A Regulatory Patchwork: Stormwater Permitting Requirements at the Federal, State and Local Levels

Hartsfield-Jackson Atlanta International Airport’s Experience With Stormwater Fees
Discussion Topics

- Overview of a Stormwater Fee Program
- Impacts to ATL
- Steps to Mitigate Impact
So What is a Stormwater Fee Program? Simplistically...

- It is a program to aid jurisdictions in managing their stormwater infrastructure – replacing it, expanding it, keeping it well maintained, etc.

- The primary goal is to benefit the watershed in which a property resides.

- The benefits are improving water quality and area hydrology.
Local Jurisdictions Have Legal Authority to Establish a Stormwater Utility in Georgia. How it’s done in Georgia was a matter of question to be decided in the Georgia courts.

While stormwater utilities have been springing up across the state since Griffin established its utility in 1997, only two of the ordinances have been challenged in court.

**Fulton County Taxpayers Association v. City of Atlanta**

In 1999 the City of Atlanta passed an ordinance creating a stormwater utility funded by annual charges based on the size of the parcel of property owned by the landowner. When the ordinance was challenged in the late 1990s, the court ruled that while the City had the power to provide stormwater management services, the manner in which the city assessed its service charge was characteristic of a tax rather than a fee. Thus, the charge was declared unlawful.

**McLeod v. Columbia County - LEGAL**

Established in 1999, the Columbia County ordinance charges landowners in the designated service area a monthly stormwater utility charge based on the amount of impervious service area on their property...
Stormwater Utility = Utility Bill = Fee $ =
Fees Are Deposited Into a Trust Fund

The fund is designed to manage stormwater maintenance and improvements within a jurisdiction – and only manage stormwater issues. Hence, the “trust fund”.
Stormwater Fee Impact to ATL
So where does the money come from?

- John Q. Property Owner – residential or commercial

- A systematic methodology for calculating fees yields equitable charges for every property owner, generating revenue subsequently deposited into the fund
So where does the money come from?

- The fees are based on Stormwater Management Units (SMU’s), which are based on square footage
  - 1 SMU = 2,950 square feet of impervious surface
  - Monthly charge per SMU, on water bill
  - And best of all, it’s only $3.75/SMU/Month. Not bad at all, right?
So you think $3.75/SMU/month isn’t bad, do ya? Well, let’s take a closer look.

1 SMU = 2,950 sq.ft.; that can’t be bad, right?

Well, let’s say that ATL has over 85,000,000 square feet of impervious surface…or almost 29,000 SMU’s.

Ah, how shall I say it…that’s bad.

At $3.75 per SMU…PER MO., we pay annually almost $1,000,000 – and that’s AFTER we receive hefty credits through the programs.

September 12, 2012

Hartsfield Jackson Atlanta Airport
Department of Aviation
Brian Hennessey

Dear Mr. Hennessey,

Clayton County and the surrounding metropolitan areas are facing an increasing set of challenges related to the management of Stormwater runoff as the area continues to grow. These challenges include protecting the quality of our drinking water, increasing federal, state, and regional Stormwater directives and the cost to repair an aging Stormwater infrastructure. In order to address these challenges, Clayton County and the Cities of Morrow, Jonesboro, Forest Park, Lake City, Lovejoy, and Riverdale have been proactive and entered into an agreement with Clayton County Water Authority to provide a uniform program of Stormwater management throughout the county.

CCWA implemented a Stormwater Utility Fee to fund necessary infrastructure improvements and to help pay for the cost of managing Stormwater run-off. The Stormwater Utility Fee Ordinance, adopted by the County and all six Cities, provides for creation of a dedicated Stormwater Utility fund. Under this ordinance, every developed property in the county is subject to this fee.

All Clayton County Stormwater customers will pay a Stormwater Utility Fee in proportion to the amount of runoff generated by their property and the demand this runoff places on the Stormwater drainage system. This runoff is directly related to the amount of impervious development on the property, such as buildings, driveways, and parking lots. Fees for non-residential properties are calculated based on the actual amount of impervious area on a property at a rate of $3.75 per month for each 2,950 sq. ft. of impervious surface. Because the Stormwater Utility is structured just like a Water or Sewer Utility, all responsible parties of developed property are charged the fee, including tax-exempt and publicly owned (schools and government) properties.

Sincerely,

Nicole Gindraw
Customer Service Coordinator Manager
Did you notice?

- I said “programS” on a previous slide
- We are subject to two programs presently
- We have one that may come into play soon
- We have three other possibilities

Isn’t it good to be…

But I also said “after credits”…stay tuned
Our third program...humorous to an extent...love the sun as we talk about the rain

The City of East Point

DATE: February 14, 2014

TO: Commercial Property Owners

Re: Appeal of the Stormwater Service Charge Fee – Exemptions and Credits based on Technical Requirements and Standards

Dear Sir/Madam:

If you feel that your company is due a Stormwater Service Charge Fee Exemption Credit, then you are eligible to appeal your Stormwater fee. Please refer to the Stormwater Management Ordinance Section 8-2454 – Exemptions and Credits
Watch for “Double-Counting”

- No overlap in jurisdictional fee charges is permitted
- Keep a close eye on this
- To my pleasant surprise/amazement, we do not have any double-counting
Steps to Mitigate Impact
So what is a credit program? Simplistically…

- It involves a prescriptive set of measures a property owner can implement to lessen their impact on stormwater pollution, hydrology, and the infrastructure that conveys it.

- Owners may institute some, all, or none of these measures. For those that pursue some or all, they may file an application for a fee reduction.

- Credits have a five year duration

- Apply every five years for an updated credit
Some measures at ATL yielding credit
Stormwater Management and Attenuation Plan

Hartsfield-Jackson
Atlanta International Airport
## ATL’s Fee Picture

<table>
<thead>
<tr>
<th>Item/Feature - Sq. Ft.</th>
<th>College Park</th>
<th>Clayton County Water Authority</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Buildings</strong></td>
<td>3,416,414</td>
<td>6,279,478</td>
<td>9,695,892</td>
</tr>
<tr>
<td><strong>Runways</strong></td>
<td>1,857,434</td>
<td>6,308,632</td>
<td>8,166,066</td>
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<tr>
<td><strong>Taxiways</strong></td>
<td>15,146,128</td>
<td>34,183,380</td>
<td>49,329,508</td>
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<tr>
<td><strong>Parking</strong></td>
<td>8,721,891</td>
<td>6,188,477</td>
<td>14,910,368</td>
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<tr>
<td><strong>Rental Car Center</strong></td>
<td>853,138</td>
<td></td>
<td>853,138</td>
</tr>
<tr>
<td><strong>International Apron</strong></td>
<td></td>
<td>1,422,545</td>
<td>1,422,545</td>
</tr>
<tr>
<td><strong>International Terminal</strong></td>
<td></td>
<td>326,749</td>
<td>326,749</td>
</tr>
<tr>
<td><strong>International Parking</strong></td>
<td></td>
<td>506,201</td>
<td>506,201</td>
</tr>
<tr>
<td><strong>Total Impervious Surface</strong></td>
<td>29,995,005</td>
<td>55,215,462</td>
<td>85,210,467</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Stormwater Fee - $/SWU</th>
<th>$3.75</th>
<th>$3.75</th>
<th>$3.75</th>
</tr>
</thead>
<tbody>
<tr>
<td>One SWU = 2950 square feet; Therefore, total SWU’s</td>
<td>10,168</td>
<td>18,717</td>
<td>28,885</td>
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</table>

<table>
<thead>
<tr>
<th>Mo. Fee = Impervious Surface Sq. Ft./SWU x $/SWU’s</th>
<th>$38,129.24</th>
<th>$70,189.15</th>
<th>$108,318.39</th>
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<tbody>
<tr>
<td>Stormwater Fee Credit Reduction</td>
<td>44%</td>
<td>33%</td>
<td></td>
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<tr>
<td>Monthly Fee After Credit =</td>
<td>$21,175.44</td>
<td>$47,026.73</td>
<td>$68,202.17</td>
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<tr>
<td><strong>Annual Savings =</strong></td>
<td>$203,445.64</td>
<td>$277,949.02</td>
<td>$481,394.66</td>
</tr>
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<td><strong>Annual Cost =</strong></td>
<td>$254,105.28</td>
<td>$564,320.74</td>
<td>$818,426.02</td>
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</tbody>
</table>
Cooperate With Your Jurisdiction(s) to Manage the Program

- Airports typically have very good aerial photography.

- It is generally pretty easy to calculate square footage from the aerial, and apportion it by jurisdiction too.

- The jurisdiction will typically accept the numbers and exhibit – and bill accordingly.

- The jurisdictions love this as it makes their life much easier.
Recapturing Money From Tenants

- Every airport should, though we haven’t gotten this far yet

- Some issues involve lease clauses

- Some issues involve “sweetheart” deals

- For instance, our dominant carrier has a deal in place with a cap on landing fees. That cap has long ago been hit so ATL absorbs additional costs to operate the airfield and presently has no way of recapturing those costs.
ATL – We Maintain Yet We Pay – Why???

- Good question

- We maintain our stormwater infrastructure, not the jurisdictions

- We are paying the fee without receiving a good or service

- Is this Revenue Diversion? That’s frowned upon

- This a job for our legal professionals in the room...like the two here with me now