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IN THE SUPREME COURT OF OHIO

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

MEMORANDUM IN SUPPORT OF JURISDICTION
AS AMICUS CURIAE
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Statutes

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

[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,

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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.

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