

**Written Testimony of Mayor Dave Berger
Senate Environment and Public Works Committee**

Introductions

Good morning Chairman Inhofe, Ranking Member Boxer, and members of the Committee. I wish to thank you for this invitation to give mine and the Conference of Mayors' perspective on water and wastewater issues in the United States.

I also want to thank this committee for its bipartisan work on trying to provide some relief to Flint, Michigan. The Conference of Mayors sent you a bipartisan letter, signed by over 170 Mayors, asking Congress and the Administration to provide aid to the City of Flint. On behalf of myself and my fellow Mayors, I hope you can succeed in this important and critical endeavor.

My name is David Berger and I am in my 27th year serving as the Mayor of Lima, Ohio. I also spent nearly 20 years in negotiations with Ohio EPA and USEPA over Long Term Control Plans to solve combined and sanitary sewer overflow problems. As Vice-Chair for Water and as a member of the Conference's Water Council, I have participated in over 5 years of discussions with EPA Headquarters on the issues of Integrated Planning, green infrastructure and affordability. So a significant portion of my professional and elected life over the past quarter century has been spent on this and related matters. I would guess this makes me a reluctant expert in this field.

And my message to you is this – we are on a dangerously unsustainable path when it comes to providing water and wastewater services in an affordable manner.

- Local governments are stuck on an unsustainable financial treadmill when it comes to providing water and wastewater services; decisions made by Congress and the Administration to eliminate or reduce financial assistance without restricting costly mandates has placed a severe financial burden on our nation's cities and our citizens.
- The combination of federal water policy mandates that force aggressive, and in many cases unachievable, goals, coupled with the high cost of building, maintaining and operating the necessary infrastructure to provide core city services that comply with water laws is now beyond the means of half the populations of our cities. This is an artifact of federal policy that forces the lower half of the income strata to afford the same rates as the upper half of household incomes.
- The net effect of mandates and infrastructure investment (both capital and operations) puts cities in increasingly higher long term debt with accompanying rate hikes that has the effect of raising basic service rates to levels that are unaffordable to a growing percent of the 80% of Americans served by these systems.

USCM Policy – Give Us Money or Give Us Relief

Local government -- not the federal government -- is where the job of providing water and wastewater services gets done and is paid for. But here's the conundrum: Congress eliminated the CWA construction grants program in the late 1980s by stating that water and sewer are local concerns. The EPA, however, continued to issue an unending number of new and revised mandates for which cities were responsible. Illustrative of this attitude, in 2009 the then EPA Administrator told a meeting of mayors in Washington, DC that EPA staff advised that cities don't want to spend the money on improving water quality. But contrary to this it should be known that local government has invested over \$2 trillion in water and sewer infrastructure and services since the early 1970s. In 2013 Bureau of Census data report local government spent \$117 billion a year to provide services to 80% or more of American households. With this investment, local governments have substantially improved drinking water and water quality: reducing acute microbial infections by 90% or more; and, vastly increasing monitoring and treatment of metals and organic contaminants that are associated with long-term chronic diseases.

But, public water infrastructure and services are ultimately paid for by customers, many of which are residential households. The cumulative costs of unfunded federal mandates on public water infrastructure and services that are paid by customers have reached or exceeded thresholds of clear economic burden on low and fixed income households.

I put this question to the Chairman and Committee Members, all whom are elected and accountable like Mayors for how federal agencies interact with our local constituents -- how much of a community's resources should be dedicated to sustaining the health and environmental benefits we have achieved versus how much more should be directed by EPA to achieve national water goals if the federal government provides negligible financial assistance or regulatory flexibility?

At the Conference of Mayors, we have unanimously passed a number of policies dealing with this issue. One is a simple message to the Congress and the Administration, "Give us money, or give us relief." The Mayors of this nation would be happy to implement any rule or regulation you or EPA comes up with but you have to provide at least half of the money. And I'm talking real money, not authorization levels that never get funded. And ideally, I'm also talking about grants and not loans that need to eventually be paid back and only add to our debt burden. (Attachment)

For too long, local governments have had to deal with the heavy hand of EPA; and our residents, particularly our poorest residents, have been left to pay a disproportionate burden of the costs.

Let me give you a few examples of what I mean.

Lima

Lima is a proud community of modest financial means. We have shrunk from roughly 52,000 to 38,000, as more affluent households have moved to the suburbs. Our annual median household income is \$26,943 with nearly 1/3 living under the poverty threshold.

The City had a \$60 million agreement with Ohio to fix our combined sewer overflow problem. However, the federal EPA intervened, effectively halting any progress and contravening the control plan agreed to by the state regulators. I spent over 10 years and \$10 million on engineers and lawyers which did nothing to improve water quality. EPA demanded that I spend \$150 million and pay a civil penalty. Remember, my community only has 38,000 residents. In order to implement EPA's Long Term Control Plan, the projected average sewer bill will be \$871.62. This means that 47% of my households would be spending more than 4% of their household income on just their sewer bills with nearly 17% of my residents spending nearly 9% of their income.

Despite being one of the first communities in this country to have an approved Integrated Plan as the basis of our consent decree, it still is a frustrating process that is costly, drawn out and requiring special interventions by Headquarters. In this regard, we have talked with other communities about their experiences, and we have found that they are dealing with similar challenges. EPA staff stipulates deadlines to turn around information and then does not respond in similar timely ways. While Headquarters prioritizes Integrated Planning, the Regional Offices actively resist proposals that incorporate flexibility, longer implementation timetables, and priority setting, and focus instead on high cost approaches, fixed deadlines, and penalties. While Headquarters acknowledges that cities and their citizens have financial constraints, the Regional Offices minimize the arguments about burdensome costs and unrealistic time tables. While Headquarters embraces the idea that cities have shared stewardship roles for improving the environment, the regional EPA offices along with DOJ staff sometimes use bullying tactics and threats of near term federal court actions. And without help and intervention from EPA headquarters, I'm not sure if we would have gotten an approved Integrated Plan from the Regional Office.

The Lima experience is not unique. Cities around the nation are finding that little or no change has occurred in the regional offices in dealing with the challenges of the Clean Water Act. While we applaud the continuing engagement and good faith efforts of EPA headquarters, we must report that the message is not getting through to the regional offices.

Other Communities

Mayors have lost elections or faced recalls because they raised their water and sewer rates to pay for these mandates. This includes in Chicopee, Massachusetts where water and sewer rates were raised by 134%; Omaha, Nebraska which faced a \$1.5 billion consent decree; Akron, Ohio whose costs went from a \$350 million fix to a still not agreed upon figure of \$1.4 billion; and Chattanooga, Tennessee which faced a costly consent decree while the surrounding communities did not share in the cost even though they contributed to the problem.

In California, cities must comply with Total Maximum Daily Loads (TMDLs) which are estimated to cost cities in the Los Angeles County alone upwards of \$140 billion to comply. In USCM's study of current cost per household for water, sewer and flood control, of just 33 California cities that were studied, 24 cities reported that more than 10% of their households were paying more than 4.5% of their income on water, sewer and flood control costs with 10 of those cities having more than 20% of their households spending 4.5%. Please keep in mind that for many of these cities, they have not yet factored in the cost for TMDL controls. (Attachment)

Reality vs. Affordability

How did we get here? When the Clean Water and Safe Drinking Water Acts (CWA/SDWA) were first established, Congress set lofty, aspirational goals. A practical intergovernmental partnership with local, state, and federal governments was established, each playing a significant role. Congress provided CWA construction grants to local government, and that investment, that skin in the game on the part of the federal government, created a reasonable attitude about how we could accomplish those goals together.

That is not the case now. Congress retreated from the grants program primarily because of the anticipated high cost to the Treasury; but the implementation of the water policies by successive Administrations did not move in concert with Congress' decline in financial assistance. Quite the contrary, the Administration advanced then-goals to compliance status as permit requirements in the CWA, and drinking water standards under the SDWA. Now, local governments with state water permits are being punished by being held accountable to pay for reducing pollution from other non-urban sources, or for design limitations that make controlling natural forces (stormwaters) difficult to manage.

Let me give you a few examples –

- In a typical CSO consent decree, cities are held to an arbitrary number of no more than 4 overflows per year. However, there is no science that substantiates that as a magic number for all receiving water bodies. So, in some cases, cities are allowed 14 while in another case, 0 overflows. I'm sorry, but to try to engineer anything that could handle any and all types of storm with zero overflows is almost impossible and needlessly expensive. Attached is a sample list of communities and the number of overflows that are allowed.(1)
- In Iowa, fertilizer runoff from farms upstream has caused nitrate levels to exceed EPA's Drinking Water standards for the City of Des Moines. The city was forced to build a special facility 20 years ago to extract the pollutant. In 2013, the city spent \$900,000 just on nitrate removal and Des Moines' customers are facing a 10% rate hike. This facility will need to be replaced at a cost over \$100 million.
- In my own city, I have a river that is labeled as "fishable and swimmable". That particular river dries up in the summer time with water pooling and stagnating in only 4 inch depths. I can safely say that no one is ever going to swim in it and yet, I'm held to that standard of compliance.

As a result, EPA is dictating our priorities and where our taxpayer money is being spent. And, in many Mayors' opinions, they are diverting money that could be spent on not only our fundamental responsibilities of providing safe drinking water and proper handling of wastewater, but other core services as well such as education, safety services, and economic development.

Solutions

I do not want to give you the impression that Mayors do not care about clean water. We do. We care passionately about it and our actions and investments speak loudly. Local governments are the primary water quality steward of the nation, investing \$117 billion a year, employing nearly 300,000 people to provide the services; and, in the 30 years since Congress retreated from providing meaningful financial assistance we are the only level of government that actually provides water and sanitation services. It is no little irony that in dealing with EPA mandates we are offered loans to pay back with interest and promises from Congressional authorizers that fail to produce appropriations!

If federal policy continues to isolate local government as the remaining, and single-most, important player in this field, and our households and businesses are to shoulder the cost burden by themselves, then local government should have a greater voice in setting and achieving goals.

- The Mayors believe that future investments should be prioritized to first ensure the sustainability of existing public water infrastructure and associated public health, economic and environmental benefits.
- Additional improvements that will achieve additional benefits should be prioritized second.
- Investments that do not have commensurate public health, economic and environmental benefits do not belong on the priority list.

As I mentioned in the beginning, we need the federal and state government to be our partners, not our prosecutors. We either need real money or we need regulatory relief. And when we talk about regulatory relief, we are not talking about "turning the Clean Water or Safe Drinking Water acts on their ear" but we must ask for the following:

- Codify Integrated Planning to allow cities to develop comprehensive plans for their water, sewer, and stormwater needs;
- Define Affordability and stop the use of Median Household Income (MHI) as the critical metric for determining investment level. It puts 50% of households on an unfair and burdensome financial impact;
- Develop Reasonable and Sustainable Goals. Whether that means relooking at use attainability or allowing variances until a goal can be reasonably reached;
- Allow for Substantial Additional Time to reach these goals. I know we all want all of our lakes and streams to be perfect overnight but we can't get there if that means bankrupting our most vulnerable citizens;

- Eliminate civil penalties for local governments who develop an integrated plan and put good faith efforts into improving their water. We are not x-Chemical company where penalties impact our profit margin - Civil penalties only hurt the citizens, the customers of our communities; and
- Establish a review process to appeal decisions made at the regional level and allow for more transparency.

I have attached the Conference's legislative proposal that outlines in more detail on the type of solutions we are looking to accomplish along with excerpts from my testimony before the House Transportation and Infrastructure Subcommittee on Water and the Environment outlining this subject.

Conclusion

Cities are stewards of the public trust, a responsibility that we share with the state and federal governments and should be accorded the respect of a shared stewardship of our environment.

We need Congress to provide relief. We need Congress to provide oversight and to remember that EPA has its authority because of the way the Clean Water Act was written and enacted by the Congress. We need Congress to act.

Thank you again for this opportunity to address you.

(1) List of Local Governments with consent decrees, administrative orders, or in process. The number of annual overflows specified in long term control plans.

Akron OH – 0	Anderson IN – 8
Elkhart IN – 9	Evansville IN – 4
Fitchburg MA – 0	Ft. Wayne IN – 4
Henderson KY – 85% capture	Hammond Sanitary District IN – 0
Indianapolis IN – 4/2	Kansas City MO – 12
Lima OH – 5	Mishawaka IN – 0
Nashua NH – 0	New Bedford MA – 0
Newport RI – 0	Northeast Ohio Regional Sewer District OH
– 4	
Omaha NE – 4	Oswego NY – 0
Philadelphia PA – 80% capture	South Bend IN – 4
St. Louis MO – 4 for non Miss. River; no restriction on Miss. River discharges (target 10% volume reduction)	
Terre Haute IN – 7	