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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**

**“Integrated Planning and Permitting Framework: An Opportunity for EPA to Provide
Communities with Flexibility to Make Smart Investments in Water Quality.”**

H.R. 2707 – *“The Clean Water Compliance and Ratepayer Affordability Act”*

July 24, 2014

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 (County) Board of Commissioners. I am here today testifying on behalf of the County and the “Perfect Storm” Communities Coalition (Coalition). The Coalition is made up of communities dealing with a “perfect storm”: combinations 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.

Hamilton County and the Coalition wholeheartedly support the swift enactment of H.R. 2707, the “Clean Water Compliance and Ratepayer Affordability Act”. We very much appreciate the Subcommittee holding this hearing and want to thank Representative Steve Chabot, whose congressional district includes portions of Hamilton County, and fellow Ohioan, Representative Marcia Fudge for their leadership in introducing the bill. We also would like to thank the bill’s 13 other bipartisan cosponsors for supporting this legislation.

H.R. 2707 requires the Administrator of the Environmental Protection Agency (EPA) to carry out a program to work cooperatively with, and facilitate the efforts of, specifically identified pilot showcase communities to develop and implement integrated plans to meet their wastewater and stormwater obligations under the Federal Water Pollution Control Act, also known as the Clean Water Act (CWA). These pilot programs are to focus on cost-effective and flexible compliance methods consistent with the EPA’s Integrated Municipal Stormwater and Wastewater Approach Framework issued by the Agency in May 2012.

The bill directs the EPA Administrator, in consultation with state regulators, to select at least 15 pilot showcase communities to participate in the program each year for five years. It sets forth selection factors, including prioritizing those communities with a history of knowledgeable, detailed, and comprehensive efforts to develop integrated and adaptive clean water management practices. It is important to highlight, that communities who wish to revise their existing Long Term Control Plan to include a more cost effective and innovative approach to compliance would be eligible for relief under this pilot program.

H.R. 2707 would provide standards for approval of a municipality's integrated plan under the pilot program. This would provide community planners basic transparency regarding EPA's expectations and alleviate mounting frustration in what many local leaders characterize as a guessing game of regulatory expectations. The existing uncertainty of EPA's approval criteria forces communities such as Hamilton County to incur unnecessary and redundant expenditures to develop both a preferred long term plan and a costly contingency plan as a precautionary measure. Instead of finding EPA as a fully engaged partner, too often communities incur unnecessary planning expenditures because EPA does not clearly tell them what they expect in these adaptive plans, and default to non-adaptive approaches of big cement pipes buried deep underground. By instructing EPA to be an active partner with pilot showcase communities, HR 2707 will immediately reduce overall project costs by eliminating the uncertainty that produces costly contingency planning.

In addition, H.R. 2707 includes financial capability criteria, prioritization of obligations under the CWA, and the use of innovative and flexible approaches to meet obligations. The bill also allows priority to be given to municipalities seeking to develop and implement approaches that adapt to changed or uncertain future circumstances.

Finally, the bill would provide additional authorities regarding selected municipalities concerning extending the allowable National Point Source Discharge Elimination System (NPDES) permit term from five years to up to 25 years, modifying the implementation terms of a consent decree, and providing additional regulatory flexibility in approving and implementing an integrated plan that includes adaptive approaches.

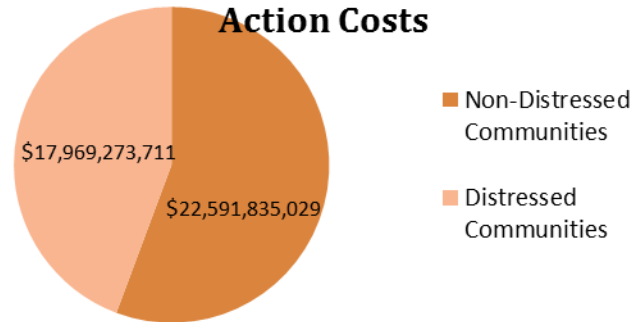
Enacting H.R. 2707 would allow the EPA to provide communities like mine and those of the Coalition with the flexibility to meet these huge regulatory challenges in a more affordable and cost-effective manner, but still consistent with achieving the environmental requirements of the CWA and existing regulations. This bill does not "gut" the CWA or limit EPA's authorities – quite the contrary. H.R. 2707 provides congressional authorization, direction, and guidance in implementing the Agency's own Integrated Planning and Permitting Framework crafted over the last several years, which the EPA, unfortunately, has heretofore failed to fully implement.

An important component of this Framework will enable communities to more readily apply green infrastructure technology to storm water management. Unlike traditional gray build projects which are removed from the public eye and serve a limited function, green infrastructure projects provide the public additional social, economic, and environmental benefits as a return on their investment. Not only does this technology offer a far more cost effective investment, but also offers communities continued savings in reducing the overall amount of water that enters the system and that must be processed. The proposed showcase communities would offer a promising opportunity to generate large quantities of meaningful data on green infrastructure and how it is best optimized.

The stakes are huge for the hundreds of communities beset with the massive costs of complying with EPA mandates for CWA compliance, from court-driven consent decrees, administrative orders, and permit compliance mandates. Over the last ten years alone, over \$40 billion in mandated wastewater and stormwater upgrades have been mandated on communities large and

small across the nation, with many of these communities located in regions experiencing some of the worst economic conditions in decades. The costs of using traditional methods to meet federal CWA wet weather mandates are enormous, with some costing billions of dollars per community and leading to massive rate increases for local ratepayers. Under normal economic conditions, these mandates are often not affordable; but in the current economy, incurring these costs will have long-term negative impacts. In fact, almost \$18 billion, or 44% of the total compliance action costs (Figure 1), fell on these distressed communities.¹

Figure 1: Distribution of Compliance Action Costs



In Hamilton County, for instance, our poverty rate for individuals living in the County escalated from 2000 to 2012 by over 66%, translating into 40% of County households (in 2012) bringing in less than \$35,000 in total household income per year.² And, one in ten of households in the County made less than \$10,000 annually in 2012.³ These are the families that will be hardest hit by the astronomical sewer rate increases set for the future in my County. These are the families who will pay 350% more (gray-build) for sewer in the next 30 years. And, these are the families who will benefit most from any savings to be derived from the more flexible, adaptive approach that H.R. 2707 allows.

¹ The analysis considers the costs to distressed communities, using the following Economic Development Agency (EDA) economic distress criteria:

- Unemployment rate: A region that has an unemployment rate that is, for the most recent 24-month period for which data are available, at least one percentage point above the national unemployment rate.
- Per capita income: A region that has a per capita income that is, for the most recent period for which data are available, 80 percent or less of the national average per capita income.

Source: Case Data from the Integrated Compliance Information System (ICIS) Federal Enforcement and Compliance (FE&C) Dataset. Unemployment data are from the April 2014 Current Population Survey. Income data from the Bureau of Economic Analysis and are for 2012.

² Source: Census Bureau, American Community Survey 1-Year Estimates, 2012
Income figures are in 2012 inflation adjusted dollars

³ Ibid.

Communities, like mine, that have been dealing with the impacts of a combination of high unemployment, housing foreclosures, declining water and sewer use, and economic challenges now must also face the enormous burden of complying with these mandated sewer upgrades. While the federal government provided hefty grants for prior CWA mandates in the past, no such grant programs exist for these new mandates. In fact, my County alone must spend over \$500 million more with a gray-build solution than with an adaptive green infrastructure approach over the next several decades. And these cost savings have been estimated before the enactment of H.R. 2707, which we believe could provide additional savings in the form of adaptive, flexible approaches to water quality improvements in our County over the long-term.

Using innovative approaches to correct combined sewer overflows (CSOs), sanitary sewer overflows (SSOs), and stormwater impacts during wet weather events can save ratepayers significantly over the long-term. Communities must be able to develop alternative wet weather management approaches to lessen the financial impact, 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, gray infrastructure, and other innovative techniques to reduce wet weather impacts.

In my County, we have proposed a watershed-based approach to dealing with our CSO issues, which could result in 22% lower water and sewer rates for ratepayers over the more traditional “gray” approach (Figure 2), using investments that can also provide other community benefits, such as added green-space, day-lighted streams and wetlands, and other “green” infrastructure that will add value and quality of life attributes to rejuvenate some of our communities while cleaning up our environment. Again, these are pre-H.R. 2707 estimates that could benefit from the enactment of the legislation.

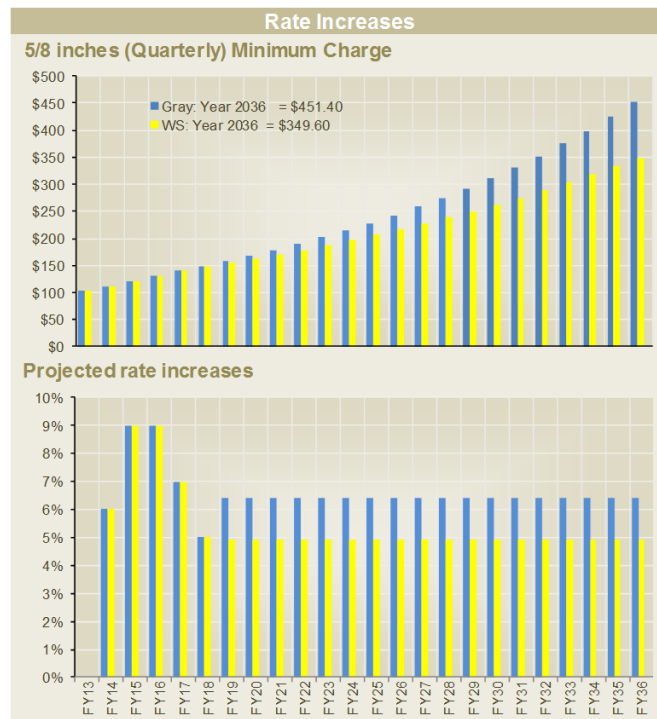


Figure 2

We must be allowed the flexibility to try new, innovative approaches in meeting the objectives of the CWA in a way that can both ensure these investments are made intelligently and to minimize the impact on our already stressed ratepayers. While we believe the EPA Framework could prove to be a solid approach towards providing more flexibility under the CWA, we question EPA's willingness to apply their Framework consistently, through changing leadership inevitable over time, in a long-term, broad, transparent, programmatic, fair and balanced manner, absent specific legislative direction.

We believe enactment of H.R. 2707 is absolutely necessary in order to properly implement the EPA Framework. As of today, we are not convinced that EPA is meaningfully committed to the Framework, or to using pilot showcase demonstration communities in implementing their Framework on a programmatic basis. On May 9 of this year, the EPA announced the availability of a small amount of assistance for communities seeking technical support to develop and implement an integrated planning approach to meeting CWA requirements for municipal wastewater and stormwater management. In response, EPA received letters from a diverse group of over 25 communities located in all but one of the 10 EPA Regions across the U.S. expressing interest in participating in and developing integrated plans.

While the interest in integrated planning under the EPA Framework appears to be great, the small amount of resources the EPA has made available for this technical assistance would only help a handful of these communities and does not appear to the Coalition to be a true and full commitment to the programmatic pilot showcase community approach that H.R. 2707 would require. For example, it does not commit EPA to stand by the selected technological choices and not require communities to pay for a second, replacement technology if the first one is not fully successful. While the technical assistance program provides the EPA with the ability to say that something is being done on this issue, we do not believe this small effort will create significant opportunities for flexibility and innovation under the CWA, nor does it provide the Coalition with comfort as to the Agency's programmatic commitment to implementing the Framework.

In the past, the Coalition has repeatedly requested that the EPA establish demonstration partnerships in showcase communities across the nation currently facing expensive mandated wet weather improvements. We wanted to see these partnerships transparently highlighted to show the Congress and other like communities how the EPA and local partners can work together, under the law, to implement flexible, practical, affordable wet weather solutions. By working with pilot showcase communities, EPA could demonstrate how the use of new, innovative approaches can result in the same or better water quality results for a smaller and smarter investment of local taxpayer dollars.

H.R. 2707 would encourage the EPA to commit to a broader, more programmatic approach for using the Framework process. By directing the EPA to annually name at least 15 specific communities as pilot showcase communities over the next five years, Congress would ensure this commitment through the open and transparent demonstration of the Framework's newly authorized flexibility. In our opinion, H.R. 2707 will provide the legislative foundation for EPA to provide additional flexibility that equates to more affordable, common sense approaches to

meeting CWA wet weather requirements by promoting innovation and adaptability, and not simply mandating the most expensive up-front solutions available.

In the Coalition's view, CWA tools like integrated planning, ongoing adaptive management approaches, and innovative watershed-based permits and pollution controls (such as pollutant trading), all mentioned in the Framework, will not be successfully implemented unless EPA is committed (financially, legally, and technically), from EPA headquarters out to the Regions, to make them work. Through the enactment of H.R. 2707, we believe that the naming of pilot showcase demonstration communities, Congress would ensure swift and thorough implementation of the Framework and ensure measurable long-term successes for these more flexible and affordable 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. H.R. 2707 encourages investments in innovative approaches under the Framework, activities that can only be successful if given enough time to work. H.R. 2707 ensures that pilot showcase demonstration communities are identified and that EPA is on record as approving such integrated plans, along with the related CWA permits or consent decrees necessary over the long-term.

If HR 2707 was enacted next week, it would start having an impact next week. The shared sense of urgency among Coalition members was in many ways a catalyst for HR 2707. This legislation was purposefully crafted with a limited scope and avoidance of contentious issues or spending provisions. It is not the intention of the bill to provide a comprehensive solution to all issues of sewer affordability. There is no doubt that a long term solution to affordability will certainly require a far more expansive bill. Even so we are confident that HR 2707 offers Congress the most promising vehicle to address CSO/SSO affordability in the remaining session of the 113th Congress. By enacting H.R. 2707, Congress would provide the leadership, legal authority, and direction to the EPA in promoting cost effective, innovative and affordable wet weather solutions. We believe by allowing communities to prioritize these alternative solutions through the 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 current proscriptive, inflexible 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. Innovative methods are implemented "at the risk of the community". Further, the current paradigm holds communities accountable for implementing programs and projects, many of which could have been negotiated years if not decades ago, without requiring that EPA consider community requests for flexibility based upon evolving technology and best practices.

Across the nation, affected communities recognize the need to effectively manage their stormwater and desire to improve their own, local water quality, particularly at a cost affordable to local residents. 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 unnecessary costs associated

with traditional “gray” 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. We believe H.R. 2707, if enacted, will help to further the use of these innovative, cost-effective approaches in complying with the CWA.

Hamilton County, Ohio and the “Perfect Storm” Communities Coalition looks forward to continuing to work with you, Chairman Gibbs, Ranking Member Bishop, and the Subcommittee, as well as with the EPA, in enacting and implementing H.R. 2707. We look forward to the implementation of the EPA Framework in developing flexible, innovative approaches in meeting wet weather challenges, including the creation of pilot showcase communities. And, through a programmatic commitment to the Framework, EPA can assist communities like mine and those of our Coalition in complying with the CWA using cost effective alternative approaches to better address expensive wet weather water quality challenges.

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.