



**Written Testimony Of Brian Gresser, President Of The Association of Ohio
Metropolitan Wastewater Agencies, Before The Ohio House Of Representatives
State And Local Government Committee In Opposition To H.B. 121
November 1, 2017**

Chair Anielski, Vice-Chair Hambley, Ranking Member Holmes, members of the committee, I am Brian Gresser, P.E., Manager of Water Reclamation Services for the City of Akron. I am testifying on behalf of the Association of Ohio Metropolitan Wastewater Agencies ("AOMWA") and its members in opposition to House Bill 121.

AOMWA is a not-for-profit trade association that represents the interests of Ohio's publicly owned treatment works ("POTWs") that serve more than 4 million Ohioans and successfully treat more than 300 billion gallons of wastewater each year. AOMWA members include Akron, Avon Lake, Butler County, Canton, City of Hamilton, Columbus, Dayton, City of Fairfield, Hamilton County, Lancaster, Lima, Marysville, Metropolitan Sewer District of Greater Cincinnati, Middletown, Newark, the Northeast Ohio Regional Sewer District ("NEORS"), Portsmouth, Solon, Springfield and Warren. The fundamental purpose of our organization and its members is to protect the water resources on which Ohio's communities depend.

AOMWA believes that H.B. 121 constitutes a substantial and unwarranted intrusion by the state of Ohio into the operational and capital spending decisions of local public wastewater utilities across the state. The bill raises several very serious concerns for AOMWA members that I will outline briefly.

I. H.B. 121 will apply to projects funded by Ohio EPA's state revolving loan funds. Many local public wastewater utilities rely heavily upon Ohio EPA loan funds for wastewater treatment and sewage collection capital improvement projects. So, H.B. 121 will have a substantial statewide impact.

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II. H.B. 121 will impose substantial additional costs and delays in every state funded wastewater project because local wastewater utilities will be forced to abandon their long-standing construction and material specifications and to employ a professional engineer to conduct a pipe material assessment in every project. Many AOMWA members maintain written construction and material specifications that establish which pipe materials are acceptable in particular applications. These specifications reflect the collective judgment of not just the utilities' professional engineering staff but also their operations and maintenance managers as to what pipe materials are appropriate in any given application and in the context of local soil, traffic, and other conditions. As such, local utility material specifications reflect not just engineering specifications but local utility judgments on life-cycle costs, maintenance costs, and environmental and social costs.

Currently, local utilities use a qualifications-based selection process to hire professional engineers to perform design work for wastewater capital improvement projects. The professional engineers design the project consistent with the utility's pipe material specifications. The project is then bid out for construction with the pipe material as provided in the design plans and consistent with the utility's material specifications. H.B. 121 will disrupt this process by requiring local utilities to abandon their specifications and to pay a professional engineer to conduct a pipe material assessment in every state funded project. This will increase costs and delay projects for all utilities, but will be particularly burdensome for smaller utilities that operate with limited resources.

III. Some AOMWA members allow plastic pipe for sanitary and storm water collection in their material specifications and some do not. In the judgment of some utilities, plastic water pipe is subject to a greater risk of failure in some environments such as areas where the pipe is subject to frequent and heavy external loads from

vehicle traffic. Plastic pipe is less strong than other pipe materials and requires very precise and careful installation. In particular, back-filling of plastic pipe must be very precise. If voids are left under the pipe or larger rocks protrude from the back-fill, and the pipe is subject to external loads, for example from vehicle traffic, there is a significant risk of failure that is not present when stronger pipe materials are used.

This risk is compounded in urban areas where water pipes share the right of way with other underground utilities. In such circumstances, the underground utilities are subject to frequent excavation, and back-filling may be less than perfect. In the judgment of some wastewater utilities these circumstances present an unacceptable risk of imposing the substantial social, economic, and environmental costs upon their customers that would arise from the failure of sanitary and storm sewers. With all due respect, the General Assembly should not second-guess local wastewater utilities by voting this bill into law, but should leave these matters to the considered judgment and expertise of Ohio's local wastewater utilities, some of whom built their first sewers in the 1840's.

IV. If H.B 121 becomes law it will result in a significant increase in bid challenges and litigation in state funded wastewater projects. As written, the bill will require utilities to have a professional engineer conduct a pipe material assessment in every project based upon "engineering specifications." Plastic water pipe meets a number of national standards for use in wastewater and storm water collection systems and arguably meets "engineering specifications." Plastic pipe is cheap to produce and will always come in at a lower initial cost than other pipe materials. "Engineering specifications" is a narrowly defined term that does not include consideration of life-cycle costs, maintenance costs and other factors. While plastic pipe may have significantly lower initial costs, its true cost may equal or exceed the cost of other pipe materials when these other factors are considered. The proponents of this bill have been relentless, returning year after year to advocate for this legislation despite being previously rejected.

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by the General Assembly. If this bill becomes law and a local utility selects a pipe material other than plastic pipe, we fully expect that such utilities will be subject to litigation challenging such a selection.

V. This bill is being sold by its proponents, plastic pipe manufacturers and more significantly the very large chemical companies that supply plastic feedstock to these manufacturers, as an effort to establish a free market for pipe materials. In truth, this bill is everything but an exercise in free market economics. In truly free markets, producers of goods and services go into the market and try to sell their products and services to potential customers. In a free market, potential customers can freely choose the products and services that meet their needs. I ask the members of the Committee to recognize this bill for what it is—an attempt by a large industrial oligarchy with enormous financial resources to increase its market share by enlisting the General Assembly to force local wastewater utilities to buy its products at considerable expense to the communities and ratepayers they serve. Finally, the Committee should know that this bill is part of what has been a multi-state effort by its proponents to pass similar legislation. Every state that has considered similar legislation has rejected it. Ohio should not be the first state to pass this unwarranted and unnecessary legislation into law.

VI. In the AOMWA's view, a recently proposed amendment to the bill puts local wastewater utilities in an even worse position than the unacceptable and unnecessary language of the current bill would. The current bill requires utilities to consider all pipe materials that meet engineering specifications for the project as determined by a design engineers. The amendment would prohibit local wastewater utilities from excluding "reasonable" pipe material as determined by "sound engineering principles." The terms "reasonable" and "sound engineering principles" are vague, undefined and clearly have no certain meaning in the context of pipe installation projects.

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The amendment presents the same fundamental problems as the language of the current bill. Both would force local utilities to abandon their written pipe material specifications and consider pipe materials just on the basis of “engineering specifications” or “sound engineering principles,” neither of which take into consideration lifecycle, environmental, or social costs that utilities consider when establishing written pipe material specifications. Responsible utilities must consider all these costs in establishing written pipe material specifications, in particular lifecycle costs that include maintenance and operational costs over time. Lifecycle costs will vary based upon local conditions in which a water utility operates. The amendment constitutes an even greater state intrusion into the pipe market that undermines local utility control over their operations and that will result in even more bid challenges and litigation. AOMWA urges the Committee to reject the proposed amendment.

Chair Anielski and members of the Committee, your attention and consideration in this matter are very much appreciated.