



# City of Atlanta Consent Decrees Obstacles to Compliance

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- CSO Consent Decree

- 1995 – Upper Chattahoochee Riverkeeper files citizen suit challenging the City's selected method to obtain compliance with state phosphorous reduction standards; Riverkeeper also alleged violations of permits for the City's newly-constructed CSO facilities.
- Phosphorous claims were dismissed – Judge is then elevated to the 11<sup>th</sup> Circuit; new Judge put in place.
- November 1997 – Court ruled that City had violated CSO NPDES Permits.
- Contemporaneously with Citizen Suit, EPA and the State Environmental Protection Division commenced a joint three-month intensive investigation of all of Atlanta's sewer system.
- Following entry of Order, EPA and the State joined Riverkeeper in negotiating terms of Consent Decree to resolve allegations involving CSO facilities.



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- CSO Consent Decree entered on September 24, 1998.
    - Required the CSO facilities to be brought into full compliance by March 31, 2007.
    - The City's approved remedial plan includes:
      - Sewer separation in certain areas of the City, eliminating two CSO treatment facilities;
      - Construction of a deep-rock tunnel storage and treatment system to service remaining CSO facilities.
      - Reduction of permitted CSO discharges to four per year at each of the remaining CSO facilities. These four permitted overflows are required to be screened, disinfected and dechlorinated prior to discharge and must meet WQS.
      - Final Plan – \$757 Million
      - ALL CONSTRUCTION NOW COMPLETE!!






- SSO Consent Decree

- Concurrent with lodging of CSO Consent Decree, EPA and State filed a complaint including additional claims regarding wastewater treatment plants and collection system.
- Shortly after entry of CSO Consent Decree, EPA and EPD commenced negotiations on these new issues.
- Wastewater treatment plants already the subject of substantial capital improvements, thus this Consent Decree focused on collection system issues.
- SSO Consent Decree entered by Court on December 20, 1999.
- Requires comprehensive study program to evaluate current condition of entire collection system and remedy deficiencies through capital improvement program.
- 14 years to implement
- Entered by Court in December 1999.
- Full compliance estimated to cost \$2.2 Billion.



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- Lack of Trust by the regulators that City would do the “right thing.”
  - Poor track record on collection system.
  - City leadership with “issues.”







- 2003 – 5 Year Rate Hike

- Mayor proposed rate hike of 45%; public information campaign
- Obtained assurance of Federal and State Agencies that they would enforce decrees if City failed to finance them. Letters from DOJ, Georgia EPD and comments from Federal Judge in court warning of consequences of failure to finance Consent Decrees
- City Council rejected, passing one year 1% increase on 12/1/03 and cutting DWM budget by \$25 million
- City Water Sewer Revenue Bond rating downgraded. 12/3/03
- Mayor vetoes 12/8/03
- State announces it will loan City \$50M/year over 10 years. 12/23/03
- State Senate Majority leader announces he will back legislation to approve 1 cent muni option sales tax for water sewer purposes to blunt impact of rate hikes. 12/23/03
- Council unanimously approves sufficient 5 year rate hike 1/5/04.




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- 2003 Sales tax statutory change
    - City lobbies for change in state law allowing opportunity to have a tax referendum.
    - First opportunity – Fulton County requested to place referendum on the ballot – Fulton County denied request.
    - Second opportunity – City of Atlanta allowed to place ordinance for 1% municipal option sales tax on ballot and approved by 75% of the residents.
    - Four year tax; approved for renewal in 2008 with approval by 71% of residents. Law allows voters to approve one more 4 year renewal in 2012.



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- The Drought – substantially reduced water and sewer revenues from user fees. Mandatory 10% reduction in water usage. State mandated (local gov't enforced) Outdoor water use ban. Users conserving ~20%. (Fall 2006 – ongoing).
  - Sales tax revenue projections down due to slowing economy. (Fall 2008 – ongoing)
  - 2008 Rate Hike – conditioned on Department-wide audit.
  - Credit Crisis - Lack of access to credit markets. (Fall 2008 – ongoing)
  - Financial Capability Assessment – Where's the relief?
    - numerous submittals made *after* signing Consent Decrees showing high burden; 25% below poverty level; among highest water/sewer rates in United States for a major metropolitan utility
    - EPA sends back seeking more info or fails to respond at all.



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- West Side CSO Tunnel Boring Machine Failure
  - Two TBMs -- “Rocky and Rocksanne”
  - Manufactured and shipped from Germany
  - 8.5 mile long tunnel 300 feet below ground, 27 feet in diameter.
  - Tunnel will store CSOs until discharge to WWTP.
  - Originally scheduled for completion – November 2007.






# A GREAT BEGINNING







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- Force Majeure! Extension to Compliance Schedule Requested.
    - Bearing Failure on one of the TBMs – out of service for 52 days
    - Slower than expected excavation rate
    - More lining of tunnel than expected
  - 1 Year Extension Granted to CD Schedule






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- SSO Consent Decree required a program to evaluate and rehabilitate its collection system.
  - City submitted a Prioritization Plan for sorting 256 sewersheds into 6 groups with the primary objective of “worst comes first”.
  - However, this “worst comes first” ended up making little engineering sense for capacity relief projects as the sewersheds in each group were spread throughout the City.
  - City requested that a different schedule for capacity relief projects than for structural rehabilitation – capacity relief would be addressed on a sewerbasin wide approach.
  - EPA agreed that the schedule could be changed.



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- 2004 Fulton County Taxpayer Association attempted intervention.
  - 2005 Clean Streams Task Force Appeal of CSO NPDES Permits
    - Permits appealed based upon alleged technical and theoretical deficiencies.
    - Citizen group pushing for UV treatment technology rather than chemical treatment at CSO treatment plants.
    - Vigorous pre-hearing defense led to withdrawal.



- 2005 Grinder Pump – Request for TRO
  - 2 Homeowners attempted to stop Sewer Separation projects days from completion to prevent installation of grinder pumps so their homes' plumbing would discharge to new separate sanitary sewer.
  - Potential delay notice letters sent to agencies and Judge.
  - City defeated homeowners at TRO hearing – heavy handed arguments based upon the equities.
- Fulton County/Sandy Spring Water Rate Case – 21% water rate differential not arbitrary.





- SB 306 and HB 1145

- Introduced by the 2007 and 2008 General Assemblies.
- Would provide new water and sewer authority with power to encroach on historical City of Atlanta service areas.
- Potential impact to water rates with thus potential negative impact to bond financing and, in turn, compliance with Consent Decrees.
- Federal Judge issued statement:  
*I will exercise every power I have to provide the City with whatever it takes to finish the job . . . If it means enjoining legislation, I will do it. If it means imposing financial liability on the State of Georgia, I will do it.*
- Legislation failed to make it out of committee.





## HB 1292 and HB 1117 – Attacking Atlanta's Rate Differential:

- HB 1292 – proposed to restrict ability of water sewer providers that charge rate differential to outside customers from using outside customer revenue to fund the repayment of any bond issues unrelated to projects serving those customers. Failed to get out of committee.
- HB 1117 – proposed to change legal standard for rate differentials from being “not arbitrary” to only being allowed to recover “actual costs.”






## County Secession (The South Shall Rise Again – Sort Of)

- HR 21 proposes constitutional amendment allow formerly merged counties to reform by voters in the county that is to reform.
- Milton County – North Fulton County suburban cities. Stranded outside City water assets.



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- All Work under CSO Consent Decree completed on October 23, 2008.
  - CSO Consent Decree requires a two year compliance evaluation period.
  - Anticipate that the usual cast of characters will reappear when the Motion to Terminate is filed.





The work's been done. It's been done on time . . . [a]nd it really is a remarkable accomplishment."

-- U.S. District Court Judge Thomas Thrash



