

MEMORANDUM
Stormwater Litigation Update

FROM: Steven A. Hann, Esquire, PMAA East Solicitor

DATE: October 15, 2026

RE: Stormwater Fees

By now, most everyone is aware of the Pennsylvania Supreme Court decision involving the Borough of West Chester, in which the Supreme Court held that a stormwater charge assessed by the Borough constitutes a tax which the challenging parties in that case are immune. One issue not addressed by the Supreme Court, and it had no reason to do so, is the decision's impact on those municipal authorities in Pennsylvania that currently assess stormwater fees under the Municipality Authorities Act. However, the issue regarding the assessment of stormwater fees by municipal authorities will likely soon be addressed by a Pennsylvania appellate court. On August 13, 2026, a petition for review of a decision involving stormwater fees by the Court of Common Pleas of Lycoming County ("County Court") was filed with Pennsylvania's Commonwealth Court (an amended petition for review was filed on August 21, 2026). As of the date of this Memorandum, the Commonwealth Court has not yet set a briefing schedule in this case.

By way of background, the plaintiffs in the Lycoming County case are owners of real estate in the City of Williamsport ("City") and the defendants are various government entities. Through resolution of the City, ownership of the City's stormwater system was transferred to the Williamsport Sanitary Authority ("WSA"). A joint NPDES MS4 Permit issued to WSA, the City and Loyalsock Township contains mandatory obligations that must be met regarding stormwater discharges, including the development of a stormwater management program to reduce the discharge of pollutants from their MS4s to protect water quality and to satisfy the requirements of the federal Clean Water Act and Pennsylvania's Clean Streams Law.

There is no dispute regarding the factual background of this case. The WSA established rates to fund the stormwater management program which, as adopted, was \$10 per month for every 2,711 square feet of impervious square foot coverage for non-residential properties, and a flat rate of \$10 per month for residential properties. Properties that are undeveloped are not subject to a stormwater charge.

The legal question before the County Court was whether the stormwater fee assessed by WSA was a permissible fee for service, or an impermissible tax.¹ Focusing on the question before it, the County Court noted Commonwealth Court precedent that sewer rental charges must bear a “reasonable relation to the [v]alue of the service rendered *either* as actually consumed *or as readily available for use*.” In addressing this issue, the County Court discussed the defendants’ contention that the stormwater charge assessed by WSA bears a reasonable relation to the value of the stormwater remediation services rendered, because the stormwater charge is calculated on impervious lot surface. However, the County Court found Defendants’ contention to be “somewhat dubious,” relying on specific language from the Supreme Court’s Borough of West Chester decision for support. (“There may be properties, for example, that impose significant burdens on the stormwater system while deriving no substantial benefit from that system (*e.g.*, a property with extensive impervious coverage that is located on the top of a hill.)”)

Following an extensive citation to the Borough of West Chester decision, the County Court noted the plaintiffs’ assertion that this decision should control since the Pennsylvania Supreme Court found that a stormwater management fee calculated upon impervious lot surface is a tax, and not a fee for service. However, the County Court also noted the defendants’ position that the Borough of West Chester case involved the taxing power of a municipality, and not the question of whether a municipal authority is permitted to charge a stormwater management fee calculated using impervious lot surface.

Although the County Court acknowledged that it could not conclude that the stormwater fee assessed by WSA, which is calculated upon impervious surface, bears a reasonable relation to the value of the services received, it nevertheless found that the value of stormwater management to any property is dependent upon a universe of many lot characteristics, with impervious lot surface being only one of those characteristics. Therefore, the County Court framed the question as to whether the defendants are entitled to use that one specific lot characteristic as a measure of plaintiffs’ pro rata share of defendants’ costs for stormwater management. The County Court found that the question it posed is controlled by the language of 53 Pa. C.S.A. § 5607(d)(34), which reads as follows:

“In the case of an authority that performs storm water planning, management and implementation, reasonable and uniform rates may be based in whole or in part on property characteristics, which may include installation and maintenance of best management practices approved and inspected by the authority.”

Accordingly, based upon the aforementioned, the County Court granted summary judgment for the defendants and dismissed the complaints filed by plaintiffs. Again, this matter is on appeal to Pennsylvania’s Commonwealth Court.

By way of further update, there is another Court of Common Pleas case in Pennsylvania which was commenced after the Supreme Court’s Borough of West Chester decision that also addresses the stormwater fee issue. On July 16, 2026, the School District of Pittsburgh (“School District”) filed a complaint in the Court of Common Pleas of Allegheny County against the

¹ The County Court cited extensively to the Borough of West Chester opinion, including as to how a fee for service might be distinguished from a tax. In so doing, the County Court cited to the Supreme Court’s discussion on the two-step test used as a framework to distinguish a fee for service from other charges levied under a municipality’s taxing power.

Pittsburgh Water and Sewer Authority (“PWSA”) regarding the latter’s assessment of stormwater fees. The School District alleges, among other things, that PWSA’s stormwater fees are based on a subject property’s “hard or impervious surfaces” which, it argues, constitutes an impermissible tax under the Borough of West Chester decision. The relief sought by the School District includes a declaratory judgment that PWSA lacks the statutory authority to impose a stormwater fee and a request for a refund of all stormwater fees the School District has paid to PWSA. PWSA filed preliminary objections to the School District’s complaint arguing that the Pennsylvania Public Utility Commission (“PUC”) has jurisdiction of this matter and that the Court of Common Pleas of Allegheny County lacks jurisdiction over the School District’s claims. Argument on the preliminary objections was scheduled for October 14, 2026.

PWSA’s argument in the Court of Common Pleas of Allegheny County on PUC jurisdiction follows a Petition for Declaratory Order (“Petition”) that PWSA filed with the PUC on June 29, 2026 regarding the legality of its “stormwater service tariff.”² Not surprisingly, the School District filed a Petition to Intervene in the PUC proceedings. The School District is requesting, in part, that the PUC grant the Petition to Intervene and

On August 8, 2026, the PUC issued a Rule to Show Cause for PWSA to file a legal memorandum by October 9, 2026, showing cause why its Petition should not be dismissed. The PUC also set a deadline of October 23, 2026 for responses to PWSA’s legal memorandum. In its Rule to Show Cause, the PUC noted several preliminary legal questions presented by PWSA’s Petition “that must be fleshed out.” For example, the PUC questioned whether it would “be required to interpret the applicability of the Pennsylvania Municipality Authorities Act and address the relationship between the municipality and the municipal authority.” The PUC also noted that, although the PUC has jurisdiction over PWSA, “it does not have jurisdiction over all municipal authorities in the Commonwealth” and questioned whether granting PWSA’s Petition would “impact the rights of other municipal authorities not subject to [PUC] jurisdiction” that currently collect stormwater charges or contemplate collecting stormwater charges.³ Finally, the PUC also questioned whether this matter should more appropriately be brought before the Commonwealth Court.

Following the PUC’s issuance of the Rule to Show Cause, PWSA and the Office of Consumer Advocate (“OCA”), among others, filed a Joint Petition seeking immediate PUC review because PWSA’s Petition presents a narrow question under the Public Utility Code concerning the continued validity and enforceability of PWSA’s stormwater tariff and rates.

² PWSA filed its Petition for Declaratory Order with the PUC because it is also regulated by the PUC under legislation enacted by the General Assembly in 2017 (Act 65 of 2017).

³ In reviewing the questions posed by the PUC in the Rule to Show Cause, it should be noted that Section 5602 of the Municipality Authorities Act (“MAA”) has separate definitions for “authority,” “municipality,” and “municipal authority.” In the Rule to Show Cause, the PUC specifically cites to the MAA’s definitions of both “municipality” and “municipal authority.” The MAA defines municipality as “[a] county, city, town, borough or school district of the Commonwealth.” The MAA’s definition of “municipal authority” refers to the governing body of a municipality (“[t]he body or board authorized by law to enact ordinances or adopt resolutions for the particular municipality”). Under the MAA’s Section 5602 definitions, PWSA is an “authority,” not a “municipal authority.”

permit the School District to participate fully as a party in the proceedings. The School District is also requesting that the PUC dismiss PWSA's Petition for lack of jurisdiction over the "tax versus fee" question as applied to the School District or, in the alternative, stay the proceeding pending resolution of the case filed in the Court of Common Pleas of Allegheny County. In the PUC proceeding, the School District is also seeking to preserve its right to seek a refund of the stormwater charges that it has paid under protest.

Both PWSA and the OCA subsequently filed briefs in support of their Joint Petition. It is noteworthy that the OCA is supporting PWSA's position that PWSA's stormwater fee is valid and enforceable because PWSA is a PUC regulated entity, which is subject to a different regulatory scheme than the appellees in the Borough of West Chester case. As of the date of this Memorandum, there has been no further action on the Joint Petition.

I will update you on these matters as they proceed through the court system.

This Memorandum is provided for informational purposes only and should not be construed as legal advice on any subject matter. If any PMAA Staff, Member of the Board of Directors, or Member of the Executive Committee would like to discuss this matter further, please let me know. Anyone else reading this Memorandum should consult with their own legal counsel.