

QUESTIONS & ANSWERS

TAPPING FEES

GENERAL

1 **Q:** Is there any restriction on what monies collected through tapping fees can be used for?

A: No, except as otherwise limited under the Municipality Authorities Act for using authority revenues. Care should be taken when dealing with the capacity portion of tapping fee revenue that is related to future facility construction (since this money must be accounted for separately and may need to be refunded in the future if those facilities are not constructed).

2 **Q:** To what extent can construction contingency be included in the engineering estimate for future facilities?

A: The engineer's estimate of contingency costs can be included.

EFFECTIVE DATE

Section 5 . . . p. 14.

Slide 8

3 **Q:** What is the deadline for updating the tapping fee?

A: By June 30, 2005. It is advisable to look at your current fee structure prior to that date. After that date, the tapping fee should be periodically re-examined, particularly when major facility changes occur.

RESOLUTION & RECALCULATION

Section 5607 (d) (24) (ii)

Slide 13

4 **Q:** Does Act 57 require everyone to re-do their tapping fee by June 30, 2005?

A: The short answer is that there is no way to be absolutely sure an authority complies unless the fees are recalculated. It may be possible to examine the general process used to compute the existing tapping fee to see if that process conforms to the provisions of Act 57, without completely recalculating the tapping fee. It should be noted that Act 57 requires that by June 30, 2005, the authority must have a resolution which sets the maximum fees allowable for each part of the tapping fee and the manner in which the fees were determined.

5 **Q:** If you currently charge artificially low tapping fees, are you still required to recalculate the fees?

A: Yes. Act 57 requires that the municipality pass a resolution as did Act 203; however, Act 57 requires that all the calculations that form the basis for the tapping fee resolution, not just the total fee, are documented. Nothing in Act 57 requires raising fees. In order to simplify the recalculations, the "safe harbor" numbers for water demand and sewage flow can be used.

GRANTS/CONTRIBUTIONS

Section 5607 (d) (24) (i) (C) . . . p. 3.

Slide 18

6 **Q:** In terms of deducting grants and contributions from historical costs, what is included under the term “contribution” ?

A: Typically this would relate to the cost of facilities built by a developer at his expense, or money which the developer contributes to the Authority to cover such construction cost.

7 **Q:** Would Act 339 money received also be considered a “contribution”?

A: No.

8 **Q:** Would interest earned during construction, assessments, or tapping fees previously collected also be considered a “contribution” ?

A: No. However, costs included in the assessments cannot be included in the basis of a tapping fee.

9 **Q:** Can equipment costs be included in the tapping fee?

A: This depends on the type of equipment, how integral it is to the functioning of system facilities how, much of the overall cost it represents, and how easy it is to document that cost.

CONNECTION FEE

Section 5607 (d) (24) (i) (A) . . . p. 2.

Slide 15

10 **Q:** If you start with original cost of the facilities, is there a time limit as to how long you can trend?

A: No. There is no time limit but as facilities are modified, it would be wise to periodically determine actual costs for such work to ensure that the fee is realistic.

COLLECTION PART

11 **Q:** In situations where a developer is extending the authority’s sewer system to pick up a new development, and the developer is also constructing the sewers within the development, what tapping fee charges may the authority impose?

A: The tapping fee can include the collection and capacity portions of the existing system to which they are connecting. However, the cost or value of the extended sewer service to the new development, built at their cost, would not be included.

SELLING OF EXCESS SEWAGE CAPACITY

Section 5607 (d) (24) (i) (C) (V) (d) (iv) of the Municipalities Authorities Act.

12 **Q:** If an authority has an agreement with a neighboring authority or municipality to sell excess sewage capacity to them, does the agreement supersede the language limiting the amount that can be charged for the capacity part of a sewer tapping fee found in the Municipality Authorities Act noted below?

A: The agreement would take precedent as long as it was executed prior to the effective date of that particular provision in the law (February 20, 2001). Any agreement after that date would be subject to the limitations in this section.

Similarly, with regard to the changes under Act 57, agreements that expire or are executed after the effective date of Act 57 would be subject to those changes.

Section 5607 (d) (24) (i) (C) (V) (d) (iv) of the Municipalities Authorities Act reads as follows:

A municipality or municipal authority with available excess sewage capacity, wishing to sell a portion of that capacity to another municipality or municipal authority, may not charge a higher cost for the capacity portion of the tapping fee as the selling entity charges to its customers for the capacity portion of the tapping fee. In turn, the municipality or municipal authority buying this excess capacity may not charge a higher cost for the capacity portion of the tapping fee to its residential customers than that charged to them by the selling entity.

RESERVATION OF CAPACITY FEE OPTION

Section 5607 (d) (24) . . . p. 2.

Slide 12

13 Q: When can a Reservation of Capacity fee be collected?

A: The purpose of a ROC fee is to essentially hold your place in line, and it should be assessed prior to collection of a tapping fee.

14 Q: Can an authority charge both a reservation of capacity fee and a tapping fee?

A: Yes, but no tapping fee can be charged until the applicable building permit fee is due.

15 Q: Under what circumstances should the reservation of capacity fee option be used?

A: There are no specific circumstances; however, this is an option available to assist an authority in recapturing costs associated with tying up available capacity prior to the need to use that capacity. The ROC fee then becomes a source of revenue prior to subsequently charging tapping fees for new connections to the system.

16 Q: The reservation of capacity optional fee can be used for both water and sewer system situations, but Act 57 says it cannot exceed 60% of the average residential sanitary sewer bill. Can we use 60% of the drinking water as a limit in water system reservation of capacity situations?

A: No, in both situations, the limit is 60% of the sewer bill.

COST APPROACHES

17 Q: A new water (or sewer) system was built ten years ago and an initial tapping fee of \$1,000.00 was established. Initially, there was no deduction of outstanding debt or trending of historic cost. The original computation could have resulted in a tapping fee of \$10,000.00. Can the authority now, or in the future, modify its tapping fee up to a maximum of \$10,000.00?

A: At this point, under Act 57, the authority should re-compute its allowable tapping fee, using one of the approaches available, which include:

- Using historic cost, trended to current cost, less outstanding debt.
- Using historic costs plus cost of financing.
- Indexing the initial tapping fee using the weighted average interest rate on the debt.

An authority can then set its tapping fee up to the maximum amount determined under any of these approaches.

Section 5607 (d) (24) (i) (C) (I) . . . p. 3.

Slide 17

18 Q: When determining the original tapping fee several years ago, in the absence of good historic cost information, the “replacement cost” was used. With the passage of Act 57, would a new determination of “replacement cost” be necessary?

A: No. However, depending on how much time has elapsed since the original calculation, it may be worth the effort to update the “replacement cost” and outstanding debt as part of the overall recalculation of the tapping fee under Act 57. Also, the use of replacement cost is limited to those facilities whose historical cost is not ascertainable and must be documented by an itemized listing. This is more stringent than Act 203.

19 Q: When determining the “historic cost” or “replacement cost” of the facilities in question, aside from actual construction costs, what other (legal, engineering, etc.) costs should be included? Can operation and maintenance (O&M) costs be included? Should “depreciation” be included?

A: Although this is not defined in the act, the normal additional technical, legal and administrative “out of pocket” costs associated with such construction can be included (taking care to remove any grants or contributions). O&M costs are not considered part of a facilities construction cost. Also, depreciation should not be included.

OUTSTANDING DEBT

Section 5607 (d) (24) (i) (C) (VII) . . . p. 10.

Slide 40

20 Q: Does the definition of outstanding debt in the Act pertain only to the debt “principal?”

A: Yes.

Section 5607 (d) (24) (i) (C) (I) . . . p. 3.

Slides 19-22

21 Q: When constructing a new facility to serve existing customers and future customers, do you have to deduct the outstanding debt when calculating the tapping fee for those future customers?

A: Any time when serving both existing and new customers, you must subtract the outstanding debt.

22 Q: If the authority is expanding its facilities to serve a neighboring community (i.e. new customers) how should the tapping fee be structured for those new customers?

A: If the expansion involves additional facilities that serve exclusively new customers, a separate capacity/collection/distribution, or a special purpose, tapping fee can be established without deducting outstanding debt. However, if those additional facilities are simply expanding the capacity and/or collection/distribution aspects of the existing system, and therefore will serve both existing and new customers, then the existing tapping fee should be updated to take into account the deduction of debt associated with the additional construction. There may be situations where a special purpose part could cover some of the anticipated collection or distribution facilities.

23 Q: If outstanding debt is subsequently refinanced, and debt was not deducted in the initial tapping fee calculation, would it need to be deducted once it is refinanced?

A: No.

RESIDENTIAL FLOW COMPONENT OF TAPPING FEE CALCULATION

Section 5607 (d) (24) (i) (C) (V) (e) . . . p. 8.

Slides 32 & 33

24 Q: If an authority chooses to use a per-capita daily flow rate less than the standard of 65 gallons (for water) or 90 gallons (for sewage), would such flow rates be subject to challenge?

A: While the legislation does not provide total immunity from legal challenge, the above-mentioned flow rates are intended to be a legally defensible “standard” for such calculations. Therefore, if a flow rate is used which is less than the maximum allowed by Act 57 (to the benefit of the developer or homeowner) it should be legally defensible.

Section 5607 (d) (24) (i) (C) (V) (e) . . . p. 8.

Slide 32-33

25 Q: One option for residential sewage flow includes adding 10% to the metered water usage to account for infiltration/inflow in the sewer system. Can the residential water flows be adjusted upward to account for water losses in the distribution system?

A: No. There is no basis for doing so in this legislation.

LOWER TAPPING FEES FOR MULTI-FAMILY DWELLINGS

Section 5607 (d) (24) (i) (C) (V) (f) . . . p. 10

Slide 35

26 Q: What does “multi-family” mean and can a separate tapping fee be established for such situations?

A: The term “multi-family” covers things like townhouses, apartment complexes and nursing homes. A separate tapping fee can be established for such situations. In developing such fees, it may be helpful to check out available census data on “renter occupied” households. It should be emphasized that the establishment of a multi-family fee is totally at the authority’s option.

27 Q: In this case, could you impose different tapping fees as opposed to the typical single family residence?

A: Yes.

Section 5607 (d) (24) (i) (C) (V) (f) . . . p. 10.

Slide 35

28 Q: What is the “effective date” of this provision?

A: Act 203 of 1990 did not prohibit a lower tapping fee for multi-family dwellings and Act 57 of 2003 clearly provides this **option**. Therefore, it is currently an available option.

DESIGN CAPACITY

29 Q: Regarding the use of “design capacity” in the calculation of tapping fees, if a sewer system is extended out to serve a few customers, but the sewer line is capable of carrying a much higher flow, how should this be addressed in the calculation?

A: Presuming that those new customers will be contributing flow to the existing collection, conveyance and treatment facilities, they would be subject to the normal tapping fee for the existing system. An additional “special purpose” tapping fee can be assessed for these customers, by dividing the cost of the extension by the number of EDUs to be served by the extension.

Section 5607 (d) (24) (i) (C) (VII) . . . p. 10.

Slide 42

30 Q: If your authority provides strictly interceptor and collection service, not treatment, what design capacity number do you use for the capacity portion of your tapping fee?

A: An authority operating its own collection/conveyance system (while purchasing conveyance/treatment service from another entity) can establish its own system tapping fee, including a “collection” part and a “capacity” part. The “system design capacity” used for both of these calculations should be the amount of capacity being purchased from the entity providing the conveyance/treatment services. The “collection” part would then be calculated using the cost of the authority’s collection system divided by the purchased capacity. The “capacity” part would be calculated using the cost of the authority’s capacity components, plus the cost of purchasing conveyance/treatment service, divided by the purchased capacity.

31 Q: If Community A constructs a new water line (which has a hydraulic capacity of 6 mgd) to serve its population, but only will be purchasing and providing 2mgd of water from Community B, what capacity figure should be used by Community A in establishing its tapping fee?

A: In such situations, the purchased capacity (i.e. 2 mgd) should be used. The tapping fee calculation would be similar to the process described in Question # 31 above.

CAPACITY RELATED TAPPING FEE FOR FUTURE FACILITIES

Section 5607 (d) (24) (i) (C) (I) . . . p.4.

Slide 23

32 Q: If a future interceptor sewer is anticipated, will its capacity be added to the existing system design capacity?

A: Not unless the corresponding sewage treatment capacity is also being increased.

Section 5607 (d) (24) (i) (C) (I) . . . p. 4

Slide 24

33 Q: In terms of taking at least two of the seven actions toward construction of future facilities, what is meant by “entered into a contract?”

A: Any type of contract that obligates construction of the facilities in question.

34 Q: In terms of taking any two of the seven actions toward construction of future facilities: Could the term “engineering study” include related portions of Act 537 planning?

A: Yes, it could.

35 Q: In terms of taking any two of the seven actions toward construction of future facilities, with regard to “obtained financing,” would the fact that an Authority already has “cash on hand” to finance such facilities qualify as obtaining financing?

A: Yes, but it would be advisable to make sure that this money is earmarked for the project (via a resolution) and not otherwise subject to spending restrictions.

36 Q: Can operation and maintenance costs be included in the calculation?

A: No.

REFUNDING OF FUTURE FACILITIES TAPPING FEES

Section 5607 (d) (24) (i) (C) (VI) (a) & (b) . . . p. 10.

Slide 25

37 Q: In terms of refunding a future facilities capacity tapping fee, when does the seven-year time period begin?

A: The seven-year time frame begins once this tapping fee is enacted via a resolution by the authority.

38 Q: When is the starting date for establishing a separate accounting for these refunds?

A: This provision in Act 57 was effective starting December 30, 2003.

39 Q: Where a portion of the tapping fee charged to a developer was based on costs for capacity related future facilities, if the developer no longer exists, who should be the recipient(s) of the refund for the future facilities portion of the tapping fee? Could it be the homeowner(s) who have contributed to the payment?

A: Strictly speaking, it should go to the original “payor” of the tapping fee. This could be the developer, the builder, or maybe the individual homeowner. An authority should incorporate a process for dealing with such situations in its operating procedures. If the original payor cannot be located and the authority has outlined procedures of due diligence to find them and followed those good faith efforts, then no refund is necessary.

MANDATORY REIMBURSEMENT FOR SERVICE LINE CONNECTIONS

Section (31) of the Municipality Authorities Act

Slide 28 & 31

40 Q: Can a developer waive his right to receive reimbursement for subsequent “service line” connections?

A: Yes, but this should be agreed to in writing.

41 Q: If a developer extends a main and service lines connect to it, how much reimbursement is the developer entitled?

A: The developer is entitled to reimbursement up to the cost of the main construction (minus up to 5% for the cost of administration for the reimbursement process. It is advisable that a written agreement be prepared to address the reimbursement process.

42 Q: At what rate should the reimbursement be made?

A: When the authority receives tapping fee payments from the new connecting users, it passes on the appropriate portion of those fees to the developer.

43 Q: Once total reimbursement has been made for the original cost of the facilities, does reimbursement continue as new service line connections occur?

A: It is not necessary to continue making such reimbursements. This should be spelled out in an original reimbursement agreement with the developer.

44 Q: If a developer and several nearby homeowners jointly participate in constructing sewage facilities, would they all share in any future tapping fee reimbursements?

A: Yes. It would be advisable to state this in the original reimbursement agreement.

Section 5607 (d) (24) (i) (C) (VII) . . . p. 11.

Slide 29 & 31

45 Q: If a cluster of existing homes is subsequently hooked up to the developer's sewer line (for instance, to address malfunctioning on-lot sewage problems) via a separate sewer line, is it necessary to reimburse the developer?

A: No, since multiple homes are addressed with this connection, it does not meet the strict definition of a "service line connection." However, this does not prevent the Authority from including such situations in a reimbursement agreement with the developer. This type of reimbursement is optional but if agreed upon by both parties to reimburse for this circumstance, it must be stated in a written agreement.

BILLING DISPUTE RESOLUTION PROCESS

Section 5607 (d) (30) (i) . . . p. 13.

Slide 37

46 Q: What constitutes "notice" for the purpose of notifying the Authority to dispute a billing?

A: No specific guidance in the legislation, but an Authority should establish an official procedure to describe the form and content, and related procedures for such notifications.

47 Q: Regarding the process for settling disputes over the billing cost for construction, engineering and inspection services, how long does the Court of Common Pleas have to appoint a professional to help resolve such disputes?

A: There is no specific deadline for this in Act 57.

It is advisable to adopt a procedure as to what constitutes notice what that entails – written notice required, is a fax or email considered written notice, and what time period – after 5 pm permissible, etc.).

COMMERCIAL/INDUSTRIAL TAPPING FEES

Act 203 and Act 57 set parameters for charging tapping fees strictly for residential users. However, a number of questions focused on charging fees for commercial and/or industrial users.

48 Q: What approach should be used to determine flow rates for a commercial/industrial water user?

A: One approach is to base it on the size of the water meter or service line pipe diameter, as representative of service capacity being provided. Another approach is to consider how much

capacity will actually be needed by the customer. Regardless, there must be a reasonable and rational basis for the tapping fee calculation.

49 Q: If the tapping fee for a commercial/industrial water user is initially based on a specific number of gallons of capacity and, once online, metered usage determines a significantly larger number, can you redetermine and recalculate the tapping fee to reflect the additional capacity necessary and charge the difference?

A: Yes. You can charge additional tapping fees for this at any point in time. This is found in the Capacity part - Section 5607 (d) (24) (i) (C) (I) . . . p. 4, Distribution/Collection part - Section 5607 (d) (24) (i) (C) (II) . . . p. 6, and the Special Purpose part - Section 5607 (d) (24) (i) (C) (III) . . . p. 7. It is advisable to document the procedure/process in your rules and regulations and charge all C/I customers uniformly. In contrast, if the capacity usage is overestimated, there is no requirement for reimbursement to the user (unless the usage agreement addresses this situation).

50 Q: Can a separate tapping fee component be determined to cover water demand associated with fire protection needs?

A: Although the costs of providing such service can be covered in system user fees, they can be covered under the Special Purpose part of the tapping fee.