

Stormwater Utilities in Illinois

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Does your community need increased funding for stormwater issues? What is this nationwide craze called a Stormwater Utility (SWU)? How long does it take to set up a SWU?

The problem: Many communities are not keeping up with the infrastructure demands of their communities, especially for stormwater expenses. The effects of community growth and aging infrastructure aggravate drainage conditions, causing more flooding and polluting rivers and lakes. Flood protection and dam safety improvements are always postponed, and in dry years “out-of-sight, out-of-mind” create false sense of security. Many communities are not spending the funds needed for routine maintenance or for improving their stormwater facilities. Getting the money to meet these stormwater management needs is tough. A community has many funding options, including bonds, property taxes and impact fees. However, bonds are usually paid off by property taxes and property taxes have statutory limits that many communities have already reached. Impact fees generally help only the area affected by a new development project.

Finding the money: Today, most people are willing to pay to protect themselves and/or the environment, provided they see the results. A recent survey in Milwaukee determined that most residents would be willing to pay \$50-\$75 per year for lake and stream restoration projects. But, it is important that any governmental funding increase be fair and that each resident sees a tangible benefit. A stormwater utility meets these criteria. It is a funding approach based on a public utility process, similar to sewage treatment and garbage collection. The SWU approach says that since everyone contributes water to the drainage system, everyone should pay their fair share of the cost of maintaining the system. Property owners should pay their share proportional to the amount of runoff they “burden” the system. The large mall should pay more than a single-family property owner because it sends more stormwater downstream. If no runoff leaves a site, no fee should be charged. Stormwater fees are not charged based on the value of the property, but on the amount of runoff it adds to the drainage system. Many stormwater utility fees are generally set by the amount of imperviousness on each property. The amount of imperviousness (pavement, roof-top, sidewalks, etc.) on each property increases runoff volume and peak storm flows downstream. It usually takes a thorough and comprehensive study to determine an Equivalent Residential Unit or ERU, i.e., what a typical single family home contributes. ERUs are used to set the rates for everyone. Nowadays, geographic information systems can accurately estimate each property owner’s impervious area to calculate ERUs. Infrared aerial photographs can differentiate imperviousness by heat. A GIS office can combine the results with property lines to define impervious areas for each property. Often, though, single family homes pay a flat rate and are not rated individually. Preliminary results from a recent national survey taken by Western Kentucky University found that single family lots averaged about 2,800 square feet of impervious surface and pay an average of \$3.85 per month. Commercial properties pay by the ERU ratio of their amount of imperviousness. If they have twice the rooftop and pavement of an ERU, then the commercial property owner pays twice the fee. As part of the stormwater management planning, the community should prepare a credit manual that outlines steps that will allow a property owner to lessen the

monthly fee. These reductions can be for building a rain garden or a detention pond to hold runoff from the property and not allow it to enter the public drainage system. Businesses and churches can look into ways to reduce their parking lot runoff to reduce their monthly fees. Schools could get credit by teaching classes on rainfall stewardship.

Utilities in Illinois: The Western Kentucky University surveyors estimate that there are over 600 SWUs across the United States. A recent survey of states adjacent to Illinois tabulated about 110 SWU programs. However, presently Illinois has only eight active stormwater utilities. One major reason for our late entry into the field has been the statutory authority the State grants local governments. Most programs have been started based on municipal home rule authority. No counties have a program, yet. The authority for municipalities to charge a stormwater utility fee was challenged in a 2005 lawsuit against the City of Rock Island's new utility. Twelve churches located within the city claimed that the fee was a tax upon real property and, as churches, they were exempt from paying property taxes. The trial court ruled in favor of the City, but the churches appealed. In *Church of Peace v. City of Rock Island* (Third District No. 3-04-0480 (May 12, 2005)), the appeals court noted that Section 1-145 of the Illinois Property Tax Code provides that a tax is any tax, special assessment or costs, interest or penalty imposed upon property. In contrast, a service charge or fees are contractual in nature, either express or implied, and are compensation for the use of another's property, or of an improvement made by another, and their amount is determined by the cost of the property or improvement and the consideration of the return which such an expenditure should yield. The plaintiffs claimed that the city's charge was a tax because it was a cost upon the property levied as a governmental service for the benefit of the general common good, not a benefit to the particular parcel of property. However, the appellate court determined that the city's stormwater service charge was a "fee" and not a "tax" because the fee was proportional to a benefit or service rendered. The appellate court determined that there was a rational relationship between the city's charge and the service it provided with its storm water utility. (Summary courtesy of the Illinois Municipal League Legal Bulletin, 2005-06) It can be seen that it takes a lot of work to initiate a stormwater utility. It involves a master stormwater management plan, careful estimates of the costs of services and how much money needs to be raised, a fair system of charging fees (including ways to provide stormwater services to reduce or eliminate monetary fees), good legal advice, and, above all, an educated leadership and public who realize the benefits of the approach. For more information, see www.illinoisfloods.org.

Stormwater Management Grades

By American Society of Civil Engineers:

Illinois' Infrastructure - D

By Chicago Wilderness Society:

Lakes - C

Streams – C

Wetlands - D+

Reptiles and amphibians – C

Fish - D+