

Guide to Creating Equitable Stormwater Utility Credit Policy

December 21, 2018





This document was developed to provide guidance for one element of managing a stormwater utility-credit policy for utility fees. The *Joint Study Committee on Storm Water Management Fees December 2017 Final Report* recommended that a guidance document be developed to encourage more consistent and equitable stormwater utility credit practices. The intended audience for this guide is local government staff and officials of communities that either have established, or are considering *establishing*, stormwater utilities in Georgia.

SECTION 1

Background

As a result of the adoption of the Clean Water Act (CWA) in 1972, communities became regulated through the National Pollutant Discharge Elimination System (NPDES), whereby dischargers were required to implement pollution prevention measures as a condition of obtaining a NPDES permit to discharge waste water. Initially this program was directed toward industrial and municipal wastewater systems. While the CWA led to significantly improved water quality nationally, a significant number of water bodies remained impaired. Further research indicated that urban runoff was a major contributing factor to these impairments.

Due to the high percentage of impervious surface cover found in urbanized areas, unmanaged urban stormwater runoff is characterized by increased volume, increased rate, and higher levels of contamination as the runoff rapidly transports any pollutants it encounters in the landscape to nearby water bodies. The result is significantly increases in levels of downstream flooding, polluted lakes and streams, and a degraded natural environment.

These issues led to the development and expansion of stormwater management as the CWA evolved to include the NPDES Phase I & II Municipal Separate Storm Sewer System (MS4) permit programs, the TMDL program, and mandates for wastewater utilities to implement surface water protection programs as a condition of their wastewater permits. The result of this regulatory path is that a significant portion of the responsibility for implementing the Clean Water Act fell to local communities.

While certain functions of stormwater management, particularly as they relate to drainage and flooding, have long been funded as a function of general government (public works, planning, engineering, etc.), communities these systems are built and operated at public expense and funded by fees paid by the end-users. Since it is

have expanded their role in stormwater management traditional funding sources have often proved inadequate. To address these funding challenges, communities have taken a variety of approaches. One of the most effective and equitable approaches has been the establishment of stormwater user fee programs, also known as *stormwater utilities (SWU)*.

Communities across Georgia have established stormwater utilities to fund their growing stormwater management challenges, including:

- Continued growth and development has altered the runoff characteristics of watersheds.
- Aged and deteriorating drainage infrastructure, is approaching the limit of its expected lifespan.
- Increased community demands for new services related to drainage maintenance and repair.
- Unfunded compliance mandates related to the NPDES MS4 Permit program.
- Unfunded compliance mandates related to floodplain and water quality (watershed management) requirements.

Stormwater utilities treat drainage infrastructure and associated services like a traditional water utility in that not feasible to provide a meter to measure the use (i.e. storm runoff) from each property, other means must be used to do so. Most stormwater utilities assess fees based on the impervious area of a given property. The rationale is that impervious areas (i.e., parking lots, rooftops, etc.) prevent rainfall from storms from soaking into the ground. Areas of higher impervious result in greater rates and volumes of runoff during storms, which in turn puts greater burden on the community's drainage infrastructure. As such, impervious surface area provides a measurable surrogate to the amount of manmade runoff generated by a property.

A well-implemented stormwater utility fee program is characterized by the following:

- **Equity** – Fees are based on a community's planned stormwater management program expenditures and are related to customers' impact to its stormwater system. All property owners must pay, though credit programs provide opportunities to reduce their bill by performing activities that lesson their burden on the system.
- **Dedication** – Revenue collected under the stormwater utilities are accounted for and separated into an enterprise fund that is allocated directly to stormwater programs.
- **Continuity** – Provides a community with ongoing funding to ensure long-term effective program implementation and environmental stewardship.

Stormwater utility user fee programs have proven to be a stable and equitable means of funding stormwater management programs. As of 2017, 39 states have at least one stormwater utility.

The first stormwater utility in Georgia was established in the City of Griffin in 1998. The following year, the constitutionality of stormwater utilities in Georgia was challenged in court when Columbia County was sued.

The Georgia Supreme Court (*McLeod, et al vs. Columbia County*) held that the Georgia Constitution and general statutory law supported the County's authority in establishing a Stormwater Utility and a fee. The court also found that the charge was not a tax and that using impervious surface as a basis for billing is reasonable.

By 2017, 60 Georgia entities (counties, cities, and authorities) had established stormwater utilities.

Credits

A stormwater utility user fee should have the means to recognize efforts of the individual rate payer to reduce their impact to the stormwater management system. This recognition usually takes the form of a reduction in the relevant rate payer's stormwater utility fee. This is referred to as a *credit*. The nature of credits is highly variable depending on the community. Typically, the types of credits offered reflect the priorities of the community in question.

Given that a stormwater utility fee is a user fee and not a tax, a credit program is a key feature of a viable stormwater utility user fee system. The rate payers' ability to limit their use of stormwater management services is one of the differentiating elements distinguishing a stormwater utility user fee from a tax. Unlike other utilities, like electricity or water, a typical ratepayer cannot choose to simply cut-off service. A credit program provides a means of recognizing a rate payer's actions that mitigate a portion of the need for stormwater management services provided by the stormwater utility. This fee reduction should be appropriate and proportionate with the reduction in services provided by the utility.

All Georgia stormwater utility operators are strongly encouraged to have both a credit

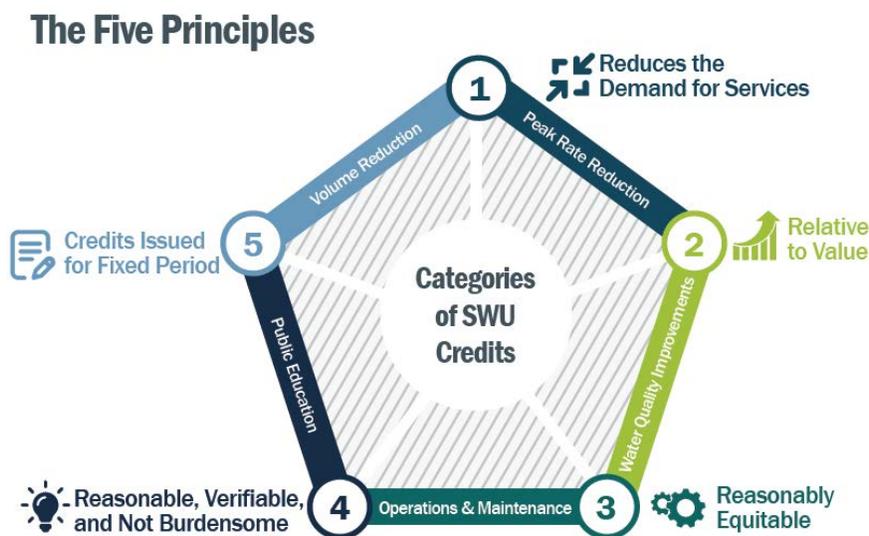
program and guidance that clearly describes the means and methods to the ratepayers of obtaining credits. At minimum, this guidance should describe the following:

- Credit policies
 - Credit Terms
 - Duration and renewal
 - Eligibility
 - Proof of compliance documentation
- Application procedures
- Maximum allowable credit for each activity
- Maximum credit available per property

Activities that result in credits benefit both the utility operator and the ratepayer. Georgia stormwater utility operators are encouraged to educate their ratepayers about their stormwater credit program.

Principles of Stormwater Utility Credits

Credit programs are a means to promote equity for unique conditions within a given stormwater utility's rate structure, and stormwater utilities should be set up in a manner that reflects the needs, values, and priorities of a community with regard to their water resources. As such, they vary in their development and administration. It stands to reason that credit programs may be as varied as the stormwater utilities of which they are a part. Despite this variability in the structure of stormwater utility programs, certain standards should be applied across credit policies.



Principle #1 – A credit policy should recognize an activity undertaken, or condition maintained, by a rate payer to reduce the need for services by the Stormwater Utility.

Principle #2 – The value of a credit should be relative to the reduction in need for services by the Stormwater Utility.

Principle #3 – A credit program should be reasonably equitable, in availability and application, between different groups of ratepayers.

Principle #4 – Conditions for the application of a credit should be reasonable, verifiable, and present the least administrative burden practicable for both the rate payer and stormwater utility.

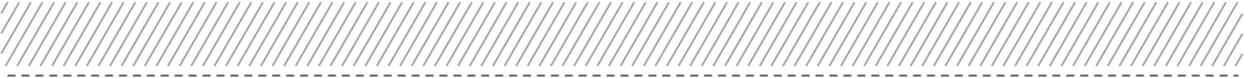
Principle #5 – Credits should be issued for a fixed period, based on the time a given practice can reasonably be anticipated to be effective, after which the credit's status should be reassessed.

The following table of stormwater utility credits offered in Georgia, as identified by stormwater utilities in a 2018 GAWP survey, demonstrates the breadth of stormwater credits presently available to ratepayers. All are predicated on the concept that voluntary actions taken on the part of the ratepayer, that reduce the demand on a community's stormwater management program, should be recognized by a reduction in the ratepayer's stormwater user fee.

While not available in every SWU, the diversity of credits offered across the state reflect the diverse nature of the communities that have adopted stormwater utilities as a tool to find local solutions to local problems. Not every principle will apply to every credit, however, in general the application of these principles should result in a stormwater credit program that is effective, consistent, and accountable.

Menu of Stormwater Utility Credits Found Among Stormwater Utilities in Georgia

		Rationale for SWU Fee Credit				
		Peak Rate Reduction	Volume Reduction	Water Quality Improvement	Service Demand Reduction	Regulatory Obligation Assistance
Stormwater Utility Fee Credit Programs	Voluntary implementation of green infrastructure practices onsite.	✓	✓	✓		✓
	Demonstration of continued compliance of your SW Facilities with GSMM/CSS standards.	✓	✓	✓	✓	✓
	Impervious area is insignificant relative to parcel size	✓	✓	✓	✓	
	Natural Area Preservation	✓	✓	✓	✓	
	Natural Area Restoration	✓	✓	✓	✓	
	No Direct Discharge to MS4				✓	
	NPDES Industrial Stormwater General Permit Compliance			✓	✓	
	Removal of existing impervious area.	✓	✓	✓	✓	
	Reduced SFR Footprint: Single Family Residential impervious footprint is less than 1/2 of the ERU	✓	✓	✓	✓	
	Voluntary retrofit of SW Facilities (i.e. ponds) constructed prior to GSMM adoption to bring into compliance with current regulations	✓	✓	✓	✓	
	Voluntary demonstration of regular Septic Tank Maintenance			✓		
	Tree Planting	✓	✓	✓	✓	
	SW Education Program (public): Education programming available to general public			✓		✓
	SW Education Program (school-based): Education in the schools			✓		✓
	Stewardship: Participation in stream clean-ups, storm drain marking, etc.			✓		✓



Acronyms

CWA –	Clean Water Act
CSS –	Coastal Stormwater Supplement (to the GSMM)
GAWP –	Georgia Association of Water Professionals
GSMM –	Georgia Stormwater Management Manual
MS4 –	Municipal Separate Storm Sewer System
NPDES –	National Pollutant Discharge Elimination System
SFR –	Single Family Residential
SWU –	Stormwater Utility
TMDL –	Total Maximum Daily Load



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