

Clerk of the District
 JUN 06 2023
 Metropolitan Water Reclamation
 District of Greater Chicago

**BEFORE THE BOARD OF COMMISSIONERS OF THE
 METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO**

CITY COLLEGES OF CHICAGO)	
COMMUNITY COLLEGE DISTRICT)	Case No. 22B-004
NO. 508)	
)	(Appeal Under User Charge Ordinance)
Appellant,)	
)	
v.)	
)	
METROPOLITAN WATER)	
RECLAMATION DISTRICT)	
OF GREATER CHICAGO,)	Hearing Officer:
)	Heather A. Begley
Appellee.)	

**REPORT OF HEARING OFFICER PERTAINING TO APPEAL FILED BY
 APPELLANT, CITY COLLEGES OF CHICAGO DISTRICT NO. 508**

Procedural History and Findings of Fact

Appellant, City Colleges of Chicago District No. 508 (“City Colleges”) consists of seven community colleges in the City of Chicago, including Daley College, Harold Washington College, Kennedy-Kind College, Malcolm-X College, Olive-Harvey College, Truman College, and Wright College. Approximately 54,000 students attend the colleges. Approximately 3,800 faculty are on staff at the colleges.

Appellee, The Metropolitan Water Reclamation District of Greater Chicago (“The District”) is responsible for treatment of wastewater and flood water abatement in Cook County to protect the health and safety of citizens and of area waterways.

On October 29, 2021, the District classified several campuses of the City Colleges as Tax-Exempt Users and requested compliance with the User Ordinance, including sampling consistent with the RD-920 reporting statement and completion of the User Charge Annual Certified

Statement (RD-925). **Exhibit A.** City Colleges contested this request and classification by asserting they were not subject to the District's User Charge Ordinance and should not be classified as Tax Exempt. City Colleges appealed and on June 13, 2022, the Director of the Metropolitan Water Reclamation District denied the Director Appeal made by City Colleges and classified the City Colleges of Chicago Facilities as Tax Exempt Users under the User Charge Ordinance. **Exhibit B.** On July 14, 2022, City Colleges filed an appeal of that classification. On November 30, 2022, a preliminary User Charge Hearing was held. On April 26, 2023, a hearing was held following submission of Proposed Findings and Conclusions of Law by appellant and appellee.

City Colleges contends it is a Local Government User that does not charge an admission fee, is a sister agency to the City of Chicago, and is not a Tax-Exempt User subject to compliance with the User Charge Ordinance. City Colleges disputes that "tuition" paid by students admitted and enrolled in the City Colleges is an admission fee and offers case citations and definitions of the words "admission fee" and "tuition" in support of its position. City Colleges disputes it is subject to payment of a User Charge on the basis that it charges "tuition" and not an "admissions fee".

The District contends the City Colleges are Tax-Exempt Users and that its User Charge Ordinance should be liberally construed to support its position that payment of tuition by students for enrollment is an admission fee. The District references that many other community colleges that pay the User Charge under the Ordinance as Tax-Exempt Users. Specifically, the District references public colleges such as Chicago State University, Morton Community College District 527, Northeastern Illinois University and the University of Illinois-Chicago as Tax-Exempt Users since 1995. For the 2021 reporting year, Harper Community College (District 512) paid

-----\$14,378.54 in User Charges and Triton Community College (District 504) paid \$14,881.10 in User Charges.

Conclusions of Law

The purpose of the User Charge Ordinance is to establish an “orderly” and “fair system” whereby the operations, maintenance and replacement costs incurred by the District are charged to Users for sewage collection and treatment facilities. The system uses a self-reporting platform wherein each User evaluates its waste discharge in accordance with the User Charge Ordinance and determines its user classification status. See User Charge Ordinance Section 4, generally. Specifically, Section 1 of the User Charge Ordinance states:

This Ordinance is promulgated pursuant to the statutory authority contained in 70 ILCS 2605/1, et seq., as amended. The purpose of this Ordinance is to establish an orderly and fair system whereby the operations, maintenance, and replacement costs incurred by the Metropolitan Water Reclamation District of Greater Chicago in treating and disposing of the sewage, industrial wastes, and other wastes generated by each User is charged to that User for his or her use of the sewage collection and treatment facilities of the Metropolitan Water Reclamation District of Greater Chicago, as required by The Federal Water Pollution Control Act Amendments of 1972 and the Clean Water Act of 1977 (33 U.S.C. §§ 1251-1387) and the rules and regulations of the United States Environmental Protection Agency, promulgated pursuant thereto.

“There is a strong public interest in protecting [] public health and environment. Accordingly, statutes which were enacted for the protection and the preservation of public health are to be given extremely liberal construction for the accomplishment and maximization of their beneficial objectives.” *People v. Conrail Corp.*, 251 Ill. App. 3d 550 (Ill. App. Ct. 1993).

Under the User Charge Ordinance, “Local Government User” is defined as follows:

Publicly owned facilities used to perform local governmental function which discharge solely domestic waste. Such functions are limited to administration or legislative activities of a local government, such as police and fire departments, public elementary and public high schools, and municipal office buildings. Publicly owned facilities charging an admission fee, or publicly owned facilities leased to non-public entities are not considered Local Government Users.

Local Government Users are not subject to the payment of User Charges.

User Charge Ordinance, Section 4(e).

A User Charge is a fee, not a tax; therefore, Tax-Exempt Users are not exempt from paying User Charges. User Charge Ordinance, Sec. 2. The User Charge of any User shall be directly proportional to its use of the District's sewage treatment, collection, and disposal services when compared to the total operations, maintenance and replacement costs incurred by the District in providing the same services to all Users in the District's jurisdiction, User Charge Ordinance, Sec. 2.

Police stations, elementary schools, and high schools are specifically identified in the User Charge Ordinance as examples of public facilities whose function is limited to administration or legislative activities of a local government. User Charge Ordinance, Section 4(e). The facilities operated by the Local Government Users, such as police stations, elementary schools, and high schools, do not pay a User Charge. Unlike police stations, elementary schools and high schools, community colleges are not specifically identified as examples of Local Government Users in the User Charge Ordinance.

The State of Illinois has a compulsory school attendance requirement for children ages 6 to 17 years old, with some exceptions. 105 ILCS 5/26-1. Public high schools are available to meet this need and students are permitted, for the most part, to attend free of charge. Community colleges, such as those provided by the City Colleges, meet an important educational need in society, but primarily provide non-compulsory, post-high school education. The reference to elementary and high schools in the User Charge Ordinance definitions is illustrative and demonstrates a distinction between whether a public facility is deemed a Local Government User, or a Tax-Exempt User, depends on their funding sources and category of public school.

City Colleges contends it is a Local Government User because the funds received from students to attend its classes are considered “tuition” and generally, not as “fees”. It also contends it is a sister agency to the City of Chicago. It is undisputed that public schools such as City Colleges provide local government functions. However, students who are admitted to the City Colleges also contribute funds, via tuition payments and fees, to attend classes. The City Colleges collect funds from their enrollees to provide them with the right to be members of its student body, receive benefits of a college education, earn college credit, take classes for certification. It is the students’ payment of funds for admission and enrollment to the publicly operated facilities, via tuition and admission fees, that distinguishes City Colleges from other public facilities considered Local Government Users, referenced in the User Charge Ordinance, such as elementary and high schools, that requires that the City Colleges be classified as Tax-Exempt Users, and not as Local Government Users.

The appeal brought by the City Colleges of Chicago District No 508 is hereby denied. The City Colleges of Chicago District No. 508 are not considered Local Government Users under the User Charge Ordinance. The User Classification for the City Colleges of Chicago Community College District No. 508 is “Tax-Exempt User” under the User Charge Ordinance. The City Colleges are a Tax-Exempt User and shall be responsible for participating in the “orderly and fair system” established by the User Charge Ordinance of the Metropolitan Water Reclamation District of Greater Chicago, an Ordinance which is ultimately required by the Federal Water Pollution Control Act Amendments of 1972 and the Clean Water Act of 1977, along with the rules and regulations of the United States Environmental Protection Agency.

The effective date of the classification of City Colleges of Chicago District No. 508 as a Tax-Exempt User remains October 29, 2021; however the enforcement of User Charges is effective

prospectively beginning June 5, 2023. The effect of this ruling is not retroactive to prior to June 5, 2023. The amount of the annual User Charge owed by the City Colleges of Chicago District No. 508 will be subject to further determination following compliance with the RD-920 and RD-925 forms. The Cease and Desist Order entered pertaining to the events on February 7, 2022 shall be vacated, without prejudice, and the fine of \$843.00 invoiced against Harry S. Truman College on April 6, 2022 shall be waived.

Heather A. Begley

Heather A. Begley, Hearing Officer

6-5-2023

Date

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Edward W. Podczewinski, P.E.
Director of Monitoring and Research

October 29, 2021

Mr. Mike Martin
Auxiliary Services Director
City Colleges of Chicago – Richard J. Daley College
7500 South Pulaski Road
Chicago, Illinois 60652

Dear Mr. Martin:

Subject: Tax-Exempt User Classification for City Colleges of Chicago – Richard J. Daley College, Located at 7500 South Pulaski Road

The District has reviewed tax records and determined that the subject facility is exempt from paying ad valorem taxes. Therefore, pursuant to Section 2 of the District's User Charge Ordinance (Ordinance), the District has classified the subject facility as a Tax-Exempt User, effective 2021.

Each year, you are required to submit the following certified documents:

1. Results of two normal consecutive calendar working days of representative composite sampling for biochemical oxygen demand (BOD) and suspended solids (SS) on the User Charge Certified Sampling Analysis Reporting Statement (RD-920).
2. A completed and certified User Charge Annual Certified Statement (RD-925), by February 20 of the following year, that provides the User Charge amount owed based on the annual wastewater flow volume and the BOD and SS loadings.

Both the RD-920 and RD-925 forms are available on our website at www.mwrd.org, via [Documents/Forms/User Charge Forms](#). Your first RD-925 is due by February 20, 2022.



Mr. Mike Martin

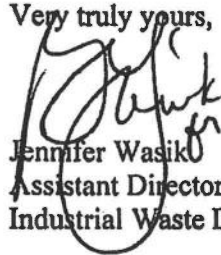
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October 29, 2021

Subject: Tax-Exempt User Classification for City Colleges of Chicago – Richard
J. Daley College, Located at 7500 South Pulaski Road

The Ordinance is available on the District's website, at www.mwrdd.org, via Documents/Rules and Ordinances. If you have any further questions or require assistance in completing your RD-925 and/or RD-920, please contact Mr. Mathew Degutes, Environmental Specialist, at mathew.degutes@mwrdd.org, or 312-751-3005. For a faster response, please contact us via e-mail during the COVID-19 restoration period in Illinois.

Very truly yours,


Jennifer Wasik
Assistant Director of Monitoring and Research
Industrial Waste Division

JW:MJD:mdm

Certified No. 7019 1640 0000 6212 6614

U30960/#21-0803

cc: Finance Billing Unit/Wasik/Degutes

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Edward W. Podczerwinski, P.E.
Director of Monitoring and Research

October 29, 2021

Ms. Anna Morales
Auxiliary Services Director
City Colleges of Chicago – Wilbur Wright College
4300 North Narragansett Avenue
Chicago, Illinois 60634

Dear Ms. Morales:

Subject: Tax-Exempt User Classification for City Colleges of Chicago – Wilbur Wright College, Located at 4300 North Narragansett Avenue

The District has reviewed tax records and determined that the subject facility is exempt from paying ad valorem taxes. Therefore, pursuant to Section 2 of the District's User Charge Ordinance (Ordinance), the District has classified the subject facility as a Tax-Exempt User, effective 2021.

Each year, you are required to submit the following certified documents:

1. Results of two normal consecutive calendar working days of representative composite sampling for biochemical oxygen demand (BOD) and suspended solids (SS) on the User Charge Certified Sampling Analysis Reporting Statement (RD-920).
2. A completed and certified User Charge Annual Certified Statement (RD-925), by February 20 of the following year, that provides the User Charge amount owed based on the annual wastewater flow volume and the BOD and SS loadings.

Both the RD-920 and RD-925 forms are available on our website at www.mwrd.org, via Documents/Forms/User Charge Forms. Your first RD-925 is due by February 20, 2022.

Ms. Anna Morales

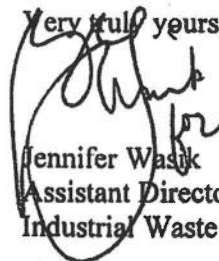
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October 29, 2021

Subject: Tax-Exempt User Classification for City Colleges of Chicago – Wilbur Wright College, Located at 4300 North Narragansett Avenue

The Ordinance is available on the District's website, at www.mwrdd.org, via Documents/Rules and Ordinances. If you have any further questions or require assistance in completing your RD-925 and/or RD-920, please contact Mr. Mathew DeGutes, Environmental Specialist, at mathew.degutes@mwrdd.org, or 312-751-3005. For a faster response, please contact us via e-mail during the COVID-19 restoration period in Illinois.

Very truly yours,



Jennifer Wasik
Assistant Director of Monitoring and Research
Industrial Waste Division

JW:MJD:mdm

Certified No. 7019 1640 0000 6212 6607

U30856/#21-0802

cc: Finance Billing Unit/Wasik/Degutes

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Edward W. Podczewinski, P.E.
Director of Monitoring and Research

November 2, 2021

Mr. Charles Talbert
Operations & Purchasing Manager
City Colleges of Chicago – Harry S Truman College
1145 West Wilson Avenue
Chicago, Illinois 60640

Dear Mr. Talbert:

Subject: Tax-Exempt User Classification for City Colleges of Chicago – Harry S Truman College, Located at 1145 West Wilson Avenue

The District has reviewed tax records and determined that the subject facility is exempt from paying ad valorem taxes. Therefore, pursuant to Section 2 of the District's User Charge Ordinance (Ordinance), the District has classified the subject facility as a Tax-Exempt User, effective 2021.

Each year, you are required to submit the following certified documents:

1. Results of two normal consecutive calendar working days of representative composite sampling for biochemical oxygen demand (BOD) and suspended solids (SS) on the User Charge Certified Sampling Analysis Reporting Statement (RD-920).
2. A completed and certified User Charge Annual Certified Statement (RD-925), by February 20 of the following year, that provides the User Charge amount owed based on the annual wastewater flow volume and the BOD and SS loadings.

Both the RD-920 and RD-925 forms are available on our website at www.mwrd.org, via Documents/Forms/User Charge Forms. Your first RD-925 is due by February 20, 2022.

Mr. Charles Talbert

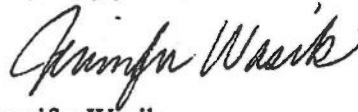
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November 2, 2021

Subject: Tax-Exempt User Classification for City Colleges of Chicago – Harry S
Truman College, Located at 1145 West Wilson Avenue

The Ordinance is available on the District's website, at www.mwrdd.org, via Documents/Rules and Ordinances. If you have any further questions or require assistance in completing your RD-925 and/or RD-920, please contact Mr. Mathew DeGutes, Environmental Specialist, at mathew.degutes@mwrdd.org or 312-751-3005. For a faster response, please contact us via e-mail during the COVID-19 restoration period in Illinois.

Very truly yours,



Jennifer Wasik
Assistant Director of Monitoring and Research
Industrial Waste Division

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U30879/#21-0801
cc: Hachim/Wasik/DeGutes

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Edward W. Podczewinski, P.E.
Director of Monitoring and Research

mwr-d-ucts@mwr-d.org

February 4, 2022

David Anthony
Associate Vice Chancellor, Administrative Services
City Colleges of Chicago
3901 South State Street, Room 216
Chicago, Illinois 60609

Dear Mr. Anthony:

Subject: Tax Exempt User Classification for City Colleges of Chicago – Malcolm X College, Located at 1900 West Jackson Boulevard

The Metropolitan Water Reclamation District of Greater Chicago (District) has reviewed tax records and determined that the subject facility is exempt from paying ad valorem taxes. Therefore, pursuant to Section 2 of the District's User Charge Ordinance (Ordinance), the District has classified the subject facility as a Tax-Exempt User, effective 2022.

Each year, you are required to submit the following certified documents:

1. Results of two normal consecutive calendar working days of representative composite sampling for biochemical oxygen demand (BOD) and suspended solids (SS) on the User Charge Certified Sampling Analysis Reporting Statement (RD-920).
2. A completed and certified User Charge Annual Certified Statement (RD-925), by February 20 of the following year that provides the User Charge amount owed based on the annual wastewater flow volume and the BOD and SS loadings.

Both the RD-920 and RD-925 User Charge Forms are available on our website at www.mwr-d.org/doing-business/forms-documents. Your first RD-925 is due by February 20, 2023.

Mr. David Anthony

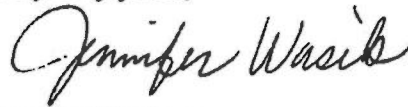
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February 4, 2022

Subject: Tax Exempt User Classification for City Colleges of Chicago – Malcolm X College, Located at 1900 West Jackson Boulevard

The Ordinance is available on the District's website, at www.mwrd.org/rules-and-ordinances. If you have any further questions or require assistance in completing your Forms, please contact Mr. Mathew DeGutes, Environmental Specialist, at DegutesM@mwrd.org or (312) 751-3005. For a faster response, please contact us via email during the COVID-19 restoration period in Illinois.

Very truly yours,



Jennifer Wasik
Assistant Director of Monitoring and Research
Industrial Waste Division

JW:MJD:lh
Certified No. 7021 1970 0001 3068 3738
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cc: Mete Hachim, Finance

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Metropolitan Water Reclamation District of Greater Chicago

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Edward W. Podczerwinski, P.E.
Director of Monitoring and Research
podczerwinski@mwrdr.org

June 13, 2022

Mr. David Anthony
Vice Chancellor of Administrative Services
City Colleges of Chicago
3901 South State Street, Room 216
Chicago, Illinois 60609

Dear Mr. Anthony:

Subject: Appeal Number 22D-001 - User Charge Classification for City Colleges
of Chicago

The Metropolitan Water Reclamation District of Greater Chicago (District) refers to the meeting on April 27, 2022, at the office of the District's Monitoring and Research Department, regarding the subject appeal. In attendance at the meeting representing City Colleges of Chicago (CCC) were you, Ms. Karla Mitchell Gower, General Counsel, and Ms. Ruth Krugly of Riley Safer Holmes & Cancila LLP. Representing the District were Mses. Jennifer Wasik and Pamela Saindon, and Messrs. Mathew DeGutes, Christopher Murray, and Gregory Yarnik of my staff.

In multiple letters dated November 2, 2021, the District classified several campuses of CCC (Richard J. Daley, Malcolm X, Harry S. Truman, and Wilbur Wright) as Tax Exempt Users (TXE), which are required to report their User Charge liability annually to the District under terms and conditions of the User Charge Ordinance (UCO). Subsequent to this classification, in an electronic mail correspondence on November 29, 2021, CCC asserted that its campuses were not subject to the UCO and should not be classified as TXEs, but rather should be classified as Local Government Users (LGU), which are not required to report User Charge liability annually to the District. Because the District reiterated its original classification of CCC campuses as TXEs, a formal Director Appeal by CCC was initiated on March 2, 2022, followed by the above referenced meeting, wherein CCC argued that it is a unit of local government that does not charge an "admission fee." Conversely, the District maintained that tuition and/or fees charged to users of CCC's services does, in fact, constitute an "admission fee," under Section 2 of the UCO, and therefore prohibits CCC's classification of its campuses as LGUs.

Mr. David Anthony

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June 13, 2022

Subject: Appeal Number 22D-001 - User Charge Classification for City Colleges
of Chicago

The District has reviewed the available evidence and arguments presented by CCC at the Director Appeal meeting and upholds the classification of CCC campuses as TXEs under terms and conditions of the UCO. The Director Appeal of CCC's classification is herein denied. In accordance with Section 9.b. of the UCO, if the User does not concur with the determination of this office, it may petition the District's Board of Commissioners (Board) for a hearing. Any such request for a hearing by the Board shall be made within 30 days after receipt of this letter.

If you have any questions regarding this matter, please contact Mr. DeGutes, Environmental Specialist, at (312) 751-3005 or DeGutesM@mwr.org.

Very truly yours,



Edward W. Podczerwinski, P.E.
Director
Monitoring and Research Department

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cc: Ms. Mitchell Gower
Ms. Krugly ✓