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Board of Commissioners
Hamilton County, Ohio
On Behalf of the “Perfect Storm” Communities Coalition**

**Testimony Before the U.S. House of Representatives
Water Resources and Environment Subcommittee
Committee on Transportation and Infrastructure**

**Oversight Hearing on
“Integrated Planning and Permitting: An Opportunity for EPA to Provide Communities with
Flexibility to Make Smart Investments in Water Quality”
December 14, 2011**

Good afternoon, Chairman Gibbs, Ranking Member Bishop, and Members of the Subcommittee. My name is Todd Portune, and I serve as a Commissioner on the Hamilton County, Ohio Board of Commissioners. I am here today testifying on behalf of the “Perfect Storm” Communities Coalition (Coalition). The Coalition is made up of communities dealing with the “perfect storm” of high unemployment, high home foreclosure rates, stagnant economic growth, and an exodus of business and industry, while being required to meet expensive CSO/SSO wet weather consent decrees and stormwater regulations.

The Coalition agrees that a legislative approach that amends the Clean Water Act (CWA) may be a good long-term approach to providing the Environmental Protection Agency (EPA) with the regulatory flexibility and authorities to help communities such as ours more effectively address wet weather challenges. In the short term, however, it is the Coalition’s intent to work with you and the Water Resources Subcommittee of the House Committee on Transportation and Infrastructure (Subcommittee) as we work with the EPA to find a regulatory approach, consistent within the CWA and existing regulations, to provide communities like ours the flexibility to meet these huge regulatory challenges in a more affordable and cost-effective way.

We appreciated EPA’s announcement that it has crafted a new policy, as stated in the final regulatory review required by the President’s Executive Order 13563, to allow municipalities to prioritize their water quality investments; and, to create a new, integrated permitting approach for dealing with stormwater, wet weather management and CSOs in order to allow this prioritization to occur. However, absent congressional involvement and oversight, we have concerns whether there will be any significant improvements as a result of these policy changes.

We believe that Congress must ensure such EPA policy changes are implemented in a meaningful and determined manner, and that they result in real, cost effective wet weather solutions for communities dealing with these challenges. Congress should provide oversight and direction to the EPA in promoting cost effective tools such as green infrastructure and other alternative measures that can provide innovative wet weather solutions. We believe allowing communities to prioritize these alternative solutions will ensure that practical, accountable and affordable remedies are approved and used to reduce and eliminate CSO violations. The EPA memorandum to EPA Regional Offices on Integrated Stormwater and Wastewater Planning directed these offices to provide as much flexibility as possible under current laws and

regulations in applying innovative, cost effective approaches to solve the many wet weather challenges we currently face, and we believe this congressional oversight hearing is timely and can help ensure this flexibility is actually realized by communities such as ours. Because many Coalition members and other communities are now operating under judicial or administrative consent decrees, it's also important that EPA and the U.S. Department of Justice make a clear, written commitment to updating and modifying these decrees more frequently in the future so that their terms do not delay or hinder "regulatory flexibility" from truly taking effect. The Committee's oversight into whether existing and future consent decrees are regularly and effectively revised across the nation will be important.

The costs of using traditional methods to meet federal wet weather mandates are enormous, costing billions of dollars per community and leading to massive rate increases for local taxpayers. Under normal economic conditions, these mandates are not affordable; and in the current economy, incurring these costs will have long-term negative impacts. To lessen the financial impact, communities are developing alternative wet weather management approaches and have found that they can achieve the same or better water quality results at a lower cost using locally-driven solutions that combine watershed approaches, green infrastructure, low impact development, grey infrastructure, and other innovative techniques to reduce wet weather impacts.

In my own community of Hamilton County, our judicial consent decree has been in force since 2004 and thus far nearly \$400 million of sewer district funds have been raised and spent locally to address CSO and SSO issues. However, the EPA approved implementation plan is expected to cost an additional \$800 million in the next 7-years. And that is just Phase 1 of a two Phase plan. The EPA-required total investment is projected to cost over \$3.1 billion (in 2006 dollars). And virtually every penny of that comes from our community ratepayers. A major chunk of Phase 1 spending (nearly \$245 million) is slated to construct a deep tunnel that EPA has required, and as a result, our ratepayers face double digit rate increases each year for three years and we are in the middle of an expected 8% per annum rate increase for the next five years.

Rate increases at this level are crushing to our citizens. Rate increases at those levels result in the average middle class homeowner facing an increase in his or her sewer bill that will do more to chase people and jobs out of my community than any increases in taxes could ever do. And, we are not alone. In the Coalition, the same horror story is repeated by each jurisdiction involved.

As an elected official, I have a responsibility to my constituents that their sewer rates are well spent and return the best possible results for the dollar invested. Because of this approach, we are working hard locally to identify an alternative to that investment to present to EPA that would return stormwater to area streams and use "green infrastructure" to control stormwater, with the goal of saving money in both construction and long-term operation and maintenance costs. We estimate that a "green infrastructure" approach could save our ratepayers as much as \$1 billion over the life of the program, while producing the same or better results quicker. When my constituents are footing the entire bill those are important considerations. Absent a compelling reason against using a "Green Build" approach, it is difficult if not impossible to justify the expenditures called for in our consent decree.

Across the nation, affected communities recognize the need to effectively manage their stormwater and improve water quality, particularly at a cost affordable to local taxpayers. We understand that ignoring wet weather issues, such as combined sewer overflows and stormwater runoff, can contribute to damaging floods, extensive erosion and the release of pollutants into water bodies. Yet, given the tremendous costs associated with traditional grey infrastructure (e.g. stormwater retention tunnels) to control wet weather events, communities must be allowed to prioritize investing their limited resources in the most cost-effective, accountable solutions that can result in the greatest immediate water quality benefits for local watersheds.

Some examples of these lower cost innovative techniques include:

- Reducing other sources of pollutants in the watershed that are more cost effective;
- Enhancement and restoration of riparian and in-stream aquatic habitats;
- Implementing green infrastructure technology to control stormwater runoff, such as green roofs, stormwater gardens and resurfacing areas with permeable materials;
- Creek bed stabilization to reduce erosion by diverting high flows away from streambanks and controlling the slope of the creek bed.

The federal CWA, in our collective opinion, is not allowing and encouraging the use of new technologies/green solutions, and unfortunately, results in inefficient and high-cost investments in water quality improvements. The current “siloe” policies do not encourage innovative, comprehensive watershed management techniques, as already authorized by the CWA in Section 1274. In fact, even as EPA is encouraging stormwater to be removed from combined sewers, it is moving ahead on another track to create new regulatory requirements for the further treatment of that stormwater. This risks an even longer “perfect storm” situation where, just as we address CSO issues, we may face new regulations and new enforcement for the very stormwater we are removing under judicial and administrative consent decrees. The current EPA regulatory policies and enforcement-led approaches through consent decrees simply direct local communities to pay for massive, expensive and, in some instances, outdated concrete and steel approaches. In addition, the current enforcement policies are applied inconsistently and unevenly across the various EPA regions and focus too much on numbers of violations and levels of fines as opposed to proactively helping communities implement water quality improvements for the benefit of water quality in rivers and streams.

Our Coalition has asked the EPA to establish 15-20 demonstration partnerships in each of the next five years in communities across the nation currently facing these wet weather challenges. While the EPA included an effort to highlight partnership communities in promoting green infrastructure, we want to see these partnerships broadened beyond just green infrastructure implementation to show how the EPA and local communities can work together to implement flexible, practical, affordable wet weather solutions. These demonstration communities will also show that using new, innovative approaches can result in the same or better water quality results for a smaller investment of local taxpayer dollars.

We believe the only way to accountably measure EPA’s success in implementing integrated stormwater and wastewater planning is to focus on these pilot demonstration communities. The

Coalition seeks to work with your Subcommittee and the EPA in attaining the regulatory flexibility and providing adequate timelines that will allow these pilot communities to design and implement wet weather management demonstration projects that achieve water quality improvements at a lower cost over a reasonable period of time.

Results from the demonstration partnerships could help pave the way for broader CWA policy changes at EPA that could lead to greater flexibility and affordability for communities to meet water quality requirements. We envision such demonstration partnership investments to include innovative water quality improvement projects that can be implemented for a lower cost, inform future investments in water quality infrastructure through adaptive management, and provide the local public a better, cost-effective investment to reduce pollution in our watersheds.

The “Perfect Storm” Communities Coalition looks forward to working with you, Mr. Chairman, and the Subcommittee, as well as with the EPA, in developing and ensuring the implementation of innovative, flexible approaches in meeting wet weather challenges, including the creation of demonstration communities that would showcase cost effective alternative approaches to expensive water quality wet weather challenges faced by the member communities of our Coalition.

Thank you for the opportunity to provide testimony at today’s hearing and I would stand for any questions that you and Members of the Subcommittee may have.