

Date: June 18, 2025

To: Holly Christman, Assistant County Administrator

CC: Board of County Commissioners; Diana Christy, MSD Director

From: Sierra Club Miami Group

Communities United For Action

Subject: Response to MSD Memo dated May 5, 2025

On May 5, 2025, MSD sent a memo to the County Administration offering proposals to encourage landowners to install Stormwater Best Management Practices (BMPs) and to make MSD's rate structure more fair. These proposals were offered as an alternative to the Impervious Surface Fee (ISF).

An MSD ISF has been under discussion since it was proposed by the Rate Affordability Task Force in 2016. It is long past time to move from discussion to action. Sierra Club and CUFA are evaluating MSD's proposals, and offer the following preliminary reactions:

- 1) Sierra Club and CUFA applaud MSD for its intention to encourage BMPs and to address the inequities in its rate structure. While MSD's proposal is far from a finished product, it shows innovation and thoughtfulness and is a meaningful contribution to these critical policy discussions.
- 2) Sierra Club and CUFA continue to believe that an Impervious Surface Fee (ISF) is the gold standard for both encouraging BMPs and advancing rate equity.

Putting a price on stormwater runoff equivalent to the costs incurred by MSD in managing stormwater runoff allows free market forces to determine which BMPs make economic sense and which don't. Put another way, under an ISF, market forces will determine which landowners will handle their own stormwater, and which landowners will pay MSD to handle their stormwater.

The ISF proposed and evaluated by MSD as part of the Stakeholder Advisory Group discussions (\$3 per month for each 500 sq. ft. "billable unit" of impervious surface) would raise \$132 million per year. This is the amount that MSD spends each year to manage stormwater. The ISF would enable the County Commissioners to reduce current sewer bills by approximately 50%, which is the portion of the sewer bill currently used to pay for stormwater. New stormwater management and rate reform proposals should be measured against this yardstick.

In its May 5th memo, MSD makes the subjective statement that an ISF would be too difficult and expensive to implement. Neither that sentiment nor any supporting data for that statement appears anywhere in the series of technical reports which MSD developed as part of the previous 9 years of ISF discussions. MSD may be overstating the implementation challenges, given that numerous communities around the country, including Columbus, Dayton, Pittsburgh, and Detroit, have adopted and implemented impervious surface fees, and that Cincinnati's Stormwater Management Utility (SMU) derives its funds from an ISF. It is of course true that there would be costs to implement an ISF, in both money and staff time. But is it too expensive? If MSD wants to make that claim, they should start by providing the cost of implementation and the planning documents that the cost estimate is based on. They should also quantify the benefits of an ISF, including quantifying the CSO reductions and the economic value of those CSO reductions in avoided consent decree costs. It will be a policy decision ultimately belonging to the County Commissioners whether or not an ISF is too expensive. MSD should quantify those costs and benefits so they can be properly evaluated.

In the May 5th memo, MSD notes that some properties do not contribute stormwater to the MSD system, and that MSD may be legally vulnerable in attempting to impose an ISF on such properties. It should be remembered that MSD is the one that first recommended making the ISF applicable to all properties, because they said it was too difficult to tell which properties actually contribute to overflows and which do not. Indeed, maps that MSD provided in response to a public information request seem to show that almost every property served by MSD sewers (combined or sanitary) is tributary to an overflow point (CSO, SSO, or PSO), meaning that stormwater entering a sewer would contribute to overflows. But, if MSD believes that some properties should be excluded from the ISF because their location makes them unlikely to contribute stormwater that leads to overflows, that is a legitimate topic for discussion. It doesn't negate the fact that MSD is drowning in stormwater expenses, and the vast majority of properties in their service area are contributing to the problem when they could be part of the solution.

One equity issue that MSD ratepayers are particularly sensitive to is the large number of landowners that discharge stormwater to the sewer system yet pay absolutely nothing to MSD because they don't use potable water. These properties include vacant buildings and parking lots. One test for any proposed alternative to the ISF will be whether these landowners pay their fair share.

- 3) MSD's memo does not contain critical information needed to evaluate its proposals. In response to a Sierra Club public records request, MSD provided a portion of the information needed to evaluate their proposals, but critical data gaps still exist. Missing information includes:
- a. What would it cost to implement an ISF?
 - b. How much would residential customers save, on average and collectively, if I/I costs were allocated 40%/60% instead of the current 75%/25%?
 - c. The May 5th memo (p.5) states that MSD has performed a preliminary analysis of the financial impacts of reallocating I/I costs. That preliminary analysis has not been released. It is unclear whether MSD believes that the preliminary analysis is sufficient for decision making or whether a more complete analysis is needed. It is unclear how long a complete analysis will take and how much it will cost.
 - d. The May 5th memo proposes to evaluate the feasibility of reducing the existing 3 Ccf allowance for the minimum charge. It is not clear what the new allowance would be, or how that would affect the minimum monthly charge. It would be important to know how many customers use less than 3 ccf per month, and how much less. That will determine how much revenue MSD will lose from such a proposal (and have to make up somewhere else) and how much money small users would save.
 - e. The May 5th memo (p.6) proposes a pilot program to incentivize downspout disconnections, possibly leading to a permanent program incentivizing a broader suite of Stormwater BMPs. The memo says that geographic areas have been identified for the pilot program, but does not reveal those locations. It also indicates that property owners completing a project would receive a 1-time payment, but doesn't indicate how that incentive will be calculated. Both the geographic extent and the size of the incentive will be critical information in understanding this proposal. How many properties are in the pilot area? The pilot is limited to downspout disconnection projects. What proportion of buildings in the pilot area have connected downspouts?
 - f. The May 5th memo (p.7) proposes charging large properties served by combined sewers for excessive runoff, but does not state the magnitude of the charge. Would it be \$3 per 500 sq. ft. of impervious area per month, as previously proposed by MSD, or some other amount?
- 4) MSD has offered 4 proposals for encouraging BMPs and improving fairness. Each of those proposals merits detailed evaluation and discussion.
- a. Update I/I Allocation in existing rate structure.

Based on the preliminary information provided by MSD, this proposal appears to merit consideration. MSD's existing rate structure is highly regressive, putting disproportionate burdens on residential and low income ratepayers while simultaneously starving MSD of needed revenue because, with regressive rates, the rate base is unable to provide MSD with adequate revenue to fulfill their obligations. If this proposed change has the effect of decreasing the burden on residential and low income ratepayers, that would be a desirable outcome. It remains to be seen whether this proposal has a meaningful impact in comparison to the proposed ISF, which would reduce the minimum monthly charges and per unit charges by approximately \$132 million per year, and make up that revenue by charges to impervious surfaces.

b. Evaluate Minimum Charge Reduction

Based on the preliminary information provided by MSD, this proposal appears to merit consideration. MSD's current rate structure bills customers for 3 ccf/month of usage, whether or not they actually use that much. Many customers, including elderly and one-person households, use far less than 3 ccf/month. With a current charge of \$6.24 per ccf per month, this means that a customer using 1 ccf is being overcharged by \$12.48 per month, or about \$150 per year. Sierra Club and CUFA will want to see how many customers fall into this category, and how much will be saved by this change, but every shift towards more equitable rates is progress.

c. Incentivize Reduced Stormwater Contributions

Sierra Club and CUFA welcome the return of the Stormwater Removal Program. Several years ago, MSD operated pilot programs that incentivized the installation of Stormwater BMPs on private property, and installed and maintained stormwater BMPs on public property. Many of those BMPs are still functioning. The experience gained through those pilot programs will be valuable to MSD in the current effort.

Ultimately, incentives for stormwater BMPs should be available to all properties that contribute storm flow to overflow points, and should include all technologies that are effective in reducing the flows that contribute to overflows. If MSD believes that a phase in process is necessary, the size and technologies included in the initial pilot and the pace of expansion are legitimate topics for discussion.

As MSD encourages installation of BMPs, whether through incentives or through fees charged for run off, it is important for MSD to structure programs in a way that can be counted towards MSD's consent decree obligations. A win/win solution will be one in which landowners receive compensation for stormwater

improvements on their property, and MSD receives relief from its obligation to address that same stormwater by upsizing its infrastructure. For regulators to “count” stormwater BMPs toward MSD’s consent decree obligation, there must be some assurance that the BMPs will remain in place and functional over time. It is difficult to see how that burden will be met with a program that makes a one-time payment to the landowner and includes no follow-up. MSD should consider replacing the one-time payment with a smaller annual payment, and a procedure for periodic reinspections of the BMPs to ensure that they are still in place and functioning. While the oversight process will involve some expense and administrative burden, that cost is likely to be outweighed by the improved performance of the BMPs over time, and the relief from consent decree obligations. As a party to the litigation that gave rise to the consent decree, Sierra Club will participate in discussions with MSD and regulators to assure that BMPs receive appropriate credit toward consent decree obligations.

d. Disincentivize Excessive Impervious Area and Wet Weather Run Off

This proposal by MSD is essentially a repeat of the previous impervious surface fee proposal with 3 new modifications. The proposed modifications merit discussion.

MSD is proposing to limit the geographic scope of the ISF to areas served by combined sewers. While this seems like a clear dividing line, it is not. Many customers have separated storm and sanitary sewers at their property, but the sanitary or storm sewers or both flow into combined sewers and contribute to CSOs. It is not clear whether such areas are defined by MSD to be inside or outside the combined sewer area. Many areas with separate sewers contribute to SSOs, PSOs or basement backups. MSD spends significant amounts of wet weather funds to resolve stormwater issues in these areas, so a strong case could be made that these areas should contribute financially to wet weather solutions. It is probably true that some properties have no plausible connection to overflow problems and should be exempt from the fee, but MSD should not overreact to this problem by switching from an overly inclusive scope to an underinclusive one. Additional discussion is appropriate to arrive at the correct geographic scope for the program.

MSD is proposing to limit the program to properties with more than 2 acres of impervious surface. According to MSD, the largest 500 properties account for 2,300 acres of impervious surface, and the remaining 99,000 properties account for an additional 4000 acres. It makes sense to prioritize the largest properties, and it also makes sense to have a de minimus level below which we don’t bother measuring the impervious surface and assessing a fee. This is especially true if an

incentive program is being created to incentivize BMPs on smaller properties. It is not clear that 2 acres is the right cut-off point. A property with 2 acres of impervious surface generates approximately 1.3 million gallons of run-off in a typical year. Perhaps the cutoff should be 1 acre, or half an acre. It would be worth looking at how many properties that adds, and how much additional stormwater it captures.

MSD is proposing to phase in the ISF, starting with the 100 largest parcels (>6 acres), and adding 200 parcels per year. A phased approach makes sense, especially if it means that the phase in can start with the 2026 budget. There is no need to decide immediately whether the phase in is complete after 3 years and 500 properties, or whether it proceeds to the next tier of properties after that. The experience implementing the program will be able to inform that scoping decision before we reach year 4.

On page 7 of the May 5th memo, MSD states that “The single parcel with the largest amount of impervious area is contributing approximately as much wet weather flow as 47,000 average residential properties.” That statement is clearly false. Perhaps it was meant to say that the 500 parcels with the largest impervious surfaces contribute as much wet weather flow as 47,000 average residential properties.

In Summary –

- MSD deserves credit for putting forth proposed solutions to the stormwater management and rate equity issues that they currently face.
- The Impervious Surface Fee remains the best way to improve stormwater management and sewer rate equity.
- MSD’s May 5th proposals may also be a part of the solution to the region’s stormwater and sewer equity issues. Additional information from MSD is needed to verify and quantify those benefits.
- MSD will need to provide additional information before the value of their May 5th proposals can be understood.
- Sierra Club will participate in discussions with MSD and regulators to assure that BMPs receive appropriate credit toward consent decree obligations.