Money Matters . . .

Making the Case for Affordability

NACWA

A Clear Commitment to America's Waters

Program of Events for Today's Seminar

- Introduction
- U.S. Conference of Mayors – Advocacy
- U.S. Environmental Protection Agency Enforcement Strategy
- NACWA Guiding Principles
- Case Studies:
  - City of Atlanta, Ga.
  - City of Akron, Ohio
  - Sanitation District No. 1, Ky.

NACWA
A Clear Commitment to America's Waters

Loren Denton, Acting Chief
Municipal Enforcement Branch
Water Enforcement Division
U.S. EPA

NACWA Webinar

June 22, 2010

CWA National Enforcement Priorities – FY2008-2010

- Combined Sewer Overflows (CSOs)
- Sanitary Sewer Overflows (SSOs)
- Storm Water
- Concentrated Animal Feeding Operations (CAFOs)

CWA National Enforcement Initiatives – FY2011-2013*

- Keeping Raw Sewage and Contaminated Storm Water Out of Our Nation's Waters.
- Preventing Animal Waste from Contaminating Surface and Ground Waters.

*http://www.epa.gov/oecaerth/data/planning/initiatives/initiatives.html

EPA Administrator: "Seven Priorities for EPA's Future"

- Taking Action on Climate Change
- Improving Air Quality
- Assuring the Safety of Chemicals
- Cleaning Up Our Communities
- Protecting America's Waters
- Expanding the Conversation on Environmentalism and Working for Environmental Justice
- Building Strong State and Tribal Partnerships

Working for Environmental Justice

- Untreated sewage too frequently overflows from sewers into waterways, or backs up into city streets or basements of homes.
  - This problem particularly affects older urban areas, where minority and low income communities are often concentrated.
- EPA recognizes that certain areas of a community may be disproportionably impacted by the costs to implement environmental control measures.
  - A municipality will often be in the best position to determine how to apportion the costs across the community.

Green Infrastructure

- OW/OECA Guidance clarifying there is no regulatory impediment to “Green Infrastructure” in permitting or enforcement actions.
- Numerous settlements now include green infrastructure components requiring site-specific practices (e.g. green roofs, rain gardens, permeable pavement, etc.).
  - Hamilton County/Cincinnati, OH
  - Louisville, KY
  - Kansas City, MO
- Benefits include storm water control; urban heat island mitigation; and energy demand reductions.

Environmental and Financial Issues

- Implementation schedules may be phased based on:
  - Relative importance of adverse impacts on WQS, designated uses, and community impacts;
  - Priority projects identified in LTCP;
  - Permittee's financial capability.

Financial Capability

- Length of Compliance Schedule
  - Scope of problem
  - Complexity of remedy
  - Cost of remedy
- Financial capability guidance – Financial burden on community determines length of schedule:
  - Low burden – 5 years;
  - Medium burden – 10 years;
  - High burden – 15 years, up to 20 years in unusually high burden circumstances.
- Current economic situation is a major factor.

Compliance Schedule Flexibility

- The analysis is done on a case-specific basis and EPA will consider all appropriate schedule proposals.
- For longer schedules, a municipality must articulate a well-supported factual basis for why a longer schedule is necessary including, but not limited to:
  - A municipality's inability to raise funds;
  - High unemployment;
  - Significant financial burdens to implement control measures;
  - Incorporation of green infrastructure, etc.
- When considering longer schedules, EPA looks for areas of immediate relief:
  - Sensitive waters and/or designated uses;
  - Community impacts;
  - Incorporation of green infrastructure;
  - Improved asset management.

Shared Principles

- Public clean water agencies, mayors, NACWA, States and EPA share a desire to:
  - Clean up urban waters;
  - Improve the quality of life;
  - See that money spent will directly benefit communities of concern and their associated water quality.

Resources

- EPA Green Infrastructure Website: http://cfpub.epa.gov/npdes/home.cfm?program_id=298
- Combined Sewer Overflows: http://cfpub.epa.gov/npdes/home.cfm?program_id=5
- Combined Sewer Overflows Guidance for Financial Capability Assessment and Schedule Development: http://www.epa.gov/npdes/pubs/csofc.pdf
- Sanitary Sewer Overflows and Peak Flows: http://cfpub.epa.gov/npdes/home.cfm?program_id=4
- Stormwater Discharges From Municipal Separate Storm Sewer Systems (MS4s): http://cfpub.epa.gov/npdes/stormwater/munic.cfm
- Urban BMP Performance Tool: http://cfpub.epa.gov/npdes/stormwater/urbanbmp/bmpeffectiveness.cfm

Affordability Initiative of US Conference of Mayors

Fred Andes

Barnes & Thornburg LLP

June 22, 2010

Problems

- CSO and SSO communities negotiating CSO Long-Term Control Plans, SSO plans and consent decrees with EPA and States
- Agencies applying CSO and SSO requirements in inflexible way, including as to affordability in control and schedule decisions
- Need for broad dialogue about how to address those concerns within current structure

Steps to Address Problem

- B&T and LimnoTech worked with US Conference of Mayors to develop set of directives that could be issued by EPA HQ
- Directives would NOT change Clean Water Act or EPA rules, and would be fully consistent with current EPA policies
- Goal is to ensure that EPA Regions and States are using all of the flexibility provided by those current EPA policies

Issues Covered by Initiative

- Focus on Benefits
- Green Infrastructure
- Carbon Footprint
- Affordability

Affordability Issues

- Decisions as to level of control and schedule should not be dictated by affordability
- "Knee of curve" is a key factor – look for the most cost-effective solutions
- Allow longer time schedules – more than 20 years – to assist in finding best long-term solutions
- Also need to consider:
  - Ability to raise money, including bonding issues
  - Impact on low-income communities
  - Cumulative costs to meet CWA requirements

Steps in Dialogue

- Two meetings between USCM and EPA and DOJ representatives – late 2009/early 2010
- EPA/DOJ have indicated willingness to discuss ways to include more flexibility in implementation of current policies
- Parties plan to have series of meetings
- USCM is developing issue papers in preparation for meetings

Support of USCM Effort

- Ad Hoc CSO/SSO Group formed to provide support to USCM and to provide opportunity for communities to give input
- NACWA is supporting Ad Hoc Group – including financial assistance from Wet Weather Fund for participating members
- Ad Hoc Group is developing papers on each issue, as input to USCM process
- Important to include examples – good and bad – of how EPA policies being implemented

Questions?

- Fredric P. Andes, Esq.

  Barnes & Thornburg, LLP

  312-214-8310

  fandes@btlaw.com

National Association of Clean Water Agencies
Web Seminar
June 22, 2010

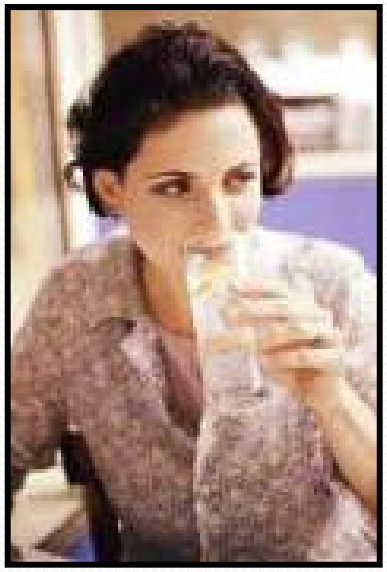
Money Matters …
Making the Case for Affordability

NACWA Guiding Principles

Definitions of Terms

- **Financial capability**
  - ability of a community to finance required capital improvements & support utility operations

- **Affordability**
  - ability of individuals, most notably low-income ratepayers, to pay costs of utility services within prevailing budget constraints



NACWA Guiding Principles

EPA Guidance – Limited 2-Part Test

Permittee Financial Capability Indicators Score	Residential Indicator (Cost Per Household as a % of MHI)		
	Low (Below 1.0%)	Median (Between 1.0% and 2.0%)	High (Above 2.0%)
Weak (Below 1.5)	Medium Burden	High Burden	High Burden
Mid-Range (Between 1.5 and 2.5)	Low Burden	Medium Burden	High Burden
Strong (Above 2.5)	Low Burden	Low Burden	Medium Burden

NACWA Guiding Principles

Rethinking financial capability

- What the EPA guidance and enforcement posture gets right:
  - Claim on MHI is one reasonable metric
  - Schedule relief, if substantive, mitigates burden
  - Service is generally under-priced
    - **Limiting the merit of claims for subsidy / support**
- Yet, a static workbook approach to assessment denies that financial capability:
  - changes with changing conditions
  - reflects “local” factors
  - must be considered holistically

NACWA Guiding Principles

Rethinking financial capability

- What do you consider when determining to purchase a new car, boat, second home?
  - Can you define a fixed schedule today?
  - Would you commit to purchases without considering other pending claims on income?
    - How do you weigh needs of less fortunate?
  - Would such a schedule need to be adjustable to accommodate salary changes, price trends of the planned purchases, etc?
  - Would you plan to purchase a 2009 model car irrespective of technology advances coming later?
- Relevant principles derive from common sense perceptions based on personal experience

NACWA Guiding Principles

EPA Guidance - opportunities for enhancement

Limitations

- "Snapshot" calculation – without reference to utility cash flows or capital financing options
- Exclusion of other water quality investments
- Flawed financial indicator scoring and matrix logic
- No guidance on how schedule relief determined

Opportunities

- Reference utility financial plans and forecasts
- Include all costs that will place claims on utility ratepayers
- Develop forecasts using relevant financial indicators (used by ratings agencies)
- Adjust controls / schedule based on financing capacity (acceptable level of burden)

Policy Issues

- Cost participation of suburban communities
- Decision framework for site specific factors
  - Environmental justice
- Dynamic conditions
  - Future new requirements
  - Cost variances over program periods
- Affordability programs

Prospects for Enhancement

- Economic conditions have heightened concerns of honoring CWA policy intent
  - Discussions with EPA (directly and in context of ongoing Consent Decree negotiations)
  - U.S. Congressional action
    - Voinovich / Brown legislation
  - State actions
    - Enacted Kentucky legislation
- NACWA / USCOM advocacy

Case Studies

City of Atlanta
Department of Watershed Management

Robert Hunter, Commissioner

City of Atlanta

CSO Consent Decree compliance

- 9 of 9 projects completed and in operation
- 3 sewer separation projects completed @ cost of $300 million
  - New sewer, New water, New streets
- West Area CSO Tunnel
  - 8.5 miles - 150 million gallon capacity
  - 85 mgd treatment plant
  - **All 55 Consent Decree milestones ahead of schedule and within budget**

"A REMARKABLE ACCOMPLISHMENT"
– Judge Thomas Thrash

City of Atlanta

First Amended Consent Decree compliance

- Phase 1 – Inspection & Evaluation
  - 1,323 miles completed (84% of 1,582 miles)
  - Complete before 2011 deadline
- Phase 2 – Sewer Rehabilitation
  - 339 miles completed (65% of 521 miles)
  - Complete 6-months before 2013 deadline
- Phase 3 – Sewer Capacity Relief
  - 12 relief projects completed including Nancy Creek Tunnel
  - South River Tunnel under Construction
  - Peachtree Creek Design Complete

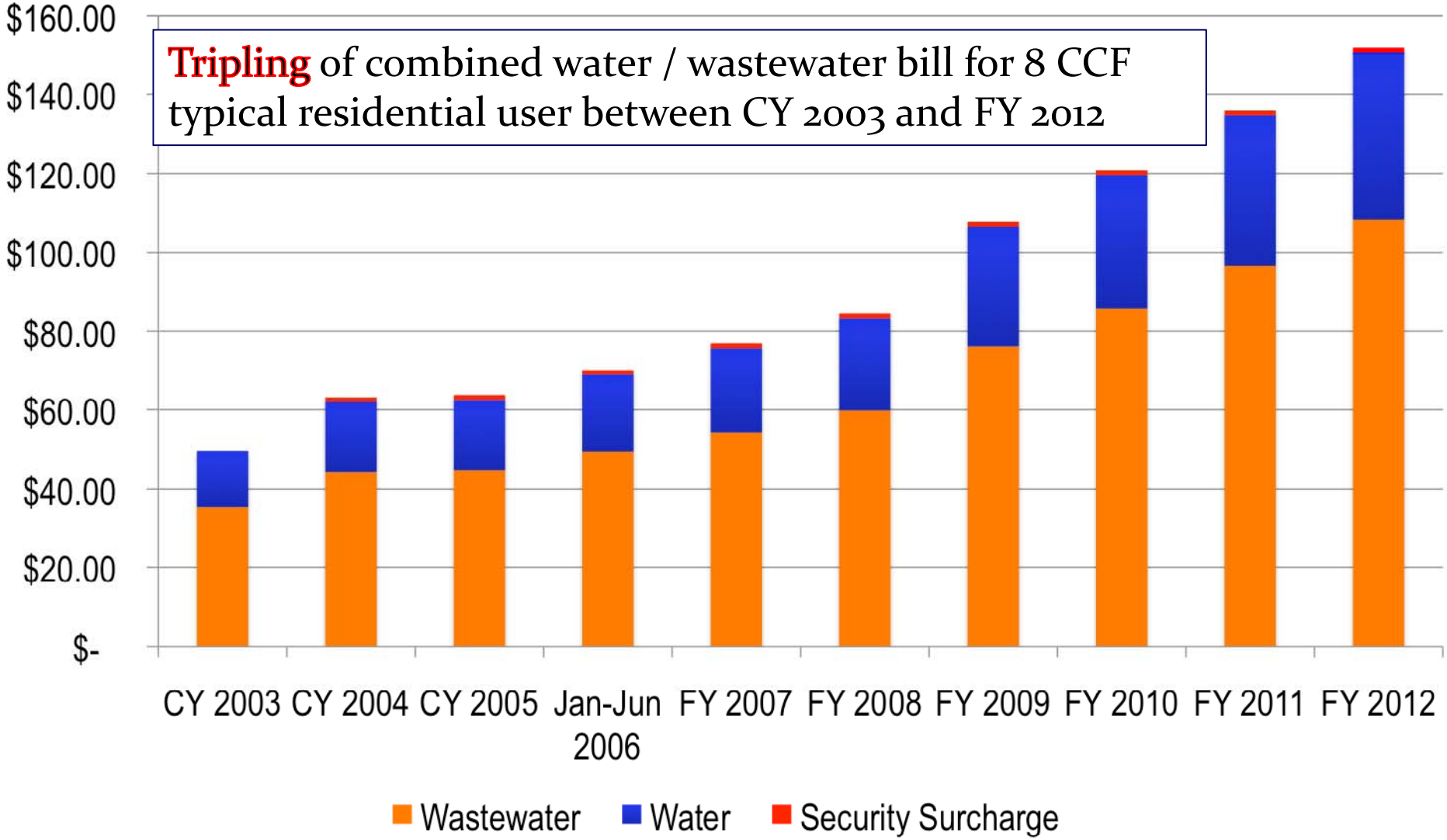
City of Atlanta

Chronology of financial milestones

- Jan 2004 – 5 year rate increase legislation (189% cumulative increase in system rates)
- July 2004 – Municipal Option Sales Tax referendum
- September 2004 - $849 million bond issue
- December 2004 – Rate legislation (1% - 'dollar for dollar' reduction via MOST)
- December 2005 – Rate legislation (10% for Jan – Jun 2006/ 10% for FY'07)
- February 2006 – Tax Exempt Commercial Paper ($1.2 B)
- June 2007 – Rate legislation (10% increase – FY 2007-08)
- February 2008 - Referendum to renew MOST for 4 years
- June 2008 – 4 year rate increase (80% cumulative increase in system rates)
- June 2009 - $750 million bond issue ($352 million new money)
- October 2009 - $448 million refunding issue – revised CIP
- April 2010 – Financial Capability Based Scheduled Extension Request

City of Atlanta

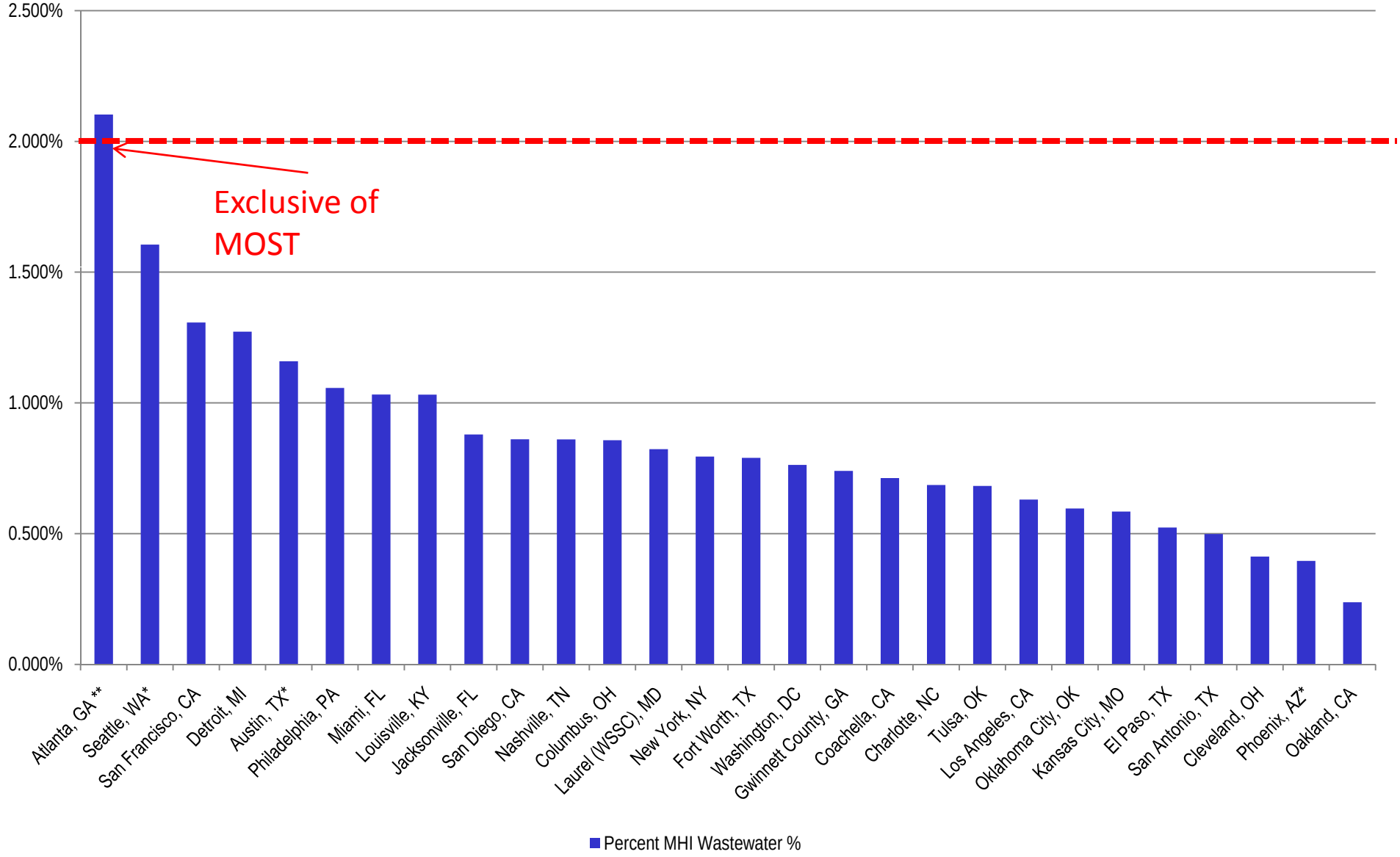
Bill Impacts (8 CCF usage)



2008 AWWA Water and Wastewater Rate Survey
Selected Group A Water and Wastewater Utilities

Bills as a Percent of Median Household Income

10 CCF Residential User



City of Atlanta

Program revisions needed for financial viability

Long-term, Fitch remains concerned about the system's ability to continue absorbing rising annual debt service obligations. Fitch will monitor the system's progress in gaining consent decree schedule relief from the Environmental Protection Agency (EPA). If measures prove unsuccessful, Fitch believes the system would face a considerable challenge in raising sufficient revenues to meet its operational and capital costs which may result in a financial profile no longer consistent with the current rating level.

FitchRatings
KNOW YOUR RISK

FITCH RATES ATLANTA, GEORGIA WATER & SEWER REVS 'BBB+'; OUTLOOK STABLE

Fitch Ratings-New York-02 October 2009: Fitch Ratings assigns a 'BBB+' underlying rating to Atlanta, GA's (the city) approximately $460 million water and wastewater revenue bonds, series 2009B. The bonds are scheduled for negotiated sale on Oct. 13, 2009 with proceeds being used to refund outstanding parity bonds originally issued as variable rate demand obligations backed a letter of credit that is set to expire on Nov. 1. At this time, Fitch also affirms the 'BBB+' rating on the city utility system's $3.2 billion of outstanding parity bonds. The Rating Outlook is Stable.

The 'BBB+' rating primarily reflects the city's utility system's (the system) large capital needs and a very high rate structure partially subsidized by a municipal option sales tax subject to periodic reauthorization. The rating further incorporates the system's adequate debt service coverage, broad and diverse service area, a demonstrated willingness to raise rates and implement other revenue sources, and continued success in executing on time a large and costly regulatory remediation program. Fitch believes the system's much improved capital planning efforts and financial management have led to solid operating results in recent years and continued compliance with outstanding consent orders.

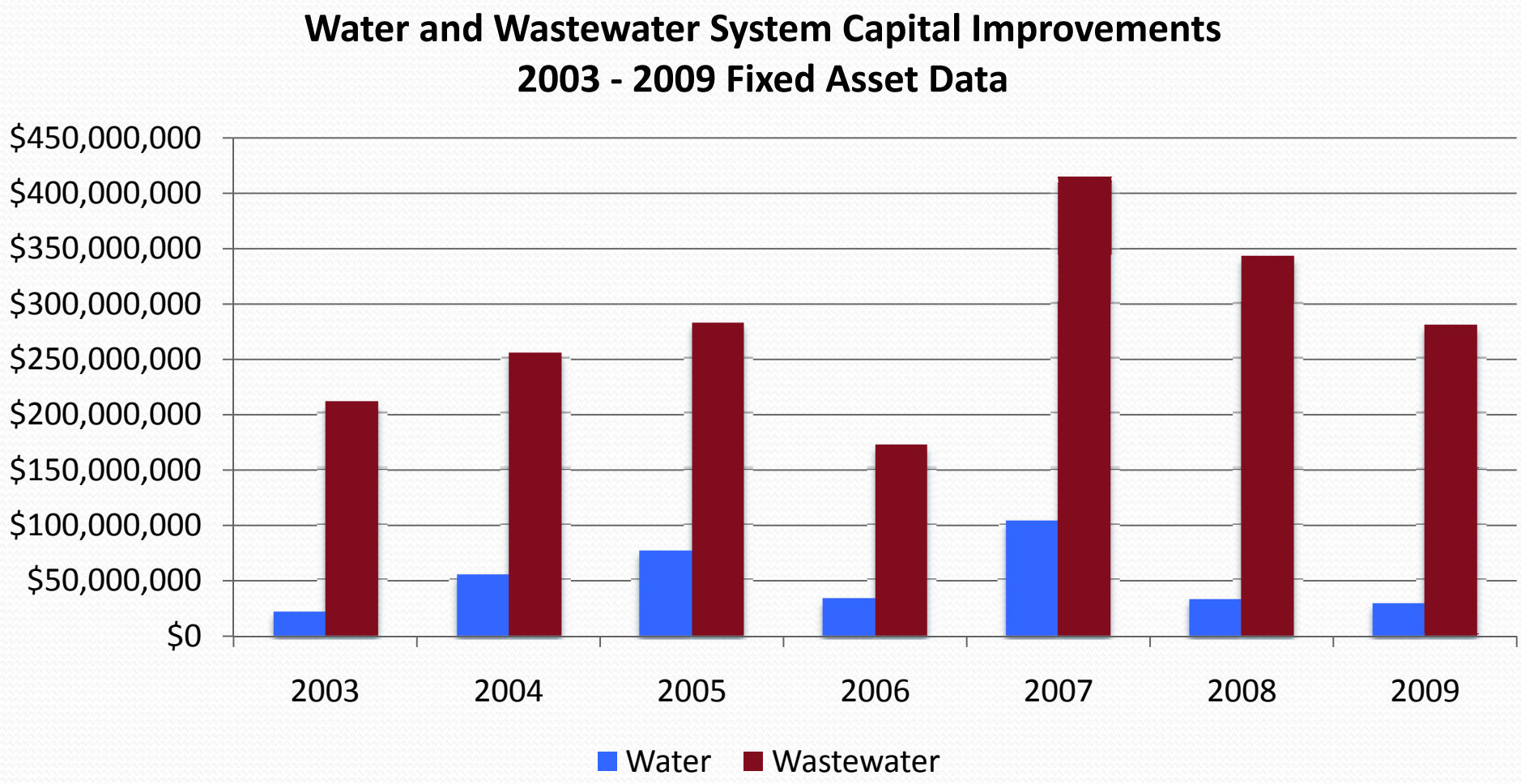
Near-term credit concerns include the potential for continued declines in sales tax revenue attributable to current economic conditions and rate revenues driven by weather patterns and a continued shift towards conservation among rate-payers. Long-term, Fitch remains concerned about the system's ability to continue absorbing rising annual debt service obligations. Fitch will monitor the system's progress in gaining consent decree schedule relief from the Environmental Protection Agency (EPA). If measures prove unsuccessful, Fitch believes the system would face a considerable challenge in raising sufficient revenues to meet its operational and capital costs which may result in a financial profile no longer consistent with the current rating level.

The system continues to face regulatory issues common among older, major metropolitan utilities. Favorably, much progress has been made to date in meeting milestones associated with outstanding consent decrees and court mandated projects. A majority of costly water system projects required by two consent orders issued by the Georgia Environmental Protection Division (EPD) are reportedly complete, including the separation of almost of all of the city's combined sewers and the construction of a 177 million gallon combined sewer overflow (CSO) tunnel. Additional remediation projects are reportedly being completed ahead of schedule and under budget, as are steps to address an additional consent decree (the first amended consent decree. or FACD) issued in 1999 to reduce sanitary sewer overflows (SSOs). While the system has made notable progress in addressing its regulatory issues, a significant level of capital investment is needed to achieve full compliance.

Financial operations, though satisfactory for the rating category, are reliant on the highest rates in the nation as well as a four-year, one-cent sales tax that was re-authorized by a wide margin of voters in 2008. Rates will continue to rise given the city council's adoption of a four-year rate program that boosted charges by 27.5% in fiscal 2009 and by an additional 12.5% for fiscal years 2010 and 2011 and 12% in fiscal 2012. The average monthly residential bill now exceeds $100 and is equal to a very high 3% of median household income, nearly twice the percentage that Fitch considers to be in the affordable range. Fiscal 2008 ended with almost 200 days of cash on hand, and net revenues covered annual debt service on senior lien debt by an adequate 1.42 times (x). Unaudited results for fiscal 2009 show debt service coverage increasing to a solid 1.7x. While state-imposed water use restrictions were recently lifted, sales tax receipts continue to decline as collections dropped by about 9% in fiscal 2009. Fitch believes the system's financial forecast is more conservative compared to prior years as consumption is projected to remain level despite easing of watering restrictions, sales tax revenue is held flat over the next two years before showing slight growth in the outer years, and no customer growth is assumed. Debt service coverage is projected to decline to 1.2x over the next few years which Fitch believe is realistic given the

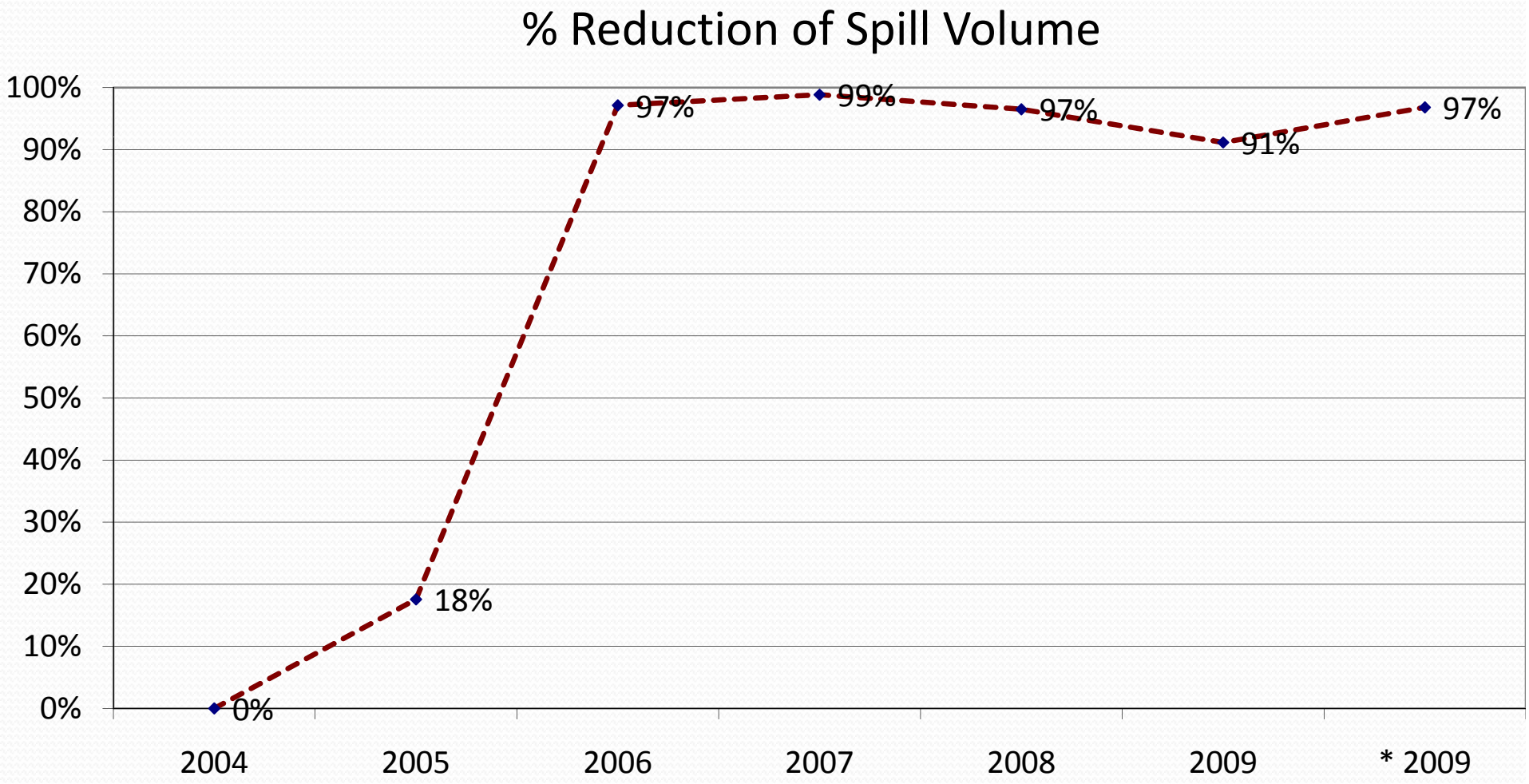
City of Atlanta

Consent Decree compliance led to unbalanced system investment



City of Atlanta

Remaining work to address remaining 3% of spill volume



City of Atlanta

Schedule Extension Request

- Commit to 4 major projects by original 2014 completion date – Major Projects phase
- Convert to Asset Management phase whereby approximately $30M per annum allocated to sewer collection using risk-based prioritization
- Limit rate increases to 2% per year following scheduled increased in FY 2011 & FY
- Revise program reporting requirements – address effective utility management
- Incorporate “zero-sum protocol” for future CIP

Case Studies

City of Akron
Public Utilities Bureau

Proposed Consent Decree

Lodged in Federal Court, November 13, 2009

United States of America / State of Ohio / City of Akron, Ohio

Overview

- Consent Decree
- Negotiation Inflexibility
- USEPA Flexibility
- Immediate Financial Impact
- Flexibility Needed

Akron – Consent Decree

- Akron – Home to Goodyear, Soap Box Derby
- Started 1916, 85,000 customers, serves 350,000
- 179 mi combined, 701 mi sanitary sewers, 70 MGD (ADF) plant, 94 sq mi service area
- DOJ files Complaint February 2009
- Federal Judge orders “expedited” schedule - Consent Decree negotiated - lodged November 2009 - expect entry in 3Q 2010
- Term October 15, 2009 – October 15, 2028 (**19 years**)

Negotiation Inflexibility

- No allowance for economic recession or declining/flat consumption
- DOJ “must” have civil penalty
- Milestones and deadlines (based on October 15, 2009) prior to Entry of Consent Decree
- CMOM - 5 year cycle for televising/cleaning sewers cycle
- Phased project approach not permitted
- No Akron-specific modification clauses

USEPA/DOJ Flexibility

- CMOM
  - **Allowed to use work performed in 2008-09 towards first system cycle**
- Civil Penalty
  - **Make 3 payments over 13 months from date of entry**
- Supplemental Environmental Project
  - **Make 3 payments from 6/30/10 to 6/30/11**

Immediate Financial Impact

- 4 year sewer rate hike approved December 2009
  - 2010 - 25%
  - 2011 - 20%
  - 2012 - 20%
  - 2013 - 9%
- Typical monthly residential bill $26 → $51
- No cash capital until 3Q 2011 – all debt financing (including program non-project costs)

Flexibility Needed

- Feasible combination of level of control, term, project cost/timing and affordability
- Allow phased approach for projects
- Civil and Stipulated Penalties $
- CMOM - More than a 5 year cycle (10?)
- Account for decreasing/flat consumption
- Acknowledge all user classes have affordability impacts/issues
- Anticipate “reluctant/poor” tributary sewer systems

Flexibility Needed

- Time extensions based on mitigating circumstances (financial, technology, bid/construction situations, future regulations)
- Limit State ability to “pile on” requirements in NPDES Permits or PTIs that increase financial burden
- Account for attainment of current receiving stream recreational use designations may not occur despite successful completion of Consent Decree projects (early UAA to reflect reality?)

Flexibility Needed

- Schedule and term flexibility
  - Realized revenue can and does fall short of rate increase forecasts
  - Prevent situation where funding Consent Decree takes priority over funding existing system needs, otherwise:
    - Staying within realized revenue stream “starves” existing sewer system O&M and Capital, decreasing system reliability and service levels

Flexibility Needed

- Allow higher benefit projects (benefit-days, multimedia) to have priority over, substitute for all/portion of, Consent Decree projects:
  - System/Plants
  - Watershed/receiving stream (benefit-days) (within and/or outside of Consent Decree, NPDES Permit scope)
  - Watershed/green infrastructure (benefit-days)

Money Matters …Making the Case for Affordability

Michael McGlinchy, P.E.

Public Utilities Manager

mmcglinchy@akronohio.gov

Affordable Water Protection

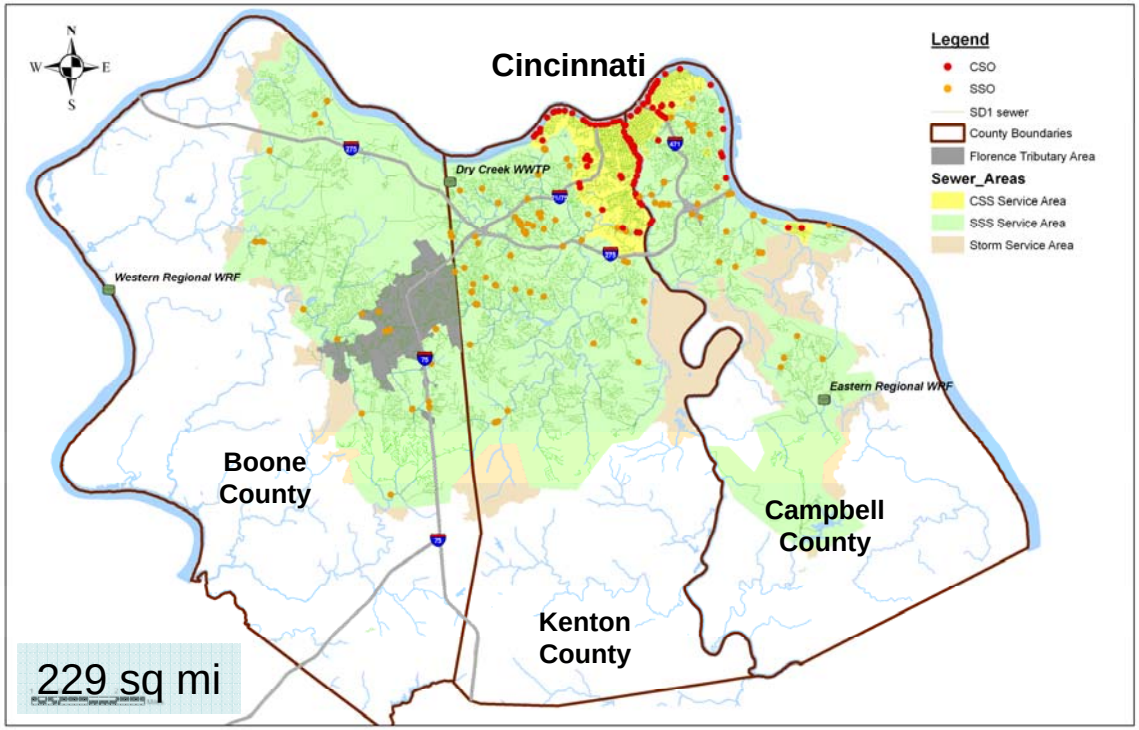
NACWA Web Seminar

Money Matters…Making the Case for Affordability

Jeffery Eger, Executive Director

June 22, 2010

SD1 Overview



- Regional utility
  - $1.1 billion fixed assets
- Watershed-based Consent Decree
  - $1.2 billion vs. $3.2 billion

Watershed Approach

- CSOs & SSOs in context with other pollutant sources
- Integrates gray/green/ watershed controls to improve water quality
- Provides opportunities for setting priorities based on regional objectives
- Regional economic realities make it the right path to take

USEPA Guidance for Long-Term Control Plan (1995)

… Municipalities should try to ***evaluate all sources of pollution*** *(e.g., point sources, CSOs, storm water) during system characterization and, wherever possible,* ***develop control strategies on a watershed basis*** *…. (pg 1-10)*

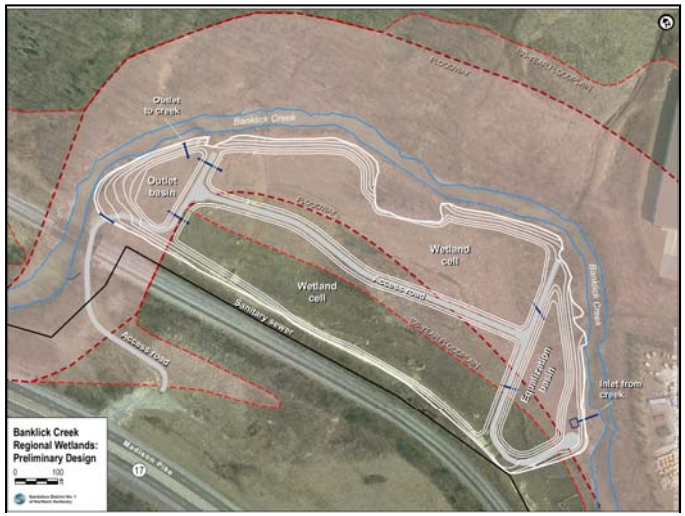
Elements of SD1's Consent Decree (2007)

… the District may develop the LTCP component of the Watershed Plans in conjunction with ***a watershed based approach*** *providing for the evaluation of water pollution control needs* …. (pg 17)

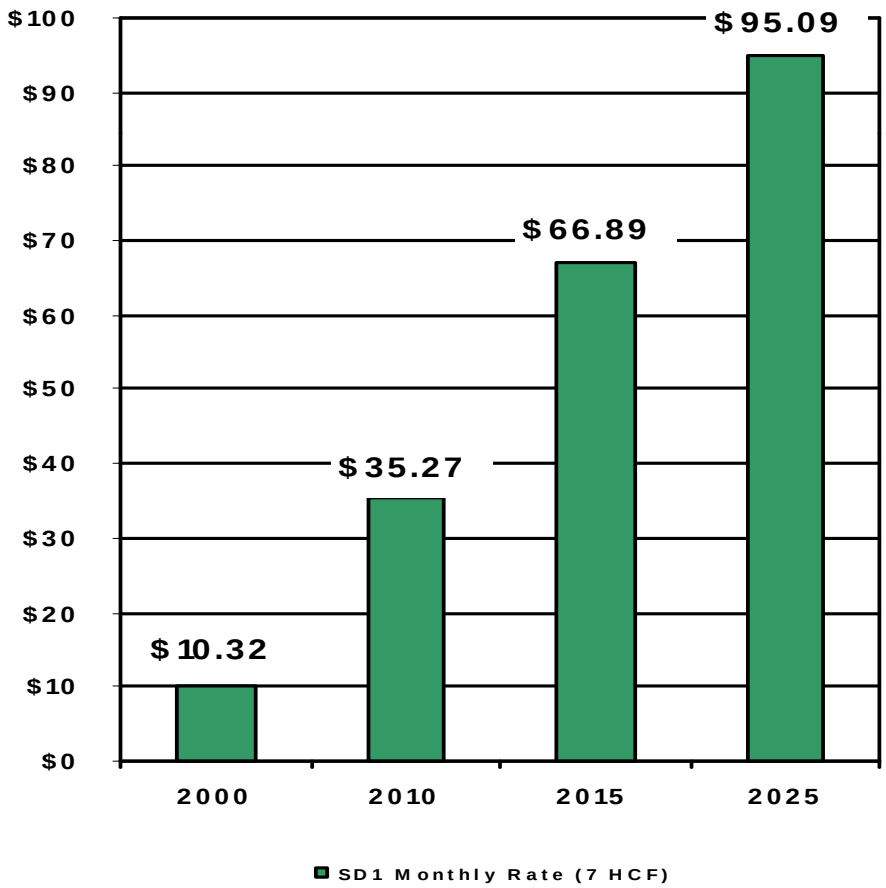
…. if a control on these other sources of pollution is to be implemented to ***offset the level of CSO controls*** or to ***delay the elimination of an SSO*** or Unpermitted Discharge …. the Watershed Plan shall identify the means by which the District intends to insure that the control is implemented … (pg 26)

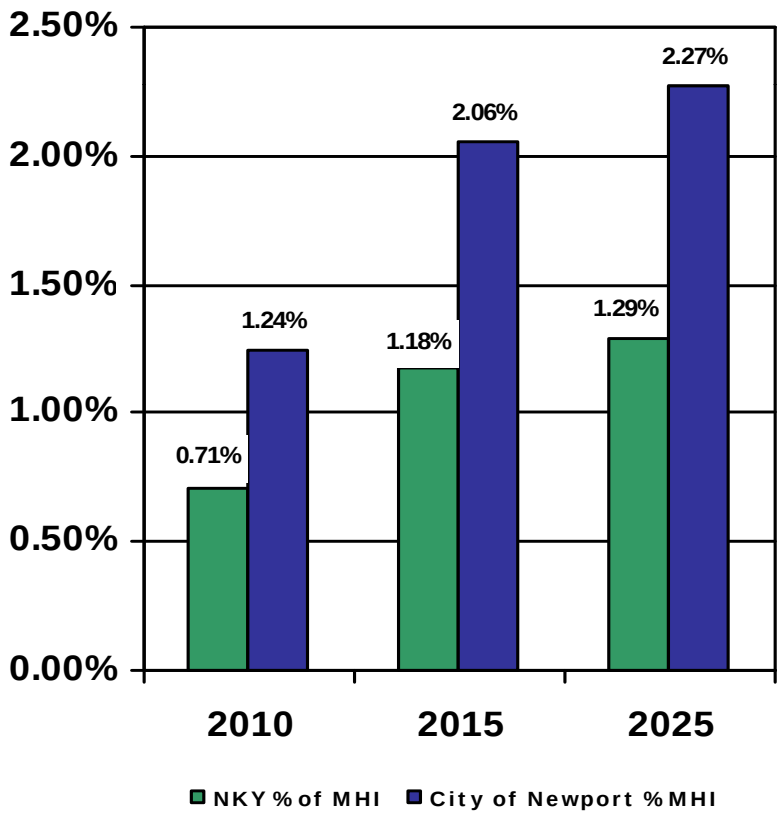
Common Sense Approach

- SSO elimination at Lakeview Pump Station:
  - Immediate storage needs at PS approximately $20M
- Banklick Creek Wetland
  - 6 acres of constructed wetlands
  - Construction Costs: $923,000



Increasing Rates





Customer E-mails

- "…my bill has jumped from 30-35 dollars most 3 month periods to $17.60 per month. I am horrified at the way my account is being handled. I feel like I am being gouged and taken advantage of. This is unbelievable in time of recession…"

- "…I understand that investing in our future sewer system infrastructure is important, but it should be done in moderation over several years so as to not break the budgets of typical working families. Unlike SD1, the families of NKY have more limits on their check books."

- "You got to f------ kidding me. You want me to write a $5 check each month for sanitation I don't even have…You idiots have gone too far with this unconstitutional c---."

On-line News Article Comments

- "…15% rate increases for the next decade is outrageous! It isn't the federal government's fault, it's the SD1 bureaucracy's fault…"

- "…We realize there are old decrepit sewers that allow sewer to enter the river and it needs to be dealt with. However raising sewer and water rates to pay for it in such a short amount of time is ridiculous. $30.00 a month is insane…"

HB 504

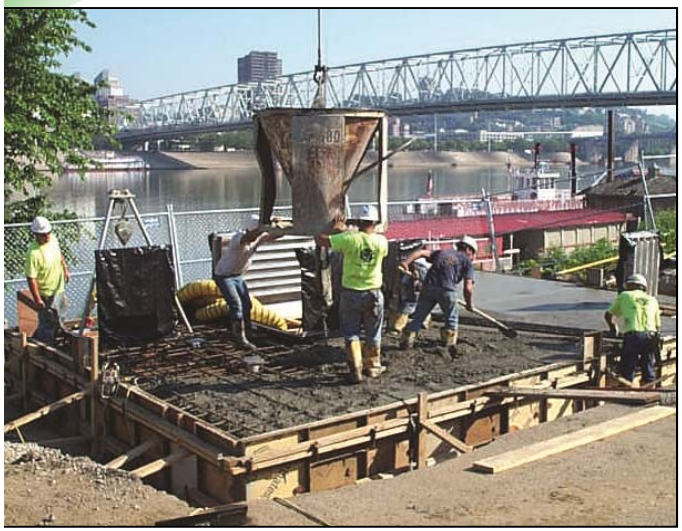
- Passed 2010 Kentucky legislature; signed by Governor
  - Bipartisan; nearly unanimous
- Addresses:
  - CSO Permits
  - CSO/SSO LTCPs, and
  - CSO/SSO enforcement

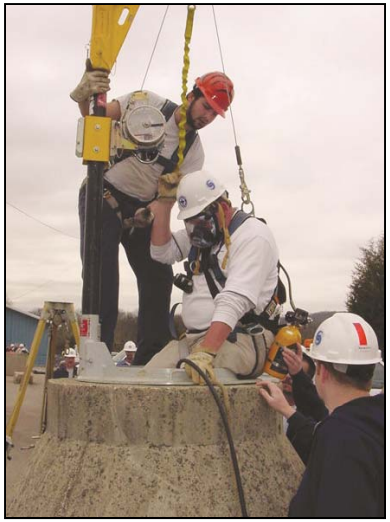
HB 504

- Requires Kentucky Energy and Environment Cabinet to consider (as allowable under federal law):
  - *Limitations on a community's financial capability;*
  - *Affordability of control options;*
  - *Effectiveness and affordability of control technologies;*
  - *Promotion of green infrastructure;*
  - *Reducing economic impacts;*
  - *Allowing flexibility in the design of sewer improvements and implementation of control plans.*

Next Steps

Supporting the need for EPA policy changes





Jeffery A. Eger, Executive Director

jeger@sd1.org