ORIGINAL

IN THE SUPREME COURT OF OHIO

NORTHEAST OHIO REGIONAL SEWER DISTRICT,	)	CASE NO. 13-1770
Plaintiff/Appellee/Cross-Appellant,	)	
vs.	)	On Appeal from the Cuyahoga County Court of Appeals, Eighth Appellate District Appellate Case No: 98728-98729 Civil Case No: CV-714945
BATH TOWNSHIP, et al.,	)	
Defendants/Appellants/Cross-Appellee.	)	

MEMORANDUM IN SUPPORT OF JURISDICTION
AS *AMICUS CURIAE*
NATIONAL ASSOCIATION OF CLEAN WATER AGENCIES (NACWA) and ASSOCIATION OF OHIO METROPOLITAN WASTEWATER AGENCIES (AOMWA)

Andrea M. Salimbene (#0080622)
MCMAHON DEGULIS LLP
1335 Dublin Road Suite 216A
Columbus, OH 43215
Ph: (614) 678-5372
Fax: (614) 485-9108
asalimbene@mdllp.net
(COUNSEL OF RECORD)

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Gregory J. DeGulis (#0045705)
MCMAHON DEGULIS LLP
The Caxton Building, Suite 650
812 Huron Road
Cleveland, OH 44115-1168
Ph: (216) 367-1403
Fax: (216) 621-0577
gdegulis@mdllp.net

Erica M. Spitzig (#0085536)
MCMAHON DEGULIS LLP
The Monastery
1055 St. Paul Place
Cincinnati, OH 45202
Ph: (513) 898-1542
Fax: (216) 621-0577
espitzig@mdllp.net

Counsel for Amicus Curiae **NATIONAL ASSOCIATION OF CLEAN WATER AGENCIES (NACWA) and ASSOCIATION OF OHIO METROPOLITAN WASTEWATER AGENCIES (AOMWA)**

Attorneys for Appellee/Cross-Appellant:

For N.E.O.R.S.D.

Mark I. Wallach (#0010948)
THACKER MARTINSEK L.P.A.
2330 One Cleveland Center
1375 East Ninth Street
Cleveland, Ohio 44114
(P) 216-456-3848
(F) 216-456-3850
mwallach@tmlpa.com

James F. Lang (#0059668)
Molly A. Drake (#0083556)
Matthew J. Kucharson (#0082388)
CALFEE, HALTER & GRISWOLD L.L.P
The Calfee Building
1405 East Sixth Street
Cleveland, Ohio 44114
(P) 216-622-8200
(F) 216-241-0816
jlang@calfee.com
mkucharson@calfee.com
mdrake@calfee.com

Marlene Sundheimer (#0007150)
Director of Law
N.E.O.R.S.D.
3900 Euclid Ave
Cleveland, Ohio 44115
(P) 216-881-6600
(F) 216-881-4407
Sundheimerm@neorsd.org

Attorneys for Appellants/Cross-Appellees

For the City of Beachwood, City of Bedford Heights, City of Cleveland Heights, Village of Glenwillow, City of Independence, City of Lyndhurst, City of North Royalton, Village of Oakwood, City of Olmsted Falls and City of Strongsville

John H. Gibbon (#0010986)
City of Cleveland Heights Director of Law
Cleveland Heights Municipal Court
40 Severance Circle
Cleveland Heights, Ohio 44118
(P) 216-291-5775
(F) 216-291-3731
jgibbon@walterhav.com

Christopher L. Gibbon (#0010983)
Heather R. Baldwin Vlasuk (#0077459)
WALTER & HAVERFIELD L.L.P.
The Tower at Erieview
1301 East Ninth Street, Suite 3500
Cleveland, Ohio 44114
(P) 216-781-1212
(F) 216-916-2332
cgibbon@walterhav.com
hvlasuk@walterhav.com

For the City of Lyndhurst

Paul T. Murphy (#0016470)
City of Lyndhurst Director of Law
5301 Mayfield Road
Lyndhurst, OH 44124
(P) 440-442-5777
(F) 440-442-1844
carbmurph@aol.com

For the City of Brecksville

David J. Matty (#0012335)
City of Brecksville Director of Law
Justin Whelan (#0088085)
Erin Hooper (#0082324)
Shana A. Samson (#0072871)
RADEMAKER, MATTY, HENRIKSON & GREVE
55 Public Square, Suite 1775
Cleveland, Ohio 44113
(P) 216-621-6570
(F) 216-621-1127
dmatty@rmmglaw.com
ssamson@rmmglaw.com
jwhelan@rmmglaw.com
ehooper@rmmglaw.com

For the Intervening Defendants-Appellants

The Greater Cleveland Association of Building Owners and Managers, Cleveland Automobile Dealers Association, The Northern Ohio Chapter of NAIOP, The Association for Commercial Real Estate, CADA Properties LLC, the Ohio Council of Retail Merchants Partners, LLC, Creekview Commons, LLC, Gargo Warehouse LLC, Greens of Lyndhurst Ltd., Highlands Business Park, LLC, JES Development Ltd., Lakepoint Office Park, LLC, Landerbrook Point, LLC, Newport Square, Ltd., Park East Office Park LLC, Shaker Plaza, Ltd., Pavilion Properties, LLC, and WGG Development, Ltd.

Sheldon Berns (#0000140)
Benjamin J. Ockner (#0034404)
Jordan B. Berns (#0047404)
Timothy J. Duff (#0046764)
Gary F. Werner (#0070591)
BERNS, OCKNER & GREENBERGER, LLC
3733 Park East Drive, Suite 200
Beachwood, Ohio 44122
(P) 216-831-8838
(F) 216-464-4489
sberns@bernsockner.com
bockner@bernsockner.com
jberns@bernsockner.com
gwerner@bernsockner.com
tduff@bernsockner.com

Also Listed:

For Bath Township, Ohio, et al.

Sherri Bevan Walsh (#0030038)
Summit County Prosecutor
Michael D. Todd (#0078920)
Marvin D. Evans (#0055616)
Summit County Assistant Prosecuting Attorneys
53 University Avenue, 6th Floor
Akron, Ohio 44308
(P) 330-643-2800
(F) 330-643-8708
toddm@prosecutor.summitoh.net

For the City of Beachwood, et al.

Stephen M. O'Bryan (#0009512)
TAFT, STETTINIUS & HOLLISTER L.L.P.
200 Public Square Suite 3500
Cleveland, Ohio 44114
(P) 216-241-2838
(F) 216-241-3707
sobryan@taftlaw.com

Rebecca K. Schaltenbrand (#0064817)
ICE MILLER L.L.P.
600 Superior Avenue, East, Suite 1701
Cleveland, Ohio 44114
(P) 216-621-6501
(F) 216-621-6502
Rebecca.schaltenbrand@icemiller.com

For the City of Bedford

Kenneth A. Schuman (#0067975)
City of Bedford Law Director
5306 Transportation Blvd.
Garfield Heights, Ohio 44125
(P) 216-587-2120
kas@rgm-law.com

Charles A. Bakula (#0058631)
30285 Bruce Industrial Parkway
Suite C — 2nd Floor
Solon, Ohio 44139
(P) 330-487-5446
charlesbakula@netscape.net

For the City of Bedford Heights

Ross S. Cirincione (#0024774)
City of Bedford Heights Law Director
5306 Transportation Blvd.
Garfield Heights, Ohio 44125
(P) 440-463-2774
rsc@rgm-law.com

For the City of Berea

Gregory M. Sponseller (#0012350)
43 East Bridge Street
Suite # 101
Berea, Ohio 44017
(P) 440-826-4114
(F) 440-826-1718
Greg@berealaw.com

For the Village of Boston Heights

Constance A. Hesske (#0061153)
1655 W. Market Street, Suite 350
Akron, Ohio 44313
(P) 330-836-8523
attyhesske@hesske.com

Charles T. Riehl (#0010971)
WALTER & HAVERFIELD, L.L.P.
The Tower at Erieview, Suite 3500
1301 East Ninth Street
Cleveland, Ohio 44114
(P) 216-781-1212
(F) 216-575-0911
criehl@walterhav.com

For the City of Brecksville, et al.

David J. Matty (#0012335)
City of Brecksville Director of Law
Justin Whelan (#0088085)
Erin Hooper (#0082324)
Shana A. Samson (#0072871)
RADEMAKER, MATTY, HENRIKSON & GREVE
55 Public Square, Suite 1775
Cleveland, Ohio 44113
(P) 216-621-6570
(F) 216-621-1127
dmatty@rmmglaw.com
ssamson@rmmglaw.com
jwhelan@rmmglaw.com
ehooper@rmmglaw.com

For the City of Broadview Heights

Vince Ruffa (#0065918)
City of Broadview Heights Director of Law
Ann C. Oakar (#0073918)
OAKAR & RUFFA
1000 W. Wallings Road, Suite A
Broadview Heights, Ohio 44147
(P) 440-550-4488
vruffa@oakarandruffa.com
aoakar@oakarandruffa.com
annieoakar@hotmail.com

For the City of Brook Park

Neal M. Jamison (#0005911)
City of Brook Park Director of Law
Brook Park City Hall
6161 Engle Road
Brook Park, OH 44142
(P) 216-433-1300
njamison@cityofbrookpark.com
neal.jamison@yahoo.com

For the City of Brooklyn

Scott Claussen (#0074465)
City of Brooklyn Director of Law
Brooklyn City Hall
7619 Memphis Avenue
Brooklyn, Ohio 44144
(P) 216-635-4223
sclaussen@brooklynohio.gov
scott.claussen@lawwoodoh.net

For the Village of Brooklyn Heights

Jerome E. Dowling (#0026035)
Brooklyn Heights Director of Law
20800 Center Ridge Road, Suite 222
Rocky River, Ohio 44116
(P) 216-331-1010
Benru677@att.net
kbaciak@brooklynhts.org

For the City of Cleveland

Barbara A. Langhenry (#0038838)
Director of Law
Catherine Ma (#0069772)
Shirley A. Tomasello (#0059593)
Assistant Directors of Law
City of Cleveland
City Hall
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114
(P) 216-664-2893
cma@city.cleveland.oh.us
stomasello@city.cleveland.oh.us
jscotta@city.cleveland.oh.us

For the City of Cleveland Heights

William R. Hanna (#0068705)
WALTER & HAVERFIELD L.L.P.
The Tower at Erieview
1301 East Ninth Street, Suite 3500
Cleveland, Ohio 44114
(P) 216-928-2940
(F) 216-575-0911
whanna@walterhav.com

For Columbia Township

Dennis Will (#0038129)
Lorain County Prosecutor
Gerald A. Innes (#0009020)
Assistant County Prosecutor
225 Court Street, 3rd Floor
Elyria, Ohio 44035
(P) 440-329-5631
(F) 440-329-5430
lcp@lcprosecutor.org

For the Village of Cuyahoga Heights, et al.

Jonathan D. Greenberg (#0000687)
Cuyahoga Heights Director of Law
Aimee W. Lane (#0071392)
WALTER & HAVERFIELD L.L.P.
The Tower at Erieview
1301 East Ninth Street, Suite 3500
Cleveland, Ohio 44114
(P) 216-781-1212
(F) 216-575-0911
jgreenberg@walterhav.com
alane@walterhav.com

For the City of East Cleveland

Ronald K. Riley (#0018857)
City of East Cleveland Director of Law
City of East Cleveland City Hall
14340 Euclid Ave
East Cleveland, OH 44112
(P) 216-681-5020
(F) 216-681-2650
rriley@eastcleveland.org

For the City of Euclid

L. Christopher Frey(#0038964)
City of Euclid Director of Law
City of Euclid City Hall
585 East 222nd Street
Euclid, Ohio 44123
(P) 216-289-2746
(F) 216-289-2766
cfrey@cityofeuclid.com

For the City of Garfield Heights

Timothy Riley (#0042007)
City of Garfield Heights Director of Law
Kevin P. Weiler (#0008987)
City of Garfield Heights Assistant Director of Law
City of Garfield Heights City Hall
5407 Turney Road
Garfield Heights, Ohio 44125
(P) 216-621-2771
(P) 216-475-1100
(F) 216-475-1124
lawtjr@aol.com
triley@garfieldhts.org
kweiler@garfieldhts.org

For the Village of Glenwillow

Stephen M. Klonowski (#0006207)
5306 Transportation Blvd.
Garfield Heights, Ohio 44125
(P) 216-587-2120
sklonowski@glenwillow-oh.gov
smk@rgm-law.com

For the City of Highland Heights

Timothy G. Paluf (#0025053)
Highland Heights Director of Law
1540 Leader Building
526 Superior Avenue
Cleveland, Ohio 44114
(P) 216-696-9555
tpaluf@highlandhts.com

For the Village of Highland Hills

Thomas P. O'Donnell (#0002462)
Village of Highland Hills Law Director
3700 Northfield Road, Suite 11
Cleveland, Ohio 44122
(P) 216-409-1989
todonnell@todlaw.com

For the City of Hudson, et al.

R. Todd Hunt (#0008951)
City of Hudson City Solicitor
WALTER & HAVERFIELD LLP
The Tower at Erieview
1301 East Ninth Street, Suite 3500
Cleveland, Ohio 44114
(P) 216-781-1212
(F) 216-575-0911
rthunt@walterhav.com

For the City of Independence

Gregory J. O'Brien (#0063441)
City of Independence Director of Law
TAFT, STETTINIUS & HOLLISTER LLP
200 Public Square
Suite 3500
Cleveland, Ohio 44114
(P) 216-241-2838
(F) 216-241-3707
gobrien@taftlaw.com

For the City of Lakewood

Kevin M. Butler (#0074204)
City of Lakewood Director of Law
12650 Detroit Road
Lakewood, Ohio 44107
Kevin.Bulter@lakewoodoh.net

For the Village of Linndale

George T. Simon (#0070379)
6638 Harris Road, 2nd Floor
Broadview Heights, Ohio 44147
(P) 440-746-9600
hellogeorgesimon@gmail.com

For the City of Lyndhurst

David M. Maistros (#0016470)
10 Center St.
Suite 2-B
Chagrin Falls, Ohio 44022
(P) 216-401-9949
davidmaistros@maistroslaw.com

Robert J. Foulds (#0008633)
DYSON, SCHMIDLIN & FOULDS CO., LPA
5843 Mayfield Road
Cleveland, Ohio 44124
(P) 440-461-9000
(F) 440-461-6108
rfoulds@dsf-law.com

For the City of Macedonia, et al.

Joseph W. Diemert, Jr.(#0011573)
City of Macedonia Law Director
Mark V. Guidetti (#0084175)
Thomas M. Hanculak (#0006985)
JOSEPH W. DIEMERT, JR. & ASSOC.
1360 S.O.M. Center Road
Cleveland, Ohio 44124
(P) 440-442-6800
(F) 440-442-0825
jwdiemert@diemertlaw.com
tmhanculak@diemertlaw.com
mvguidetti@diemertlaw.com

For the City of Maple Heights, et al.

John J. Montello (#0037909)
City of Maple Heights Law Director
Blair N. Melling (#0002896)
303 Columbus Road
Bedford, Ohio 44146
(P) 440-232-2701
(F) 440-232-7995
jmontello@bedfordlawyers.com
bmelling@bedfordlawyers.com

For the City of Mayfield Heights

L. Bryan Carr (#0066649)
L. BRYAN CARR CO., LPA
1392 S.O.M. Center Road
Mayfield Heights, Ohio 44124
(P) 440-473-2277
carrlawfirm@aol.com

For Mayfield Village

Joseph W. Diemert, Jr.(#0011573)
Mayfield Village Director of Law
Diane A. Calta (#0070453)
Assistant Law Director
JOSEPH W. DIEMERT, JR. & ASSOC.
1360 S.O.M. Center Road
Cleveland, Ohio 44124
(P) 440-442-6800
(F) 440-442-0825
jwdiemert@diemertlaw.com
dacalta@diemertlaw.com

For the City of Middleburg Heights

Peter H. Hull (#0003731)
City of Middleburg Heights Law Director
15700 E. Bagley Road
Middleburg Heights, Ohio 44130
(P) 440-234-8811
peterhhull@gmail.com

For the Village of Moreland Hills, et al.

Margaret A. Cannon (#0009532)
Village of Moreland Hills Director of Law
WALTER & HAVERFIELD LLP
The Tower at Erieview
1301 East Ninth Street, Suite 3500
Cleveland, Ohio 44114
(P) 216-781-1212
(F) 216-575-0911
mcannon@walterhav.com

Rebecca K. Schaltenbrand (#0064817)
ICE MILLER L.L.P.
600 Superior Avenue, East, Suite 1701 Cleveland, Ohio 44114
(P) 216-621-6501
(F) 216-621-6502
Rebecca.schaltenbrand@icemiller.com

For the Village of Newburgh Heights

Luke F. McConville (#0067222)
Village of Newburgh Heights Director of Law
WALDHEGER – COYNE CO., LPA
1991 Crocker Road, Suite 550
Westlake, Ohio 44145
(P) 440-835-0600
luke@healthlaw.com

For the Village North Randall

Leonard A. Spremulli (#0023915)
Village of North Randall Director of Law
29325 Chagrin Blvd. Suite 305
Pepper Pike, Ohio 44122
(P) 216-831-4935
spremullil@aol.com

For the City of North Royalton

Thomas A. Kelly III (#0010355)
City of North Royalton Law Director
KELLY AND KELLY, LLC
11221 Pearl Road
Strongsville, Ohio 44136
(P) 440-846-0000
tkelly@northroyalton.org
tak@kellyandkelly.us

Donna M. Vozar (#0058620)
City of North Royalton Assistant Law Director
13834 Ridge Road
North Royalton, Ohio 44133
(P) 440-237-5686
dvozar@northroyalton.org
dvoz@74@hotmail.com

For the Village of Northfield

Bradric T. Bryan (#0047303)
Village of Northfield Law Director
GOODWIN AND BRYAN LLP
22050 Mastick Road
Cleveland, Ohio 44126
(P) 440-686-9000
bbryan@gbs-llp.com

For the Village of Oakwood

Stephen M. Klonowski (#0006207)
Village of Oakwood Law Director
5306 Transportation Blvd.
Garfield Heights, Ohio 44125
(P) 216-587-2120
sklonowski@glenwillow-oh.gov
sml@rgm-law.com

For Olmsted Township

Olmsted Township
c/o Mrs. Sherri Lippus, Trustee
26900 Cook Road
Olmsted Township, Ohio 44138
slippus@olmstedtownship.org

Robert J. Foulds (#0008633)
DYSON, SCHMIDLIN & FOULDS CO., LPA
5843 Mayfield Road
Cleveland, Ohio 44124
(P) 440-461-9000
(F) 440-461-6108
rfoulds@dsf-law.com

For Orange Village

Stephen L. Byron (#0055657)
Orange Village Director of Law
WALTER & HAVERFIELD L.L.P.
The Tower at Erieview
1301 East 9th Street
Suite 3500
Cleveland, OH 44114-1821
(P) 216-928-2892
(F) 216-916-2342
sbyron@walterhav.com

For the City of Parma

Timothy G. Dobeck (#0034699)
City of Parma Director of Law
Parma City Hall
6611 Ridge Road
Parma, Ohio 44129
(P) 440-885-8132
(F) 440-885-8008
tdobeck@parmalaw.org

For the City of Parma Heights

Marcia E. Hurt (#0010978)
Carmen Anthony Stavole (#0003086)
STAVOLE & MILLER
5700 Pearl Road Suite 202
Cleveland, Ohio 44129
(P) 440-886-0001
(F) 440-886-0077
mehurt@stavoleandmiller.com
tak@kellyandkelly.us

For the City of Pepper Pike

Stephen L. Byron (#0055657)
City of Pepper Pike Law Director
WALTER & HAVERFIELD L.L.P.
The Tower at Erieview
1301 East 9th Street
Suite 3500
Cleveland, OH 44114-1821
(P) 216-928-2892
(F) 216-916-2342
sbyron@walterhav.com

For the Village of Richfield, et al.

William R. Hanna (#0068705)
Village of Richfield Director of Law
Charles T. Riehl (#0010971)
WALTER & HAVERFIELD L.L.P.
The Tower at Erieview
1301 East Ninth Street, Suite 3500
Cleveland, Ohio 44114
(P) 216-928-2940
(F) 216-575-0911
whanna@walterhav.com
criehl@walterhav.com

For the City of Richmond Heights

R. Todd Hunt (#008951)
City of Richmond Heights Director of Law
Amiee W. Lane (#0071392)
WALTER & HAVERFIELD L.L.P.
The Tower at Erieview
1301 East Ninth Street, Suite 3500
Cleveland, Ohio 44114
(P) 216-928-2935
(F) 216-916-2372
rthunt@walterhav.com
alane@walterhav.com

For Sagamore Hills Township

Jeffrey J. Snell (#0040513)
Sagamore Hills Township Director of Law
253 W. Aurora Road, Suite 200
Sagamore Hills, Ohio 44067
(P) 330-467-9600
(F) 330-467-9314
jeff@attorneysnell.com

For the City of Seven Hills

Richard Pignatiello (#0041137)
City of Seven Hills Law Director
Seven Hills City Hall
3479 Jasmine Drive
Seven Hills, Ohio 44131
(P) 216-524-4421
(F) 216-524-0523
pignatiellolaw@aol.com

Patrick DiChiro (#0041986)
4141 Rockside Rd #230
Seven Hills, OH 44131
(P) 216-642-0424
sevenhillslaw@aol.com

For the City of Shaker Heights

Willliam M. Ondrey Gruber (#0005950)
Shaker Heights Director of Law
3400 Lee Road
Shaker Heights, Ohio 44120
(P) 216-491-1445
(F) 216-491-1447
William.gruber@shakeronline.com

For the City of Solon

David J. Matty (#0012335)
Justin Whelan (#0088085)
Erin Hooper (#0082324)
Shana A. Samson (#0072871)
RADEMAKER, MATTY, HENRIKSON & GREVE
55 Public Square, Suite 1775
Cleveland, Ohio 44113
(P) 216-621-6570
(F) 216-621-1127
dmatty@rmmglaw.com
ssamson@rmmglaw.com
jwhelan@rmmglaw.com
ehooper@rmmglaw.com

For the City of South Euclid

Michael P. Lograsso (#0058557)
City of South Euclid Law Director
1349 South Green Road
South Euclid, Ohio 44121
(P) 216-381-0400
(F) 216-381-0364
Lograssolaw@aol.com

For the City of Twinsburg

David M. Maistros (#0047390)
City of Twinsburg Law Director
10075 Ravenna Road
Twinsburg, Ohio 44087
(P) 330-963-6248
(F) 330-963-6251
dmaistros@twinsburg.oh.us
davidmaistros@maistroslaw.com

For the City of Strongsville

Kenneth Kraus (#0000812)
City of Strongsville Law Director
16099 Foltz Industrial Pkwy
Strongsville, Ohio 44149
(P) 440-580-3145
strongsvillelaw@strongsville.org

Daniel J. Kolick (#0002631)
KOLICK & KONDZER
Westlake Centre, Suite 110
24650 Center Ridge Road
Westlake, Ohio 44145
(P) 440-835-1200
dkolick@kolick-kondzer.com

For the Village of Valley View

David A. Lambros (#0008654)
Village of Valley View Solicitor
1 Berea Commons
Berea, Ohio 44017
(P) 440-816-1525
(F) 440-816-0604
Law2direct@aol.com

For the City of University Heights

Anthony Coyne (#0039605)
Director of Law
University Heights City Hall
2300 Warrensville Center Road
University Heights, Ohio 44118
(P) 216-523-1500
(F) 216-523-1705

Kenneth J. Fisher (#0001507)
KENNETH J. FISHER CO., L.P.A.
2100 Terminal Tower
50 Public Square
Cleveland, OH 44113-2204
(P) 216-696-7661
kfisher@fisher-lpa.com

For the City of Warrensville Heights

Teresa L. Metcalf-Beasley (#0061314)
City of Warrensville Heights Law Director
Sean P. Ruffin (#0069002)
City of Warrensville Heights City Hall
4301 Warrensville Center Road
Warrensville Heights, Ohio 44128
(P) 216-587-6500
(F) 216-587-6594
tmbeasley@calfee.com

For the Village of Walton Hills

Blair N. Melling (#0002896)
Village of Walton Hills Solicitor
303 Columbus Road
Bedford, Ohio 44146
(P) 440-232-2701
(F) 440-232-7995
bmelling@bedfordlawyers.com

For the City of Willoughby Hills

Thomas G. Lobe (#0001346)
City of Willoughby Hills Law Director
33977 Chardon Rd., Suite 100
Willoughby Hills, Ohio 44094
tomlobe@yahoo.com
lawdirector@willoughbyhills-oh.gov

For Intervenors Bishop Richard G. Lennon, et al.

Michael E. Cicero (#0058610)
Matthew T. Fitzsimmons, III (#0013404)
L. James Juliano, Jr. (#0005993)
NICOLA, GUDBRANSON & COOPER, LLC
Republic Bldg., Suite 1400
25 West Prospect Avenue
Cleveland, Ohio 44115
(P) 216-621-7227
(F) 216-621-3999
juliano@nicola.com
fitzsimmons@nicola.com
cicero@nicola.com

For Intervenor the Cleveland Metropolitan School District Board of Education

Brian E. Ambrosia (#0079455)
Adrian D. Thompson (#0036742)
TAFT, STETTINIUS & HOLLISTER
200 Public Square, Suite 3500
Cleveland, Ohio 44114
(P) 216-706-3912
Bambrosia@taftlaw.com
Athompson@taftlaw.com

For Intervenor Cleveland Branch National Association for the Advancement of Colored People
William H. Smith (#0016379)
WILLIAM H. SMITH & ASSOCIATES
940 Rockefeller Building
614 W. Superior Avenue
Cleveland, Ohio 44113
(P) 216-621-0058

For Amicus Curiae

For C.O.R.D.
John B. Albers II (#0025099)
Eric J. Luckage (#0067556)
ALBERS & ALBERS
88 North Fifth Street
Columbus, Ohio 43215
(P) 614-464-4414
(F) 614-464-0604
john.albers@alberslaw.com
eric.luckage@alberslaw.com

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I. This case involves matters of public and great general interest because the Court of Appeals has re-written Ohio law to severely restrict the operations of Ohio's clean water utilities and has eliminated tools necessary to meet Clean Water Act obligations.

The increasing urbanization of American communities and rapid expansion of impervious surfaces such as asphalt and concrete over the past several decades have brought a new challenge for regulators and local governments. This urbanization has resulted in excess stormwater runoff from roofs and parking lots, which overwhelms combined sewers, floods parks and basements, and delivers sediment and other pollutants into rivers and streams. The complexity of this problem is only increased because the stormwater runoff is the result of how Americans carry out their everyday lives—this increased runoff is created when precipitation hits impervious surfaces and has no opportunity to naturally infiltrate into the ground.

As one commentator provides, the problem is "not the result of some 'Valdesian' spill," nor the "consequence of continuous chemical discharges from some large industrial plant," but is instead "how we use our land and how we conduct our simple everyday activities" that "greatly affects the amount and degree of stormwater [runoff] in our cities and towns."[1]

Thus, on a national level, there is great interest and need for better methods to control and manage the flow of stormwater in an affordable, effective and equitable manner. The 8th District Court of Appeals decision is an about-face with respect to Revised Code ("R.C.") Chapter 6119 and the authority of Ohio's wastewater utilities to deal with the problem of stormwater, which creates significant public interest for entities across the State of Ohio and great general interest for national entities tracking Clean Water Act trends across the country.

To say that there is interest in the outcome of this case among Northeast Ohio

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[1] Avi Brisman, *Considerations in Establishing a Stormwater Utility*, 26 S. Illinois U. L.J. 505, 509 (Spring 2002).

communities is an understatement. Since early 2008, local media outlets have covered stormwater issues and the Northeast Ohio Regional Sewer District's ("NEORSD" or "District") Regional Stormwater Management Program ("SMP") with more than 50 news articles. An October 18, 2013 article in the Cleveland Plain Dealer described the challenges faced by the communities served by NEORSD: "Increasingly intense storms dump rain on rooftops and pavement in a part of the country where critics say development has sprawled far beyond what the market justifies. As rivers, creeks, streams, and ditches overflow, water pours into old sanitary sewers through cracks and illegal connections before backing up into basements."[2]

In Cleveland's Metroparks "[f]ords clogged with debris regularly spill over and swamp roads," and "sediment carried by runoff washes into sections of the Rocky and Chagrin rivers, pushing out oxygen and killing off insects that trout, a popular game fish[,] feed on," and "piles up in the Cuyahoga River, contributing to the cost of dredging required to keep the channel open for commercial shipping."[3]

The handling of stormwater at the regional, rather than local, level is also critical to success because of the scope and size of the problem and the need for coordination. NEORSD expects to collect $38 million in fees in the first year of the program, and has plans for over $200 million in projects. *See* Answer Brief and Cross-Appeal Opening Brief of Plaintiff/Appellee/Cross-Appellant Northeast Ohio Regional Sewer District, 9. Although local communities have plans to construct small scale projects to benefit their citizens, they simply do not have the resources to address the issue on the larger scale that is necessary. As Willowick Mayor Richard Bonde recently noted, their local program to clean ditches and restore floodplains will not solve everything. Instead, "the ultimate solution has to be regional. No city—Euclid,

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[2] Thomas Ott, *Stormwater Concerns Swell in Northeast Ohio*, The Plain Dealer, Oct. 18, 2013
[3] *Id.*

Wickliffe, or Willowick—has those kinds of resources."[4]

Northeast Ohio is not alone in facing stormwater issues. Across the state, wastewater agencies operating under the authority of R.C. Chapter 6119 must deal with issues created by stormwater runoff. These issues are further compounded where agencies face federal consent decrees and federal Clean Water Act obligations that require reduction of combined sewer and sanitary sewer overflows, a challenge confronting municipalities and wastewater agencies nationwide.

At the heart of these obligations is the issue of stormwater, which overwhelms sewer systems causing them to overflow into creeks, streams, and rivers and backup into basements. Controlling stormwater at the source—and keeping it from entering the sewer system in the first place—is becoming an increasingly attractive and low cost option for utilities throughout Ohio and the United States.[5]

The inability of Ohio utilities to adequately fund these very complex clean water programs will only increase their vulnerability to federal Clean Water Act enforcement actions and put them at a severe operational disadvantage as compared to similar utilities in other states. Thus, Ohio utilities must have certainty that R.C. Chapter 6119 provides them with the authority to manage stormwater to meet their consent decree and Clean Water Act obligations, and the authority to fund their efforts to do so.[6]

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[4] *Id.*

[5] *See, e.g.*, Janie Chen and Karen Hobbs, *Rooftops to Rivers II: Green Strategies for Controlling Stormwater and Combined Sewer Overflows: Update October 2013* (Natural Resources Defense Counsel Oct. 2013), which highlights 20 cities nationwide—including Cincinnati and Cleveland—using "green" source control measures to keep stormwater out of sewer systems as a means of meeting their Clean Water Act obligations.

[6] Three Ohio utilities have been established under 6119 for the sole purpose of managing stormwater: Deerfield Regional Stormwater District, ABC Water and Storm Water District, and Jefferson Township Storm Sewer District.

The method by which fees are calculated also has resonance beyond Northeast Ohio. The method of fee calculation used by NEORSD has become the industry standard across the United States, because it is so intrinsically tied to the service being provided. Much like a water meter measures the amount of water used and the resulting contribution of a given property to the wastewater to be treated, the amount of impervious surface on a property can be directly linked to that property's contribution to stormwater runoff. The use of credits like those in NEORSD's SMP also allows property owners to control their impact on the system, and potentially reduce their fee significantly, while aiding in the overall management of stormwater runoff.

For these reasons, the stormwater fee issues in this case are of great importance in other major population centers in Ohio beyond Cuyahoga County. The cities of Cincinnati, Columbus, Dayton, and Toledo have all created stormwater utilities that are funded by stormwater fees based upon impervious surface area.[7]

Thus, for these amici and the hundreds of clean water agencies they represent, the questions presented in this case are of great importance. These agencies serve millions of Americans every day and provide amenities that, when operating smoothly, may not often be thought about by those receiving the services. In reality, however, turning on a kitchen tap, flushing a toilet, and the speedy removal and proper management of stormwater after a heavy rain are of real public interest and touch the lives of all members of the public – particularly when financial resources are not sufficient to adequately fund those utility programs that are mandated by federal law and intricately tied to our quality of life as Americans. The amici urge this Court to accept jurisdiction of these issues.

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[7] *See Cincinnati Code of Ordinances,* § 720-50; *Columbus Code of Ordinances*, Chapter 1149; *Dayton Code of Ordinances*, § 54.04; *Toledo Code of Ordinances* Chapter 943.

II. As representatives of Ohio and national clean water agencies, the amici curiae have an interest in ensuring that Ohio's clean water utilities can continue to protect the environment and public health.

The National Association of Clean Water Agencies ("NACWA") and the Association of Ohio Metropolitan Wastewater Agencies ("AOMWA") submit this brief as amici curiae in support of NEORSD and in support of jurisdiction. Collectively, the amici represent publicly owned clean water utilities in Ohio and across the country that are responsible for the operation, oversight, and management of municipal separate storm sewer systems and stormwater infrastructure; and agencies, companies and professionals involved in ensuring that such systems are designed, funded, operated and maintained in compliance with applicable laws and regulations.

NACWA represents the interests of nearly 300 of the nation's public clean water management agencies. NACWA has 11 public utility members in the State of Ohio, including NEORSD.[8] NACWA members serve the majority of the sewered population in the United States, and collectively manage billions of gallons of wastewater, including stormwater, each day. NACWA actively supported the recent amendment to the federal Clean Water Act § 313(c) in which Congress clarified that stormwater user fees based on a reasonable approximation of a property's contribution to pollution in terms of the volume or rate of stormwater discharge or runoff are "reasonable service charges" payable by all federal government facilities.

AOMWA is a state-wide organization that represents the interests of Ohio's public wastewater agencies. AOMWA's members construct, operate, maintain and manage public

[8] NACWA's other Ohio members are: City of Akron, City of Canton, City of Columbus, City of Dayton, City of Lebanon, City of Lima, City of Sidney, City of Toledo, the Metropolitan Sewer District of Greater Cincinnati, and Montgomery County Water Services.

sewer collection and treatment systems throughout Ohio.[9] Collectively, AOMWA's members treat more than 300 billion gallons of wastewater each year for more than four million Ohioans. AOMWA's members provide an invaluable public service that protects public health and the environment. In many cases, this service is provided through budgets that are funded solely by the citizens and businesses in those communities.

III. Statement of the Case and Facts

In 2010, the District's Board approved Title V regulations to establish a regional SMP. Answer Brief and Cross-Appeal Opening Brief of Plaintiff/Appellee/Cross-Appellant NEORSD, 15. The District sought a declaratory judgment in the Cuyahoga County Common Pleas Court that the District had the authority under R.C. Chapter 6119 to establish the SMP. The District named each of its 56 member communities as defendants. *Id.*

On April 12, 2011, the trial court granted partial summary judgment to NEORSD finding that R.C. Chapter 6119 authorizes the District to address intercommunity flooding, erosion and stormwater-related water quality issues; and that the term "waste water" under R.C. 6119 includes stormwater such that the District is authorized to implement a program to deal with regional stormwater problems. Trial Court Opinion, 1-2. After a hearing, the trial court concluded by finding that NEORSD's SMP fee is authorized under R.C. Chapter 6119 (Trial Court Opinion, 7) and its charter (*Id.* at 9), and that the charges proposed in Title V are not an unlawful imposition of a tax (*Id.* at 11).

On September 26, 2013, the Court of Appeals reversed and found that Title V and its SMP fee exceed the statutory authority granted to the District under R.C. Chapter 6119 and the

[9] AOMWA's members include: City of Akron, Butler County, City of Canton, City of Columbus, City of Dayton, City of Hamilton, City of Lancaster, City of Lima, City of Marysville, Metropolitan Sewer District of Greater Cincinnati, Hamilton County, NEORSD, City of Portsmouth, City of Springfield, City of Toledo, and City of Warren.

authority of its Charter. Court of Appeals Opinion, ¶68.

IV. Argument in Support of Propositions of Law

Proposition of Law Number 1. The definition of wastewater under R.C. 6119.011(K) includes stormwater, regardless of whether that stormwater contains sewage or industrial waste or other pollutants or contamination derived from the prior use of the water.

Revised Code Chapter 6119 does provide wastewater agencies with the authority to manage stormwater. Waste water is defined as "*any storm water* and any water containing sewage or industrial waste or other pollutants or contaminants derived from the prior use of the water. R.C. 6119.011(K) (emphasis added). The plain language of R.C. 6119.011(K) therefore provides that waste water includes a total of ***five*** items referred to in the statute, specifically:

(1) water containing sewage;

(2) water containing industrial waste;

(3) water containing pollutants;

(4) water containing contaminants derived from prior use; and

(5) ***stormwater***.

The Court of Appeals, however, re-wrote R.C. 6119.011(K) and concluded that, "[u]nder R.C. 6119.011(K), '*waste water means*' '*any storm water containing sewage or other pollutants*.'" Court of Appeals Opinion, ¶44 (emphasis in original). This is in sharp contrast to the actual text of R.C. 6119.011(K) and one that has serious implications for both the District and the entities represented by the amici.

This interpretation does not result from a natural reading of the text. The Court of Appeals may have wanted to require that "waste water" contain "waste" in a traditional sense, but it is contrary to the clear language of the statute. This interpretation leaves the "derived from" portion of the R.C. 6119.011(K) definition left out like a mismatched puzzle piece. Under

the Court of Appeals' interpretation, to require that contamination of stormwater be "derived from the prior use of the water" is senseless because there is no prior use of stormwater.[10]

The Court of Appeals' reluctance to give the statute its proper reading may stem from a discomfort about considering stormwater a waste, but this is a misunderstanding about the nature of the stormwater problem facing urbanized America. Stormwater is not just rain. The type of comprehensive stormwater approach being undertaken by NEORSD does not seek to regulate or charge the public for raindrops.

In urbanized landscapes, when rain meets an impervious surface it pools and *may* pick up pollutants as it runs off, gathering velocity and volume. However, whether stormwater has picked up pollutants or not, it still creates the serious runoff problems that utilities across the country are trying to alleviate, namely: heavy flooding; erosion and destruction of roads; bridge structures being undercut; parking lots becoming ponds; sewage collections systems and basements being inundated with a mix of sewage and stormwater; and wastewater treatment plants being damaged and their biological function being washed out due to stormwater inundation. Not only would it be difficult to differentiate between polluted and unpolluted stormwater when trying to implement this type of important, regional stormwater program, these types of damages to property and threats to public health and safety result whether or not the stormwater contains sewage or pollutants. Undoubtedly, damages and threats to public health and safety only increase if pollutants *are* picked up as stormwater runs off, but it is wholly impractical to conclude that the District *only* has authority to regulate a solution to this stormwater problem if the stormwater happens to pick up pollutants as it washes out roads and

[10] Nor does it make any sense to read the Court of Appeals decision as requiring a combination of stormwater and sewage in order to be considered wastewater. The parties have never questioned the District's authority over water containing sewage, even if no stormwater is involved.

floods basements.

By its ruling, the Court of Appeals has narrowed the scope of a R.C. Chapter 6119 district's authority over stormwater to such a degree that the authority given by the General Assembly is practically meaningless.

Proposition of Law Number 2. Ohio Revised Code Chapter 6119 authorizes the fees established for water resource projects planned under the SMP.

Chapter 6119 also provides authority for wastewater agencies to impose fees for the management of stormwater. A water resource project means "*any waste water facility* or water management facility acquired, constructed, or operated by or leased to a regional water and sewer district under this chapter ... including all buildings and facilities that the district considers necessary for the operation of the project, together with all property, rights, easements, and interest that may be required for the operation of the project." R.C. 6119.011(G) (emphasis added).

Based on this definition and building on the first proposition of law, a water resource project is essentially a waste water facility. "Waste water facilities" are defined in R.C. Chapter 6119 as:

> [F]acilities for the purpose of treating, neutralizing, disposing of, stabilizing, cooling, segregating, or holding waste water, including, without limiting the generality of the foregoing, facilities for the treatment and disposal of sewage or industrial waste and the residue thereof, facilities for the temporary or permanent impoundment of waste water, both surface and underground, and storm and sanitary sewers and other systems, whether on the surface of underground, designed to transport waste water, together the equipment and furnishings thereof and their appurtenances and systems, whether on the surface or underground, including force mains and pumping facilities therefor when necessary.

R.C. 6119.011(L). The Court of Appeals focused narrowly on the explicit purposes of a regional water and sewer district under R.C. 6119.01(A) and (B), with emphasis on the purpose "to provide for the collection, treatment, and disposal of waste water within and without the

District," R.C. 6119.01(B). However, it is important to realize that the General Assembly quite broadly defined waste water facilities also with explicit references to neutralizing, stabilizing, holding, impounding, and transporting wastewater, including stormwater, whether on the surface or underground.

The District described numerous planned stormwater projects, including the construction, replacement, repair, restoration, rehabilitation and/or stabilization of floodwalls, flood berms, culverts, detention basins facilities, concrete encasements, channels, stream banks, lakes, dams, storm sewers, and erosion control measures, as well as raising roadways to address chronic flooding. Answer Brief and Cross-Appeal Opening Brief of Plaintiff/Appellee/Cross-Appellant NEORSD, 10. In addition to these future projects, the District has already participated in the funding and construction of at least 25 stormwater-related projects. *Id.* at 25. These projects qualify as water resource projects.

Revised Code Chapter 6119 districts are authorized to "charge, alter and collect rentals and other charges for the use of services of any water resource project ..." R.C. 6119.06 (W). *See also*, R.C. 6119.09. Even if the public's relationship to and use of water resource projects is different than traditional wastewater treatment payment schemes because that use is not based on strictly metered water usage, districts are clearly authorized to charge for stormwater services and the General Assembly does not restrict or prescribe the method. The District's funding mechanism must not be disregarded simply because the public's relationship to the water resource project does not look like the kind of mechanism the Court of Appeals is used to evaluating.

To advance Clean Water Act compliance, utilities across the country are entering into consent decrees with state and federal environmental protection agencies. Stormwater

management is often a necessary and/or required component of a compliance plan. The water quality impacts caused by stormwater can be severe and can undercut gains that would otherwise be made. Stormwater does not flow in isolation. Millions of dollars spent to improve sewage treatment facilities can be undercut in one flooding scenario when treatment controls are wiped out, facilities overwhelmed and equipment destroyed as a result of excess stormwater entering the system. Restricting the District's ability to fund stormwater management programs and integrated green infrastructure strategies makes it more difficult to fund and comply with its Consent Decree obligations, frustrates both the state and federal environmental initiatives embodied in the decree, and does a tremendous disservice to the public.

Proposition of Law Number 3. Charges associated with the SMP are fees not taxes.

Not only are the charges associated with the SMP authorized by R.C. Chapter 6119, they should further be upheld by this Court as a fee, rather than a tax. As this Court has explained, fees should not be classified as taxes if their use is consistent with the statute that enables their collection. *See City of Wooster v. Graines*, 52 Ohio St. 3d 180, 184 (Ohio 1990)(opining that "water rates or charges" are not classified as a tax "so long as their use is limited to the waterworks purposes enumerated" in the authorizing statute). As described above, R.C. 6119.06(W) authorizes wastewater utilities to charge fees like those proposed by NEORSD, because the planned stormwater management projects are water resource projects as defined in R.C. Chapter 6119.

Even under the "fee" versus "tax" analysis, the SMP fees should be upheld. As this Court explained in *State ex rel. Petroleum Underground Storage Tank Release Comp. Board v. Withrow*, 62 Ohio St. 3d 111, 115, 579 N.E.2d 705 (1991), the fee versus tax determination is one that "must be done on a case-by-case basis dependent upon the facts and circumstances

surrounding each assessment," but certain "pertinent facts" in the aggregate weigh in favor of a finding that an assessment is a fee. Among other factors, the *Withrow* Court was particularly persuaded by the fact that the "assessment appear[ed] to function more as a fee than as a tax because a specific charge in return for a service [was] involved." *Id.* at 117.

Much like the fee at issue in *Withrow*, stormwater management charges imposed under R.C. Chapter 6119 are fees rather than taxes, because they are imposed in exchange for the conveyance, treatment, storage, and management of stormwater. Stormwater runoff is a problem we all contribute to and the conveyance and management of that stormwater is a service to which fees can be directly tied by reference to the amount of impervious surface on a given property. This impervious surface method is the industry standard measure for each property owner's individual contribution to stormwater runoff because it is the most equitable way to determine each property owner's volumetric contribution of runoff. Similar to individual water meter billing based on the amount of water consumed, an impervious surfaced-based fee structure for stormwater charges each "user" of a stormwater management system for the amount of runoff that occurs on their property and is contributed to the system. Additionally, where credits like those included in NEORSD's SMP are available, property owners can reduce their fees by reducing their contribution to the amount of stormwater that must be conveyed and managed.

Thus, stormwater fees charged under authority granted by R.C. Chapter 6119, like those proposed by NEORSD, are not a tax. To hold otherwise would prohibit utilities established under Chapter 6119 across Ohio from charging users for the service of managing and conveying stormwater and upgrading and modernizing their network of stormwater management facilities to keep up with the pace of development.

Courts in other jurisdictions throughout the country have recently encountered this issue,

and their decisions reflect the reality that stormwater management has become a necessary government service in our modern, urban society. The majority of these cases have upheld stormwater management charges as a permissible fee. *See, e.g., Long Run Baptist Ass'n v. Louisville MSD*, 775 S.W.2d 520 (Ky. App. 1989)(holding that service charge was not a tax); *City of Littleton v. State*, 855 P.2d 448 (Colo. 1993)(holding that fee was not a tax or special assessment); *Zelinger v. City and County of Denver*, 724 P.2d 1356 (Colo. 1986)(holding that stormwater charge was not an unconstitutional tax because funds were segregated and used solely for "operation, repair, maintenance, improvement, renewal, replacement and reconstruction of storm drainage facilities"); *Smith v. Spokane County*, 948 P.2d 1301 (Wash. App. 1997)(holding that fee to fund "Aquifer Protection Areas" was not a tax); *Teter v. Clark County*, 704 P.2d 1171 (Wash. 1985)(holding that charges for storm and surface water utility were not a tax); *Vandergriff v. City of Chattanooga*, 44 F.Supp.2d 927 (E.D. Tenn. 1998)(holding stormwater fee not a tax because charges based on use of the system); *McCleod v. Columbia County*, 599 S.E.2d 152 (Ga. 2004)(holding that stormwater fee was not a tax because it was "not arbitrary and bears a reasonable relationship to the benefits received by the individual developed properties in the treatment and control of stormwater runoff"); *Church of Peace v. City of Rock Island*, 2005 Ill. App. LEXIS 448 (2005)(holding that stormwater service charge was clearly a fee due to direct relationship between imperviousness and stormwater runoff).

Proposition of Law Number 4. Using impervious surfaces to calculate fees is rationally related to a legitimate government interest.

The use of impervious surfaces to calculate stormwater fees is rationally related to the government interest of managing stormwater runoff, and is an equitable and reasonable method for calculating a property owner's "use" of the stormwater system. The Ohio and federal constitutions permit governmental classifications for non-suspect classes, if the classification

bears a rational relationship to a legitimate government interest. *See, e.g.*, *T.W. Grogan Co. v. N.E. Regional Sewer Dist.*, 41 Ohio App.3d 387, 388-89, 536 N.E.2d 19 (8th Dist. 1981)("Absent a suspect classification like race, religion, or alienage, the government need only show that its classification relates rationally to a legitimate governmental interest."); *State v. Thompkins*, 75 Ohio St.3d 558, 561, 664 N.E.2d 926 (1996)("Under rational-basis scrutiny, legislative distinctions are invalid only if they bear no relation to the state's goals and no ground can be conceived to justify them."). Because impervious surfaces play a singularly significant role in increased stormwater runoff—and the resulting increased need for management of that runoff—charging users for their relative contribution of stormwater in order to fund the management of that stormwater could not be more rational.

Studies show that impervious surfaces are the most significant factor in increased stormwater runoff.[11] In fact, "[t]his increased volume and velocity of runoff is directly correlated to the amount of impervious cover in the given area essentially, ***the more impervious cover, the more runoff***."[12] Stormwater volume increases because "water from roads and parking lots cannot be absorbed into the ground and has no time to evaporate," and if uncontrolled, the increased runoff simply flows into sewers and basements, causes increased erosion, and brings pollution and sediment with it into rivers and streams.[13]

Because of this direct linkage between impervious surfaces and increased volume, the use of impervious surface area in imposing stormwater fees has become the industry norm.[14] As

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[11] *See, e.g.*, Avi Brisman, *Considerations in Establishing a Stormwater Utility*, 2 S. Ill U. L.J. 505, 509-10 (Spring 2002).
[12] *Id.* (Emphasis added).
[13] *Id.*
[14] *See, e.g.*, Alisa Valderrama and Larry Levine, *Financing Stormwater Retrofits in Philadelphia and Beyond*, 2 (Natural Resources Defense Council 2012)(estimating that more than 400 cities, towns, and utility districts nationwide use fee structures "based entirely or in part on the amount

explained in the *Guidance for Municipal Stormwater Funding*, published by the National Association of Flood & Stormwater Management Agencies (NAFSMA) in 2006, impervious surface based fees are so widely used for a number of reasons, not the least of which is the fact that "[i]mpervious area rate methodology reflects a philosophy of allocating costs based on each property's contribution of runoff to the system," and empirical data generally supports the methodology as equitably assessing costs relative to each property's actual contribution to the stormwater being managed.[15]

V. The Court of Appeals' decision has such broad impact on NEORSD's 56 member communities, clean water utilities across Ohio, and national stormwater trends that additional review by this Court is more than appropriate.

The Court of Appeals' rejection of NEORSD's SMP has broad implications that will hinder the ability of wastewater utilities statewide to address stormwater runoff that threatens to overwhelm sewers, flood basements, wash out roads, and damage habitats in Ohio's rivers and streams. Without the ability to manage stormwater, Ohio's wastewater utilities already grappling with challenging and costly federal consent decrees and Clean Water Act requirements will lose a valuable set of tools for sustainable, affordable compliance. In conclusion, the amici curiae respectfully request that the Court accept this case for review.

Respectfully submitted,

Andrea M. Salimbene (#0080622)
Erica M. Spitzig (#0085536)
Gregory J. DeGulis (#0045705)
MCMAHON DEGULIS LLP

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of impervious area on their property"); *Western Kentucky University Stormwater Utility Survey*, 2 (2013)(finding that the most common method of imposing stormwater—used by 657 of the 1,000 utilities surveyed—is the Equivalent Residential Unit method, which is based on impervious surface area); *Guidance for Municipal Stormwater Funding*, 2-36, 37 (NAFSMA 2006).

[15] *Guidance for Municipal Stormwater Funding*, 2-36, 37.

CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum in Support of Jurisdiction as *Amicus Curiae* was served on November 12, 2013, upon the following.

The party below was served via U.S. Mail:

William H. Smith
William H Smith & Associates
940 Rockefeller Ave
614 W. Superior Ave
Cleveland, Ohio 44113

Counsel for National Association
for the Advancement of Colored People
Cleveland Branch

The parties below were served via electronic mail:

Party/Municipality	Attorney Representative	Service Address
Plaintiff	Mark I. Wallach James F. Lang Matthew J. Kucharson Molly A. Drake Marlene Sundheimer	mwallach@tmlpa.com jlang@calfee.com mkucharson@calfee.com mdrake@calfee.com sundheimerm@neorsd.org
Bath Township	Michael D. Todd	toddm@prosecutor.summitoh.net See also: Summit County Defendants
Beachwood	Stephen M. O'Bryan Rebecca M. Schaltenbrand	sobryan@taftlaw.com rebecca.schaltenbrand@icemiller.com officeservicescleveland@taftlaw.com
Bedford	Kenneth A. Schuman Charles A. Bakula	kas@rgm-law.com charlesbakula@netscape.net
Bedford Heights	Ross S. Cirincione	rsc@rgm-law.com
Berea	Gregory M. Sponseller	gsponseller@bereaohio.com
Boston Heights	Constance A. Hesske	attyhesske@hesske.com See also: Summit County Defendants
Bratenahl	David J. Matty Shana A. Samson Erin Hooper	dmatty@rmmglaw.com ssamson@rmmglaw.com ehooper@rmmglaw.com
Brecksville	David J. Matty Shana A. Samson	dmatty@rmmglaw.com ssamson@rmmglaw.com
Broadview Heights	Vince Ruffa Ann C. Oakar	vruffa@oakarandruffa.com aoakar@oakarandruffa.com annieoakar@hotmail.com

Party/Municipality	Attorney Representative	Service Address
Brook Park	Neal M. Jamison	njamison@cityofbrookpark.com neal.jamison@yahoo.com
Brooklyn	Scott D. Claussen	sclaussen@brooklynohio.gov scott.claussen@lakewoodoh.net
Brooklyn Heights	Jerome E. Dowling	benru677@att.net kbaciak@brooklynhts.org
Cleveland	Catherine Ma Shirley Tomasello	cma@city.cleveland.oh.us stomasello@city.cleveland.oh.us jscott@city.cleveland.oh.us
Cleveland Heights	John H. Gibbon William R. Hanna	jgibbon@walterhav.com whanna@walterhav.com docket@walterhav.com
Columbia Township	Dennis P. Will Gerald A. limes	lcp@lcprosecutor.org
Cuyahoga Heights	Jonathan D. Greenberg Aimee W. Lane	jgreenberg@walterhav.com alane@walterhav.com docket@walterhav.com
East Cleveland	Ronald K. Riley	rriley@eastcleveland.org
Euclid	L. Christopher Frey	cfrey@cityofeuclid.com
Garfield Heights	Timothy J. Riley Kevin P. Weiler	lawtjr@aol.com triley@garfieldhts.org kweiler@garfieldhts.org
Gates Mills	Charles T. Riehl Aimee W. Lane	criehl@walterhav.com alane@walterhav.com docket@walterhav.com
Glenwillow	Stephen M. Klonowski	sklonowski@glenwillow-oh.gov
Highland Heights	Timothy G. Paluf	tpaluf@highlandhts.com
Highland Hills	Thomas P. O'Donnell	todonnell@todlaw.com
Hudson	Charles T. Riehl	criehl@walterhav.com docket@walterhav.com
Independence	Gregory J. O'Brien	gobrien@taftlaw.com officeservicescleveland@taftlaw.com
Lakewood	Kevin Butler Scott Claussen	law@lakewoodoh.net Kevin.Butler@lakewoodoh.net
Linndale	George T. Simon	hellogeorgesimon@gmail.com
Lyndhurst	Paul Murphy David Maistros Robert Foulds	carbmurph@aol.com davidmaistros@maistroslaw.com rfoulds@dsf-law.com
Macedonia	Joseph W. Diemert, Jr. Thomas M. Hanculak Mark V. Guidetti	receptionist@diemertlaw.com jwdiemert@diemertlaw.com tmhanculak@diemertlaw.com mvguidetti@diemertlaw.com See also: Summit County Defendants

Party/Municipality	Attorney Representative	Service Address
Maple Heights	John J. Montello	jmontello@bedfordlawyers.com mainoffice@bedfordlawyers.com
Mayfield Heights	L. Bryan Carr	carrlawfirm@aol.com
Mayfield Village	Joseph W. Diemert, Jr. Diane A. Calta	receptionist@diemertlaw.com dacalta@diemertlaw.com jwdiemert@diemertlaw.com
Middleburg Heights	Peter H. Hull	peterhhull@gmail.com
Moreland Hills	Margaret Anne Cannon	mcannon@walterhav.com
Newburgh Heights	Luke F. McConville	luke@healthlaw.com
North Randall	Leonard A. Spremulli	spremullil@aol.com
North Royalton	Donna M. Vozar Thomas A. Kelly	dvozar@northroyalton.org tkelly@northroyalton.org dvoz74@hotmail.com tak@kellyandkelly.us carolyn@kellyandkelly.us
Northfield (Village)	Bradric Bryan	bbryan@gbs-llp.com gbsllp@gbs-llp.com See also: Summit County Defendants
Northfield Center Township	Michael D. Todd	toddm@prosecutor.summitoh.net See also: Summit County Defendants
Oakwood	Stephen Klonowski	sklonowski@glenwillow-oh.gov smk@rgm-law.com
Olmsted Falls	Robert J. Foulds	rfoulds@dsf-law.com
Olmsted Township	Mrs. Sherri Lippus, Trustee	slippus@olmstedtownship.org
Orange Village	Stephen L. Byron	sbyron@walterhav.com
Parma	Timothy Dobeck	tdobeck@parmalaw.org bwirtz@cityofparma-oh.gov
Parma Heights	Marcia E. Hurt Thomas A. Kelly C. Anthony Stavole	mehurt@stavoleandmiller.com admin@stavoleandmiller.com tak@kellyandkelly.us carolyn@kellyandkelly.us
Pepper Pike	Stephen L. Byron	sbyron@walterhav.com docket@walterhav.com
Richfield (Village of)	Charles T. Riehl William R. Hanna	criehl@walterhav.com whanna@walterhav.com docket@walterhav.com See also: Summit County Defendants
Richfield Township		See: Summit County Defendants
Richmond Heights	R. Todd Hunt Aimee W. Lane	rthunt@walterhav.com alane@walterhav.com docket@walterhav.com
Sagamore Hills	Jeffrey J. Snell	jeff@attorneysnell.com See also: Summit County Defendants

Party/Municipality	Attorney Representative	Service Address
Seven Hills	Richard A. Pignatiello Patrick DiChiro	pignatiellolaw@aol.com sevenhillslaw@aol.com
Shaker Heights	William M. Ondrey Gruber	william.gruber@shakeronline.com
Solon	David J. Matty Shana A. Samson Erin Hooper	dmatty@rmmglaw.com ssamson@rmmglaw.com ehooper@rmmglaw.com
South Euclid	Michael P. Lograsso	lograssolaw@aol.com
Strongsville	Kenneth A. Kraus Daniel J. Kolick	strongsville.law@strongsville.org dkolick@kolick-kondzer.com docket@kolick-kondzer.com
Twinsburg	David M. Maistros	dmaistros@twinsburg.oh.us davidmaistros@maistroslaw.com See also: Summit County Defendants
Twinsburg Township	Alfred E. Schrader	alschrader@choiceonemail.com See also: Summit County Defendants
University Heights	Kenneth J. Fisher	kfisher@fisher-lpa.com
Valley View	David A. Lambros	law2direct@aol.com
Walton Hills	John J. Montello Blair N. Melling	jmontello@bedfordlawyers.com bmelling@bedfordlawyers.com mainoffice@bedfordlawyers.com
Warrensville Heights	Teresa M. Metcalf-Beasley	tmbeasley@calfee.com
Willoughby Hills	Thomas Lobe	tomlobe@yahoo.corn lawdirector@willoughbyhills-oh.gov
Summit County Defendants: Bath Township Boston Heights Hudson Macedonia Northfield Village Northfield Center Township	Sherri Bevan Walsh Michael D. Todd	toddm@prosecutor.summitoh.net
Bishop Lennon Intervenors	L. James Juliano Matthew J. Fitzsimmons Michael E.Cicero	juliano@nicola.com fitzsimmons@nicola.com cicero@nicola.com
Intervenor, the Cleveland Municipal School District Board of Education	Adrian D. Thompson Brian E. Ambrosia	athompson@taftlaw.com bambrosia@taftlaw.com

Andrea M. Salimbene

Andrea M. Salimbene (#0080622)
MCMAHON DEGULIS LLP