills for water, sewer, and stormwater fees on a consolidated billing done by the water utility. If a property owner's stormwater assessment isn't paid, when the unpaid amount reaches \$100 they place a lien on the property. They do not shut off water service.

Response 9: The stormwater utilities that I am familiar with bill either on utility bills or include with annual property assessments. The choice for the utilities is normally related to what works out best for them and what access they have to a billing system. As for the issue of non-payment, there is always concern about this and it can very much be a local issue, depending on the state laws. I suggest their attorney research the state law and make a determination of how they are best protected for collection of non-payment issues.

Response 10: Toledo, Ohio bills its stormwater charges along with its water/sewer bills utilizing its SAP billing software. Most residential and commercial customers are billed on a quarterly basis while the largest commercial/industrial customers are billed on a monthly basis. We have the authority to turn off water service for the non-payment of the storm water fees. However, since we apply customer payments first to storm water charges and then to water and sewer charges, we rarely have the situation where someone is turned off for just the nonpayment of storm water charges. We have not had any legal challenges to this turnoff policy so we can't cite any case law authority for its legitimacy. A copy of Toledo's storm water codified ordinance can be found at 943.08 of the city ordinances.

Response 11: Gresham, Oregon has established water turn off as one of the collections methods. See Gresham Revised Code Article 3.60 <http://www.greshamoregon.gov/city/city-departments/city-attorneys-office/revised-code/default.aspx?id=3726>