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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, Part 2: An Opportunity for EPA to Provide Communities
with Flexibility to Make Smart Investments in Water Quality”
July 25, 2012**

Good morning, 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 Hamilton County and 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 mandated to meet expensive CSO/SSO wet weather consent decrees and stormwater regulations.

The Coalition appreciates the Subcommittee holding this second oversight hearing on the current status of the Environmental Protection Agency’s (EPA) release of their final Integrated Planning and Permitting Policy Framework (Framework). We believe the EPA must find a regulatory approach, consistent within the Clean Water Act (CWA) and existing regulations, that would provide communities like mine and those of the Coalition the flexibility we need to meet these challenges in a more affordable and cost-effective manner. We hold out hope that the Agency’s final Framework can help us accomplish this goal.

During this Subcommittee’s first oversight hearing on the draft Framework back in December 2011, Mr. Chairman, you specifically asked Ms. Nancy Stoner, Acting Administrator for the EPA Office of Water, if the EPA was open to using the pilot plan of 15-20 pilot communities in implementing the Framework proposed by the Coalition. Ms. Stoner answered, “Yes that is what I was talking about in terms of those who have already done a lot of thinking and planning. We are hoping those could be initial pilots for us, and others could learn from their successes.” Ms. Stoner went on to say, “Our strategy that we are working on now would identify how we would like to work with communities through pilot projects and other means, as well.” Finally, Mr. Chairman, you asked if EPA would have something moving forward by spring, to which Ms. Stoner replied, “Yes.”

I, and the communities the Coalition represents, left that hearing encouraged that finally, after years of pleading, EPA finally understood. We were optimistic that a new policy framework would emerge, consistent with that commitment that worked to implement the standards of the CWA in a manner that was efficient, expedient and affordable.

Based on what I know today, EPA has not yet fulfilled its commitment. We still need a “Showcase Community” program that is a true demonstration program, rather than continuing the long-time practice of negotiating judicial decrees and leaving individual communities to “figure it out by themselves.”

Based on EPA’s announcements, we are not convinced that EPA has committed to using pilot demonstration communities in implementing the Framework. Under EPA’s Integrated Policy, and the most recent “Green Infrastructure Fact Sheets”, all of the financial burden and legal risk involved in developing an alternative framework remains on local communities. Under this approach Communities are given the choice of pursuing alternative approaches without direct financial, technical or related support from EPA. If a local community has access to money and expertise, and they get it right, EPA will then embrace them. If, however, they get it wrong, EPA and the U.S. Department of Justice (DOJ) will leave them subject to continued enforcement to “figure it out a second time.” This system of “forced local experiments” without federal funding is wasteful and inequitable. And, we know there is a better way – a third way – that does not ignore the mandates of the Clean Water Act, but also does not continue a “command and control” regulatory system that is inconsistent with the financial realities of America’s cities and towns.

Our Coalition has repeatedly requested that the EPA establish between 15-20 demonstration partnerships in each of the next five years in communities across the nation currently facing expensive mandated wet weather improvements. We want to see these partnerships transparently highlighted to show Congress and other like communities how the EPA and local communities can work together to implement flexible, practical and affordable wet weather solutions. By working with pilot communities, EPA could demonstrate how the use of new, innovative approaches can result in the same or better water quality results for a smaller investment of local taxpayer dollars.

Under the Coalition’s proposal, EPA would be leading the process, working in partnership with local communities, and lending EPA’s own significant body of resources and expertise to the effort. The end product of the Coalition’s proposal will be the development of the foundational data and results that can then be replicated across the nation with confidence of outcome and result. Anything less continues the current, unacceptable, process of fragmented, uncoordinated, differing approaches outcomes. There is a better way to implement a national policy, and I believe the Coalition’s proposal is that better way.

Yet, it has been my personal experience that EPA headquarters has refused to provide the direction necessary for their Regions to utilize pilot demonstration communities in implementing the Framework, applying a key component of transparency, accountability and fairness to this integrated approach and finding flexible, cost effective solutions to wet weather water quality conditions.

In fact, EPA headquarters continues to rely on their Regions and the respective state clean water agencies to implement the Framework in a rather reactive, tentative and ineffective way, rather than providing the leadership necessary to truly “roll up their sleeves” and proactively seek out

and work with communities that would benefit from such flexible, adaptive approaches to wet weather problems.

EPA may say they have been “working with” communities, such as Philadelphia, New York City and Cleveland, Ohio, on “innovative” agreements that incorporate alternative solutions such as green infrastructure. However, the hidden truth is that these communities have spent multiple millions of ratepayer dollars over the course of half a decade just to negotiate and find agreement with EPA on these innovations.” My community of Hamilton County has literally spent millions of dollars just on attorneys and consultants to “negotiate” a consent decree with the EPA and DOJ, and we still do not know if EPA will approve of our new plan using “innovative” approaches, nor do we yet believe that we will be able to afford the resulting agreement.

This approach is not particularly proactive, nor is it cost effective. EPA must commit to change the way they go about working with our communities in a way that ensures ratepayer funds are used for water quality improvements and not on attorneys and consultants fees in fighting with the agency and their lawyers to find agreement on “innovative” solutions.

As I stated in my testimony before this Subcommittee last December, the Coalition believes that Congress can ensure that innovative EPA policy changes, such as the Framework, 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 continue to provide oversight and direction to the EPA in promoting cost effective tools such as green infrastructure, pollutant trading, and other alternative measures that can provide innovative and affordable wet weather solutions. We believe by allowing communities to prioritize these alternative solutions through effective implementation of EPA’s Framework, we will ensure that practical, accountable and affordable remedies are approved and used to reduce and eliminate CSO violations.

The Coalition believes we are missing out on a rare and potentially enormous opportunity to limit or control the huge costs associated with wet weather CWA mandates. However, by not implementing the Framework in a manner that can ensure success in providing affordable and effective solutions that meet CWA goals, our communities will continue to become economically decimated by double-digit rate increases for expensive infrastructure investments.

CWA tools like integrated planning, adaptive management approaches and innovative watershed-based permits and pollution controls (such as pollutant trading) mentioned in the Framework will not be successfully implemented unless EPA is committed, from EPA headquarters out to the Regions, to make them work. We believe by addressing the implementation of the Framework through pilot demonstration communities, Congress can hold EPA accountable and ensure measurable long-term successes for these more flexible approaches. Additionally, communities that invest their scarce resources in developing integrated plans under the Framework must have a long-term commitment from EPA in order to ensure the regulatory certainty is in place to make these innovations work under the CWA. Investments in innovations such as adaptive management, green infrastructure and pollutant trading under the Framework can only be successful if given enough time to work, and EPA’s track record for regulatory

certainty does not give us much comfort under these circumstances unless pilot demonstration communities are identified and EPA is on record as approving such integrated plans for the long-term.

It is our recommendation that, for communities now operating under judicial or administrative consent decrees, the EPA and DOJ make a clear, written commitment upfront to update and to modify these decrees more frequently in the future so that their terms do not delay or hinder “regulatory flexibility” from truly taking effect.

I also want to provide the Subcommittee with a direct report from the “front lines” of our battle involving efforts to improve water quality while placing unprecedented financial burdens on American urban areas and towns. Bluntly, conditions on the front lines are terrible and we need your help.

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. We must lessen the financial impact on communities by developing alternative wet weather management approaches that 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, we have cut our County budget by over 35% since 2007. Because of the recession, we have been forced to reduce our budget for all operations of the county – corrections, courts and law enforcement; public works projects of road, highway and bridge repairs; Auditor, Recorder, Treasurer, Coroner and all other facets of county government – by over \$100 million in five years, and eliminating over 1,500 jobs in the process. We can neither borrow money nor print money to balance our budget. We can only spend what we have and, consequently, have had to make do with less with no end in sight.

Yet, in the midst of this horror story, CSO/SSO mandate-driven Sewer District spending continues to increase. Since 2008 when the recession began, our bipartisan County Commission has been forced to increase Sewer District rates by over 50%. And our Sewer District, now facing hundreds of millions of Consent Decree mandated spending, projects another 18% in rate increases in the next two years. Since 2004, when our CSO/SSO consent decree was approved by the federal court, sewer rates have increased nine consecutive years cumulatively by more than 130%. In my community, few if any people have their incomes increase 10% per year or double every decade, the way that CSO/SSO consent decree-driven sewer rates increase.

The bizarre reality is that our constituents are now paying a huge percentage of their local public budgets to federally-mandated sewer programs, as compared to police, fire, welfare, roads, and other primary services. For example, the entire 2012 budget for all of Hamilton County, Ohio (\$207 million) is now far less than the 2012 budget of our Sewer District (about \$380 million, with \$202 million in capital and \$180 million in operations, of which \$90 million is payments on capital debt). Without significant federal relief, this trend will worsen as mandated build-outs continue and local

debt payment loads increase. Not only does mandated sewer work continue for decades, it is almost entirely locally funded. Those increased sewer rates have paid for more than \$400 million in consent decree mandated work thus far and we face nearly seven more years of increased spending to reach about \$1.1 billion (in 2006 dollars) of Phase 1 spending in a two phase consent decree mandated program. Phase 2 of the mandated work, which starts in 2018, is estimated to cost about \$2 billion more. With inflation, those amounts will only increase – even as local incomes stagnate or decrease and other public spending continues to be cut.

Where is the balance in this approach – or the fairness? What do I tell my constituents when they ask why I am forcing them to pay more for sewer repairs each year than I raise from all other revenue sources for all other county operations? What answer do I give them in explanation of why the federal government is laying the entire burden of federal clean water policy on local government? How do I justify raising sewer rates to unaffordable levels at the very same time that I cannot provide for police patrols; must close down jails; cannot fix my roads and bridges; and have endured 50% cuts in human services support at the same time that a new 40% demand for human services help has been created?

We are all for clean water, but where is the balance? And, the sad truth is when all is said and done, and we've spent all of this money, we still won't have clean water in our rivers. There remain types and sources of pollutants not covered by the current wave of EPA enforcement actions. When is that shoe going to drop? And when it does, who is going to pay for that?

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 current 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 are open and desire this sustainable approach if it can save our ratepayers significant money. To achieve those savings will probably require EPA assistance, because these new approaches could be burdened with so many new requirements that they fail to result in cost savings. 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; and
- Creek bed stabilization to reduce erosion by diverting high flows away from streambanks and controlling the slope of the creek bed.

EPA's current "siloed" 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 and money spent as a percentage of average household income as opposed to proactively helping communities implement common sense, cost-effective water quality improvements that can actually benefit water quality in local rivers and streams.

Hamilton County, Ohio and the "Perfect Storm" Communities Coalition looks forward to continuing to work 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 EPA's commitment to cost effective alternative approaches to expensive water quality wet weather challenges faced by communities like mine and those of our Coalition.

Thank you, Mr. Chairman, for the opportunity to provide testimony at today's hearing and I would stand for any questions from you and Members of the Subcommittee.