

ORIGINAL

IN THE OHIO SUPREME COURT

NORTHEAST OHIO REGIONAL SEWER DISTRICT	)	CASE NO. 13-1770
	)	
Petitioner	)	Appeal from the
	)	Eighth District Court of Appeals
	)	Case No. CA-12-098728
v.	)	(Consolidated with Case Nos.
	)	CA-12-098729 and CA-12-098739)
BATH TOWNSHIP, et al.	)	
	)	Cuyahoga County Court of Common Pleas
Respondents.	)	Case No. CV-10-714945

---

**BRIEF OF *AMICUS CURIAE***  
**CLEVELAND METROPOLITAN PARK DISTRICT**  
**IN SUPPORT OF APPELLANT**  
**NORTHEAST OHIO REGIONAL SEWER DISTRICT**

---

Rosalina M. Fini (0063625)

Michael L. Hardy (0011717)  
 Karen E. Rubin (0030339)  
 Devin A. Barry (0080733)

**CLEVELAND METROPOLITAN  
PARK DISTRICT**

**THOMPSON HINE LLP**

4101 Fulton Parkway  
 Cleveland, Ohio 44141  
 Telephone 216-635-3216  
 Fax 216-635-3232

3900 Key Center  
 127 Public Square  
 Cleveland, Ohio 44114  
 Telephone 216-566-5500  
 Fax 216-566-5800

rmfl@clevelandmetroparks.com

Mike.Hardy@ThompsonHine.com  
 Karen.Rubin@ThompsonHine.com  
 Devin.Barry@ThompsonHine.com

*Attorney for Amicus Curiae*  
*Cleveland Metropolitan Park District*

*Attorneys for Amicus Curiae*  
*Cleveland Metropolitan Park District*

(continued on next page)

**FILED**  
 MAY 12 2014  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

John B. Nalbandian  
W. Stuart Dornette  
**TAFT STETTINIUS & HOLLISTER LLP**  
425 Walnut Street, Suite 1800  
Cincinnati, OH 45202

Stephen M. O'Bryan  
Gregory J. O'Brien  
Michael J. Zbiegien, Jr.  
**TAFT STETTINIUS & HOLLISTER LLP**  
200 Public Square, Suite 3500  
Cleveland, Ohio 44114

*Attorneys for Appellees City of Beachwood, City of  
Bedford Heights, City of Cleveland Heights, Village  
of Glenwillow, City of Independence, City of  
Lyndhurst, Village of Oakwood, City of Olmsted  
Falls, and City of Strongsville*

Sheldon Berns  
Benjamin J. Ockner  
Jordan Berns  
Gary F. Werner  
Timothy J. Duff  
**BERNS, OCKNER & GREENBERGER, LLC**  
3733 Park East Drive, Suite 200  
Beachwood, Ohio 44122  
Telephone 216-831-8838  
Fax 216-464-4489

*Attorneys for Appellees Northeast Ohio  
Apartment Association, et al.*

Barbara A. Langhenry  
Director of Law  
**CITY OF CLEVELAND**  
601 Lakeside Avenue, Room 106  
Cleveland, Ohio 44114  
Telephone 216-664-2800  
Fax 216-664-2663

*Attorneys for Amicus Curiae the City of Cleveland*

Elizabeth Wells Rothenberg  
Assistant Director of Law  
**CITY OF CLEVELAND HEIGHTS**  
40 Severance Circle  
Cleveland Heights, Ohio 44112  
Telephone 216-291-3808  
Fax 216-291-3731

*Attorney for Appellee City of  
Cleveland Heights*

David J. Matty  
Shana S. Samson  
Justin Whelan  
**MATTY, HENRIKSON &  
GREVE, LLC**  
55 Public Square, Suite 1775  
Cleveland, Ohio 44113  
Telephone 216-621-6570  
Fax 216 621-1127

*Attorneys for Appellee City of Brecksville*

Eric Luckage  
**ALBERS AND ALBERS**  
88 N. Fifth Street  
Columbus, Ohio 43215  
Telephone 614-464-4414  
Fax 614-461-0604

*Attorney for Amici Curiae Coalition of  
Ohio Regional Districts, Deerfield Re-  
gional Storm Water District and ABC  
Water and Storm Water District*

(continued on next page)

Mark I. Wallach  
**THACKER MARTINSEK LPA**  
2330 One Cleveland Center  
1375 E. 9th Street  
Cleveland, Ohio 44114  
Telephone 216-456-3848  
Fax 216-456-3850

James F. Lang  
Matthew J. Kucharson  
Molly A. Drake  
**CALFEE, HALTER & GRISWOLD LLP**  
1405 East Sixth Street  
Cleveland, Ohio 44114  
Telephone 216-622-8200  
Fax 216-241-0816

Marlene Sundheimer  
Director of Law  
**NORTHEAST OHIO REGIONAL  
SEWER DISTRICT**  
3900 Euclid Avenue  
Cleveland, Ohio 44115  
Telephone 216-881-6600

*Attorneys for Appellant Northeast Ohio  
Regional Sewer District*

Yvette McGee Brown  
**JONES DAY**  
325 John H. McConnell Boulevard, Suite 600  
P.O. Box 165017  
Columbus, Ohio 43216-5017  
Telephone 614-469-3919  
Fax 614-461-4198

*Attorney on behalf of Amici Curiae Village of Cuyahoga Heights, et al.*

(continued on next page)

Andrea M. Salimbene  
**MCMAHON DEGULIS LLP**  
1335 Dublin Road, Suite 216A  
Columbus, Ohio 43215  
Telephone 614-678-5372  
Fax 614-485-9108

Gregory J. DeGulis  
**MCMAHON DEGULIS LLP**  
The Caxton Building, Suite 650  
812 Huron Road  
Cleveland, Ohio 44115-1168  
Telephone 216-367-1403  
Fax 216-621-0577

Erica M. Spitzig  
**MCMAHON DEGULIS LLP**  
The Monastery  
1055 St. Paul Place  
Cincinnati, Ohio 45202  
Telephone 513-898-1542  
Fax 216-621-0577

*Attorneys for Amicus Curiae National  
Association of Clean Water Agencies and  
Association of Ohio Metropolitan  
Wastewater Agencies*

Eugene P. Holmes, Pro Se  
23507 Royalton Road  
Columbia Station, Ohio 44028  
Telephone 440-236-8486

*Amicus Curiae in Support of Appellee*

Penny Sisson, Pro Se  
Box 266  
Spencer, Ohio 44275

*Amicus Curiae in Support of Appellee*

Michael J. Jogan, Pro Se  
31440 Cannon Road  
Solon, Ohio 44139  
Telephone 440-248-0548

*Amicus Curiae in Support of Appellee*

**TABLE OF CONTENTS**

	<b>Page</b>
TABLE OF AUTHORITIES .....	ii
INTRODUCTION .....	1
STATEMENT OF FACTS .....	1
1.    Metroparks’ Unique View of the Stakes Involved in Preserving the District’s Existing Statutory Authority to Manage Stormwater. ....	2
a.    Stormwater runoff harms the ecology of the Metroparks. ....	3
b.    Stormwater runoff causes financial expense to Metroparks. ....	5
2.    Despite the significant problems of stormwater runoff, Metroparks still reduces the financial cost of stormwater management for the entire area – and could potentially do even more under a regional stormwater management plan such as Chapter 6119 authorizes . ....	6
3.    A regional solution -- as authorized under Chapter 6119 -- addresses the problems that stormwater runoff creates for Metroparks and for the area. ....	6
ARGUMENT IN SUPPORT OF PROPOSITION OF LAW.....	7
CONCLUSION.....	10

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>State Cases</b>	
<i>Medcorp, Inc. v. Ohio Dept. of Job &amp; Family Services</i> , 121 Ohio St. 3d 622, 906 N.E.2d 1125, 2009-Ohio-2058 (2009).....	9
<i>Reith v. McGill Smith Punshon, Inc.</i> , 163 Ohio App. 3d 709, 840 N.E.2d, 2009-Ohio-4852 (1st Dist. App. 2005).....	9, 10
<i>Rhodes v. City of New Philadelphia</i> , 129 Ohio St. 3d 304, 951 N.E.2d 782, 2011-Ohio-3279 (2011).....	9
<b>State Statutes</b>	
O.R.C. § 6101.04(E) .....	10
O.R.C. § 6101.04(H).....	10
O.R.C. §§ 6105.12 .....	10
O.R.C. § 6119(G).....	8, 9
O.R.C. §§ 6119(M).....	8
O.R.C. § 6119.01(B).....	7
O.R.C. § 6119.011(K).....	7, 8, 9
Ohio Revised Code Chapter 1545.....	2
Ohio Revised Code Chapter 6119.....	<i>passim</i>

## INTRODUCTION

This appeal centers on the storm-water crisis affecting Northeast Ohio's communities and other political subdivisions. Out-of-control stormwater presents an increasingly-serious problem for the entire region. On the basis of appellant's Proposition of Law No. I, *amicus curiae* Cleveland Metropolitan Park District ("Metroparks") urges the Court to reverse the ruling of the Eighth District Court of Appeals, which improperly strips appellant Northeast Ohio Regional Sewer District ("District") of its legislatively-granted authority to address stormwater-related problems on a regional basis – which is the approach that offers the best possibility of a feasible solution.

The District is expressly authorized to manage stormwater by Chapter 6119 of the Ohio Revised Code. The two-to-one opinion of the Eighth District Court of Appeals was wrong in ruling to the contrary, based on its strained and incorrect reading of the statutory language. If left standing, that ruling will have great negative impact on over fifty cities, townships and villages in Northeast Ohio, as well as over a million citizens and property owners within these communities – an area in urgent need of a means to resolve regional stormwater issues. In addition, the ruling calls into question the ability to function of approximately 40 sanitary sewer districts that, like the District, have been formed under Chapter 6119.

## STATEMENT OF FACTS

Metroparks adopts and incorporates by reference the Statement of Facts set out in the District's brief on the merits.<sup>1</sup> In addition, Metroparks has a unique perspective on the storm-water crisis and the necessity of confirming the District's existing authority to manage storm-water by means of a regional plan.

---

<sup>1</sup> In urging this Court to reverse on the basis of Proposition of Law No. 1, Metroparks is not addressing the details of the District's stormwater management program. Rather, Metroparks' focus is on the District's existing express authority under Chapter 6119 to develop a program.

**1. Metroparks' Unique View of the Stakes Involved in Preserving the District's Existing Statutory Authority to Manage Stormwater.**

Metroparks views the stormwater management crisis from its vantage point as the oldest park district in Ohio, and a steward of over 23,000 acres of parkland, comprising an aggregate area of 34 square miles – almost three times the combined size of the cities of Shaker Heights and South Euclid. Metroparks is a political subdivision of the State, organized under Chapter 1545 of the Ohio Revised Code.

About 82 percent of Metroparks' acreage lies within Cuyahoga County. The parkland under Metroparks' management includes many miles of valleys created by creeks and major rivers. Indeed, the parkland was designed to follow greater Cleveland's river valleys. Through these valleys flow 200+ stream miles of an ecologically delicate mix of waterways, ranging in size from small headwater streams to the Rocky River, Cuyahoga River and Chagrin River – each of which flows through the Metroparks and ultimately to Lake Erie.

The mission of Metroparks includes conserving natural resources and providing natural areas, including parks, for people to enjoy.<sup>2</sup> Yet, the Metroparks' ability to provide and maintain these benefits is at risk due to the lack of a comprehensive regional stormwater control program.

---

<sup>2</sup> The Metroparks benefits the area in numerous, quantifiable ways, including:

- The Metroparks' trails and parks increase the market value of neighboring residential property by approximately five percent – an aggregate area premium of \$123 million.
- The Metroparks' trees and shrubs remove air pollutants, reducing pollution control costs in Cuyahoga County and Hinckley Township in Medina County by \$14.4 million annually.
- Cuyahoga County residents receive a benefit of \$40.4 million from the direct recreational use of Metroparks' facilities.
- Eleven percent of visitors to Cuyahoga County come in order to visit the outdoors, such as parks, trails and beaches. These visitors spend \$733 million annually in the local economy and generate \$50.5 million in state and local sales taxes. *(footnote continued)*

**a. Stormwater runoff harms the ecology of the Metroparks.**

When a residential neighborhood experiences uncontrolled stormwater runoff, flooded streets and basements ensue. The natural environment of the Metroparks, however, experiences even greater stormwater runoff damage, because unnaturally fast-flowing runoff from developed areas outside the parks inevitably makes its way to parkland waterways. The effect is cumulative, as the Metroparks' small streams catch stormwater runoff from adjacent neighborhoods and terminate into rivers receiving runoff from many surrounding square miles. In fact, the majority of the Greater Cleveland area drains into the streams and rivers within the Metroparks' system. The drainage area of the Cuyahoga River by itself is 809 square miles. In effect, the Metroparks serve as a regional stormwater catch basin, receiving an enormous volume of water that flows at accelerated rates from developed areas, (*i.e.*, water-impervious surfaces) lacking any natural stormwater controls.

Because of increased impervious surface resulting from continued development in the regions, the physical impact of stormwater runoff on the Metroparks is profound, and far exceeds the volume the area ecosystem is naturally capable of handling. First, erosion occurs when the waterways are repeatedly subjected to unnaturally high flows, causing the loss of aquatic habitats. Stream beds that normally contain combinations of pools, runs and riffles with sand and

- 
- Approximately 144,000 adult Cuyahoga County residents engaged in physical activity at the Metroparks sufficient to generate measurable regional health benefits, yielding a health care cost savings of \$59.5 million in 2013 alone.

See The Trust for Public Land, *Economic Benefits of Cleveland Metroparks*, 9-11, 20-21, 16-19, 20-24, 14-15 (Oct. 2013) ("Economic Benefit Report"), available at <http://www.clevelandmetroparks.com/Uploads/Public/Trust-for-Public-Land-Economic-Impact-Report-Cleveland-Metroparks.pdf>. The report was funded by The Cleveland Foundation and The George Gund Foundation.

gravel bottoms become scoured to bed rock. The aquatic creatures that live in the stream bed material are lost as well. As the stream beds deepen from continuous scouring, flood flows are not able to spread out over the flood plain as they would in a stable, natural system. These deeper eroded channels contain all of the energy of the flowing water in a confined space, which causes erosion of the stream banks, which in turn deposits large amounts of silt into the water and removes stream bank habitat, including stabilizing features such as tree roots and gravel bars. (As much as 45,000 tons of silt is flushed from waterways within the Metroparks' system into Lake Erie each year.) These concentrated flows also damage park culverts and bridges, resulting in washed out supports, pavement and roadways.<sup>3</sup>

The volume and speed of stormwater runoff are not the only unnatural factors causing damage to the Metroparks' environment: urban pollutants in the runoff present an additional issue. Water-impervious surfaces in developed areas accumulate oil and grease from vehicles, natural debris and miscellaneous trash. During a storm event, absent an effective management program, oil and trash are flushed directly into streams, where the chemical and other pollutants become trapped in the stream sediments (and are further transported during storm events) and in the wetland ecosystems through which the streams pass. Wildlife feeding in the wetlands ingests the trash or otherwise becomes entangled in it. For a time the wetlands can perform their natural function and filter the pollutants, but eventually their capacity is overwhelmed by the episodic flows and pollutants from storm events, and the quality of the wetland vegetation is degraded.

---

<sup>3</sup> See Thomas Ott, Storm water concerns mount in Northeast Ohio, fee or no fee, The (Cleveland) Plain Dealer (Oct. 17, 2013), available at [http://www.cleveland.com/metro/index.ssf/2013/10/storm\\_water\\_a\\_concern\\_in\\_north.html](http://www.cleveland.com/metro/index.ssf/2013/10/storm_water_a_concern_in_north.html) (quoting, in part, Jenn Greiser, Metroparks' Senior Natural Resource Manager).

As the wetlands' water quality decreases, the aquatic life decreases, along with the bird populations that feed on the aquatic life.<sup>4</sup>

**b. Stormwater runoff causes financial expense to Metroparks.**

Significantly, Metroparks lacks the ability to control the sources of excess stormwater runoff; Metroparks is the involuntary recipient of water from beyond its borders, as created, routed and exacerbated by development in surrounding communities. But its involuntary catch-basin role compels Metroparks to expend its taxpayer-provided resources to address the symptoms of stormwater runoff. In the first nine months of 2012 alone, for example, the cost of physical repair and maintenance associated with regional stormwater drainage was more than \$400,000.<sup>5</sup> Repair and remediation costs included: removing and hauling debris from bridges and fords (naturally-occurring shallow points in a waterway); removing and hauling major log jams from rivers; stabilizing banks and removing accumulated sediment from rivers; replacing and resetting water-outlet and water-bank protective materials; and structurally repairing culverts, headwalls, bridges and trails. In fact, since January 2013, Metroparks' parkways and trails have been closed more than 40 times due to stormwater-related flooding. But these efforts, extensive as they are, are akin to putting a Band-Aid on a bullet hole; some of the repair work must be done over and over again in response to washouts created by major storm events, diverting funds from the Metroparks' core mission.

---

<sup>4</sup> See generally U.S. Army Corps of Engineers, Great Lakes Tributary Model factsheet (2013), available at <http://water.epa.gov/action/weatherchannel/stormwater.cfm> (stormwater picks up debris, chemicals, dirt and other pollutants, and flows into a storm sewer system or directly into a lake, stream, river, wetland or coastal water).

<sup>5</sup> An additional \$400,000 expenditure was required at the end of October 2012 to respond to the damage caused by Hurricane Sandy. The Cleveland Metroparks Zoo, located on 165 acres of property at Brookside Park Drive in Cleveland, has also been affected regularly by flood events over the years, causing disruption of zoo programs, damage, expense and loss of animal life.

- 2. Despite the significant problems of stormwater runoff, Metroparks still reduces the financial cost of stormwater management for the entire area – and could potentially do even more under a regional stormwater management plan such as Chapter 6119 authorizes.**

Ironically, while Metroparks is subject to the significant ecological and financial costs of stormwater runoff, it still benefits the entire area by reducing regional stormwater management costs. This benefit would potentially be enhanced with better stormwater management with a region-wide focus.

Metroparks consists of dozens of square miles of water-pervious parkland and trails. In fact, 72.5 percent of Metroparks' area is water-permeable. (In contrast, it is estimated that 45 percent of Cuyahoga County's area is impermeable to water – a figure that would be even higher if the Metroparks' area were not included.) By capturing precipitation and/or slowing and retaining stormwater runoff received from a wide area, Metroparks confers an enormous benefit. Based on calculations of the runoff reduction attributable to Metroparks and the avoided cost of treating that stormwater, it is estimated that Metroparks is responsible for an annual stormwater cost savings of \$5.12 million.<sup>6</sup> These savings are inherent in the nature and function of the Metroparks and would only be enhanced by the District's implementation of a regional stormwater control program, as Chapter 6119 authorizes it to do.

- 3. A regional solution – as authorized by Chapter 6119 – addresses the problems that stormwater runoff creates for Metroparks and for the area.**

Stormwater does not recognize city lines or political boundaries; it follows its own course, dictated by topography and routed by many square miles of impervious roads, parking lots and structures. As a natural force with the potential to cause boundless destruction, stormwater presents common problems and demands common solutions.

---

<sup>6</sup> See Economic Benefit Report at 12-13 (providing calculation basis for estimated annual stormwater cost savings from Metroparks' trails and parks). The report was funded by The Cleveland Foundation and The George Gund Foundation.

The record below amply confirms that individual piecemeal action by the communities and other political subdivisions affected by stormwater management problems is incapable of surmounting the challenges posed by the huge geographic area involved, the interrelated nature of the problem, the political obstacles and the enormous cost of a solution.<sup>7</sup> The comprehensive and coordinated regional approach by the District offers a feasible way forward.

Yet the Eighth District Court of Appeals' erroneous opinion, if allowed to stand, would strip the District of its legislatively-given authority to address this regional crisis with a regional management program. The Court should reverse the ruling of the Court of Appeals on the basis of Proposition of Law No. I.

#### **ARGUMENT IN SUPPORT OF PROPOSITION OF LAW**

- I. Proposition of Law No. I: A district formed pursuant to R.C. Chapter 6119 is authorized to manage stormwater that is not combined with sewage, and to impose a charge for that purpose. Such a charge is one "for the use or service of a water resource project or any benefit conferred thereby."**

The District's regional program for managing stormwater was implemented under the legislative grant of authority in Chapter 6119 of the Revised Code. Under O.R.C. § 6119.01(B), one of the purposes of a regional water and sewer district is to "provide for the collection, treatment and disposal of waste water within and without the district." "Waste water," in turn is "*any storm water and any water containing sewage or industrial waste or other pollutants or contaminants derived from the prior use of the water.*" O.R.C. § 6119.011(K) (emphasis added).

---

<sup>7</sup> The political obstacles are exemplified by the communities in the District that are located in higher elevations, "upstream" from lower-lying communities. Additional development in an upstream community or inattention to management of stormwater there can effectively thwart the efforts of that community's downstream neighbors. Managing stormwater demands a watershed-based plan in consonance with the way that stormwater behaves, so that conditions in upstream communities do not effectively nullify independent investment and mitigation efforts of downstream communities. *See, e.g.*, Transcript of Testimony of Earl Leiken, Mayor of Shaker Heights, Nov. 8, 2012, Tr. 1211-18 (detailing, in lower court proceedings, the regional basis of stormwater management issues and the inability of his community, and others, to individually create and fund effective solutions).

The lower court of appeals held that the District lacked authority to implement a regional stormwater management program because under the statute “waste water necessarily means water containing waste,” and therefore the District’s powers were limited to solely addressing water that contains sewage, industrial waste or other pollutants. (Opinion at ¶ 44.) The court of appeals was incorrect. The court of appeals effectively read the phrase “storm water” out of the statute, thus violating what the court acknowledged is the “first rule of statutory construction” (*id.* at ¶ 42), which is to examine the plain language of the statute to determine its meaning. Here, the statute repeats the word “water,” establishing the District’s authority over two kinds of waste water: *first*, “any storm water;” and *second*, “any water containing sewage or industrial waste or other pollutants or contaminants....” O.R.C. § 6119.011(K). Therefore, the express statutory language is congruent with the precise authority that the District exercised here – the authority to provide for the management of stormwater.<sup>8</sup>

Moreover, the court of appeals’ reading of O.R.C. § 6119.011(K) cannot be reconciled with other portions of Chapter 6119. Under O.R.C. §§ 6119(G) and (M), the District is authorized to carry out “water resource projects” in connection with “stream flow improvement,” “dams,” “reservoirs,” “impoundments,” “stream monitoring systems,” and “the stabilization of stream and river banks.” *Id.* These are the types of projects that the District proposes to carry out under its regional program. But if the court of appeals’ reading is correct, no regional water and sewer district could conduct a “water resource project” under O.R.C. § 6119(G) because the components of such a project do not involve “removing sewage or other pollutants from storm water.” (Opinion at ¶ 45.) Thus the court of appeals’ error in reading the phrase “storm water” out of the statute would violate another rule of statutory interpretation, by rendering O.R.C. §

---

<sup>8</sup> Even the appellate court’s holding limiting the District’s powers to water containing waste should extend the District’s authority to the collection and treatment of stormwater, which more often than not conveys oil, grease and other polluting waste.

6119(G) meaningless. *See Rhodes v. City of New Philadelphia*, 129 Ohio St. 3d 304, 951 N.E.2d 782, 2011-Ohio-3279, ¶ 23 (2011) (“We must give effect to every term in a statute and avoid a construction that would render any provision meaningless, inoperative, or superfluous.”).

As the dissenting judge points out, the court of appeals’ holding also creates an absurd result. (Opinion at ¶ 94.) If, as the majority held, the District could manage stormwater only if it was mixed with water containing sewage or industrial waste or other pollutants, then it would lack authority to manage polluted water unless it was mixed with stormwater. That cannot have been the intent of the legislature. As this Court has held, statutes should be construed in a way that does not create absurdities. *Medcorp, Inc. v. Ohio Dept. of Job & Family Servs.*, 121 Ohio St. 3d 622, 906 N.E.2d 1125, 2009-Ohio-2058, ¶ 13 (2009).

Indeed, the Eighth District’s erroneous interpretation of Chapter 6119 would also appear to divest approximately 40 of the sanitary sewer districts in the state of their authority to operate. If “waste water” means storm water mixed with sewage, as the court of appeals held (Opinion at ¶¶ 43-44), then any district formed pursuant to Chapter 6119 that treats only sewer waste without a mixture of storm water – as about 40 such districts do – would seem to be outside the law. This is another absurd result that the legislature cannot have intended.

In holding erroneously that the District can provide only for the collection, treatment and disposal of “water containing waste,” Opinion at ¶ 44, the court of appeals cited a single case: *Reith v. McGill Smith Punshon, Inc.*, 163 Ohio App. 3d 709, 840 N.E.2d 226, 2009-Ohio-4852 (1st Dist. App. 2005). (*Id.*) In *Reith*, the First District Court of Appeals considered the negligence and trespass liability of a residential subdivision developer. In connection with the plaintiffs’ attempts to avoid the applicable statute of limitations, the court, in passing, incorrectly restated O.R.C. § 6119.011(K)’s definition of “waste water,” mangling it and rendering it as “waste water means any storm water containing sewage or other pollutants.” 2009-Ohio-4852 at

¶ 29. By redefining “waste water” in this unsupported way, the First District Court of Appeals itself erroneously read all other “storm water” out of the statute. For the Eighth District Court of Appeals to cite *Reith* while doing the same is merely replicating an error. *Reith* is not valid support for the result the court of appeals reached here.

Last, the fact that watershed districts and conservancy districts might have authority under O.R.C. §§ 6105.12 and 6101.04 that is “stormwater-related” (Opinion at ¶ 46) does not support the Eighth District’s conclusion that the District lacks authority to address stormwater issues. (*Id.*) The General Assembly gave watershed districts and conservancy districts many of the same powers as regional sewer districts. *See, e.g.*, O.R.C. § 6101.04(E), § 6101.04(H) (conservancy district may regulate stream flow and provide for collection and disposal of sewage produced in district). The fact that the authority the General Assembly granted to the District is not *exclusive* does not mean that the District cannot exercise it.

### CONCLUSION

If there is to be a solution to the stormwater management crisis in Northeast Ohio, it should be regional in scope. Under its legislative grant of authority, the District is expressly empowered to implement a regional stormwater management program. The Eighth District Court of Appeals erred in holding otherwise. *Amicus curiae* Cleveland Metropolitan Park District requests that this Court reverse the opinion of the court of appeals on the basis of Proposition of Law No. I.

Respectfully submitted,

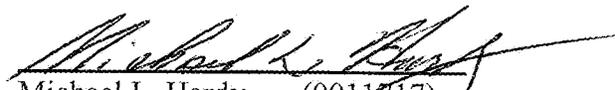
Rosalina M. Fini (0063625)

**CLEVELAND METROPOLITAN  
PARK DISTRICT**

4101 Fulton Parkway  
Cleveland, Ohio 44141  
Telephone 216-635-3216  
Fax 216-635-3232

rmf1@clevelandmetroparks.com

*Attorney for Amicus Curiae  
Cleveland Metropolitan Park District*



Michael L. Hardy (0011717)  
Karen E. Rubin (0030339)  
Devin A. Barry (0080733)

**THOMPSON HINE LLP**

3900 Key Center  
127 Public Square  
Cleveland, Ohio 44114  
Telephone 216-566-5500  
Fax 216-566-5800

Mike.Hardy@ThompsonHine.com  
Karen.Rubin@ThompsonHine.com  
Devin.Barry@ThompsonHine.com

*Attorneys for Amicus Curiae  
Cleveland Metropolitan Park District*

**CERTIFICATE OF SERVICE**

A copy of the foregoing Brief of *Amicus Curiae* Cleveland Metropolitan Park District in Support of Appellant Northeast Ohio Regional Sewer District was sent via U.S. mail, postage prepaid, to the following, on the 12th day of May, 2014:

John B. Nalbandian  
W. Stuart Dornette  
**TAFT STETTINIUS & HOLLISTER LLP**  
425 Walnut Street, Suite 1800  
Cincinnati, OH 45202

Stephen M. O'Bryan  
Gregory J. O'Brien  
Michael J. Zbiegien, Jr.  
**TAFT STETTINIUS & HOLLISTER LLP**  
200 Public Square, Suite 3500  
Cleveland, Ohio 44114

*Attorneys for Appellees City of Beachwood, City of Bedford Heights, City of Cleveland Heights, Village of Glenwillow, City of Independence, City of Lyndhurst, Village of Oakwood, City of Olmsted Falls, and City of Strongsville*

Sheldon Berns  
Benjamin J. Ockner  
Jordan Berns  
Gary F. Werner  
Timothy J. Duff  
**BERNS, OCKNER & GREENBERGER, LLC**  
3733 Park East Drive, Suite 200  
Beachwood, Ohio 44122

*Attorneys for Appellees Northeast Ohio Apartment Association, et al.*

Elizabeth Wells Rothenberg  
Assistant Director of Law  
**CITY OF CLEVELAND HEIGHTS**  
40 Severance Circle  
Cleveland Heights, Ohio 44112

*Attorney for Appellee City of Cleveland Heights*

David J. Matty  
Shana S. Samson  
Justin Whelan  
**MATTY, HENRIKSON & GREVE, LLC**  
55 Public Square, Suite 1775  
Cleveland, Ohio 44113

*Attorneys for Appellee City of Brecksville*

Barbara A. Langhenry  
Director of Law  
**CITY OF CLEVELAND**  
601 Lakeside Avenue, Room 106  
Cleveland, Ohio 44114

*Attorneys for Amicus Curiae the City of Cleveland*

(continued on next page)

Mark I. Wallach  
**THACKER MARTINSEK LPA**  
2330 One Cleveland Center  
1375 E. 9th Street  
Cleveland, Ohio 44114

James F. Lang  
Matthew J. Kucharson  
Molly A. Drake  
**CALFEE, HALTER & GRISWOLD LLP**  
1405 East Sixth Street  
Cleveland, Ohio 44114

Marlene Sundheimer  
Director of Law  
**NORTHEAST OHIO REGIONAL  
SEWER DISTRICT**  
3900 Euclid Avenue

*Attorneys for Appellant Northeast Ohio  
Regional Sewer District*

Andrea M. Salimbene  
**MCMAHON DEGULIS LLP**  
1335 Dublin Road, Suite 216A  
Columbus, Ohio 43215

Gregory J. DeGulis  
**MCMAHON DEGULIS LLP**  
The Caxton Building, Suite 650  
812 Huron Road  
Cleveland, Ohio 44115-1168

Erica M. Spitzig  
**MCMAHON DEGULIS LLP**  
The Monastery  
1055 St. Paul Place  
Cincinnati, Ohio 45202

*Attorneys for Amicus Curiae National Association of  
Clean Water Agencies and Association of Ohio Met-  
ropolitan Wastewater Agencies*

Eric Luckage  
**ALBERS AND ALBERS**  
88 N. Fifth Street  
Columbus, Ohio 43215

*Attorney for Amici Curiae Coalition of  
Ohio Regional Districts, Deerfield Re-  
gional Storm Water District and ABC  
Water and Storm Water District*

Yvette McGee Brown  
**JONES DAY**  
325 John H. McConnell Boulevard, Suite  
600  
P.O. Box 165017  
Columbus, Ohio 43216-5017

*Attorney on behalf of Amici Curiae Vil-  
lage of Cuyahoga Heights, et al.*

Eugene P. Holmes, Pro Se  
23507 Royalton Road  
Columbia Station, Ohio 44028

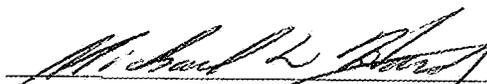
*Amicus Curiae in Support of Appellee*

Penny Sisson, Pro Se  
Box 266  
Spencer, Ohio 44275

*Amicus Curiae in Support of Appellee*

Michael J. Jogan, Pro Se  
31440 Cannon Road  
Solon, Ohio 44139

*Amicus Curiae in Support of Appellee*

  
Attorney for Amicus Curiae  
Cleveland Metropolitan Park District