



City of Atlanta *Thirteen Year Amendment*



National Association of Clean Water Agencies
2012 Legal Issues Conference
Seattle, Washington

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Overview

- Consent Decree and Compliance History
- Economic Concerns and Stressors
- The Negotiations
- The Amendment

The Olden Days . . .

The **Atlanta**
Journal-
Constitution

Human Filth chokes the Chattahoochee. Atlanta's primary waterway. One reason: The city has one of the worst sewer systems in the country.

Atlanta Journal Constitution, June 26, 1994

Gingrich rips Atlanta over river pollution. Speaker: EPA must halt Chattahoochee dumping.

Atlanta Journal Constitution, January 30, 1996

City of Atlanta Consent Decrees

- The City of Atlanta is subject to two Federal Consent Decrees:
 - 1998 CSO Consent Decree.
 - 1999 First Amended Consent Decree or SSO Consent Decree.

City of Atlanta Consent Decrees

- CSO Consent Decree
 - Substantial Completion in November 2008, Eligible for Termination.
 - \$759 Million
 - Work Included:
 - Sewer separation in certain areas of the City, eliminating three CSO treatment facilities;
 - Construction of a 8.5 mile long/24 feet diameter deep-rock tunnel storage and treatment system to service remaining CSO facilities and transfer flow to new 85 MGD CSO Treatment facility.
 - Reduction of permitted CSO discharges to four per year at each of the remaining CSO facilities -- screened, disinfected and dechlorinated prior to discharge and must meet WQS.

Christening of the CSO Tunnel



CSO Complete!



City of Atlanta Consent Decree

- SSO Consent Decree
 - 14 years to implement – Final compliance date – July 2014.
 - Entered by Court in December 1999.
 - Close to a \$1B spent so far; about \$0.5 Billion left to go.

City of Atlanta Consent Decrees

Wastewater Treatment Plants

- Maintenance Management System
- Maintenance Training Program
- Operations Program
- Operations Training Program
- Safety Program
- Laboratory Information Management System
- Composite Correction Program
- Document Retention Plan
- Capital Improvement Plan
- Operations and Maintenance Contingency Plan
- Pretreatment Program

City of Atlanta Consent Decrees

Wastewater Collection and Transmission System Programs:

- Contingency and Emergency Response Plan
- Short Term Operations Plan
- Pump Station Evaluation
- Grease Management Program
- Sewer Mapping Program
- Maintenance Plan and Training Program
- Safety Program
- Capacity Program
- Long Term Operations Plan
- System-wide Flow and Monitoring Plan
- System-wide Hydraulic Modeling Plan
- System-wide Prioritization Plan
- Macro System Evaluation
- Sewer Group Peak Flow Evaluations

Major Achievements!

- Every linear foot - over 1500 miles – of Atlanta's sewer system inspected.
- Over 70% of the sewer rehabilitated.
- Major capacity projects
 - Nancy Creek Tunnel
8 mile long/16 feet diameter
 - South River Tunnel
9000 linear feet/14 feet diameter.
 - Peachtree Creek
Large offline storage.

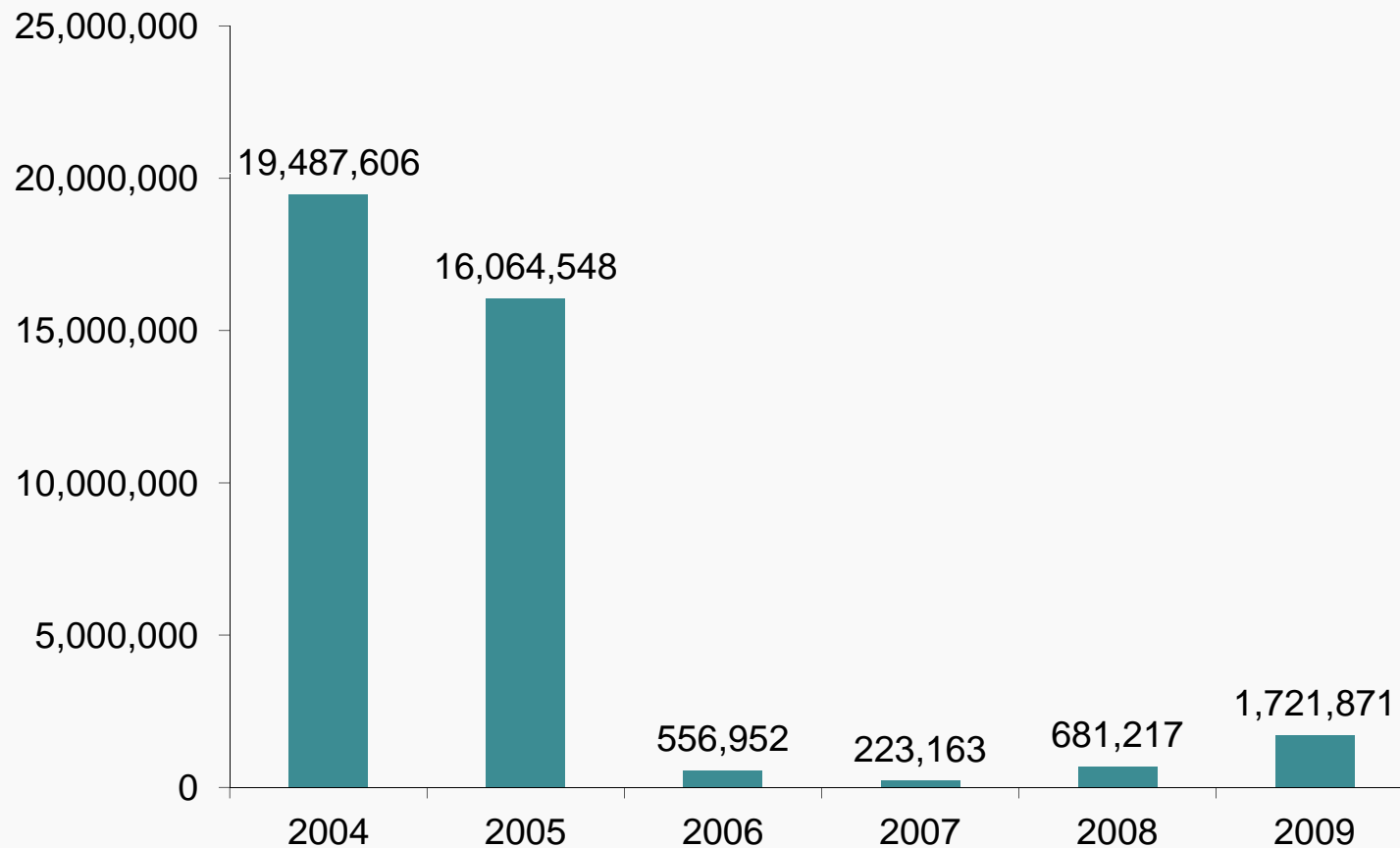
Major Achievements!

- Results! By July 1, 2014, 99% reduction from 2004 sewage overflow volumes.
- Majority of Environmental Benefit Achieved.



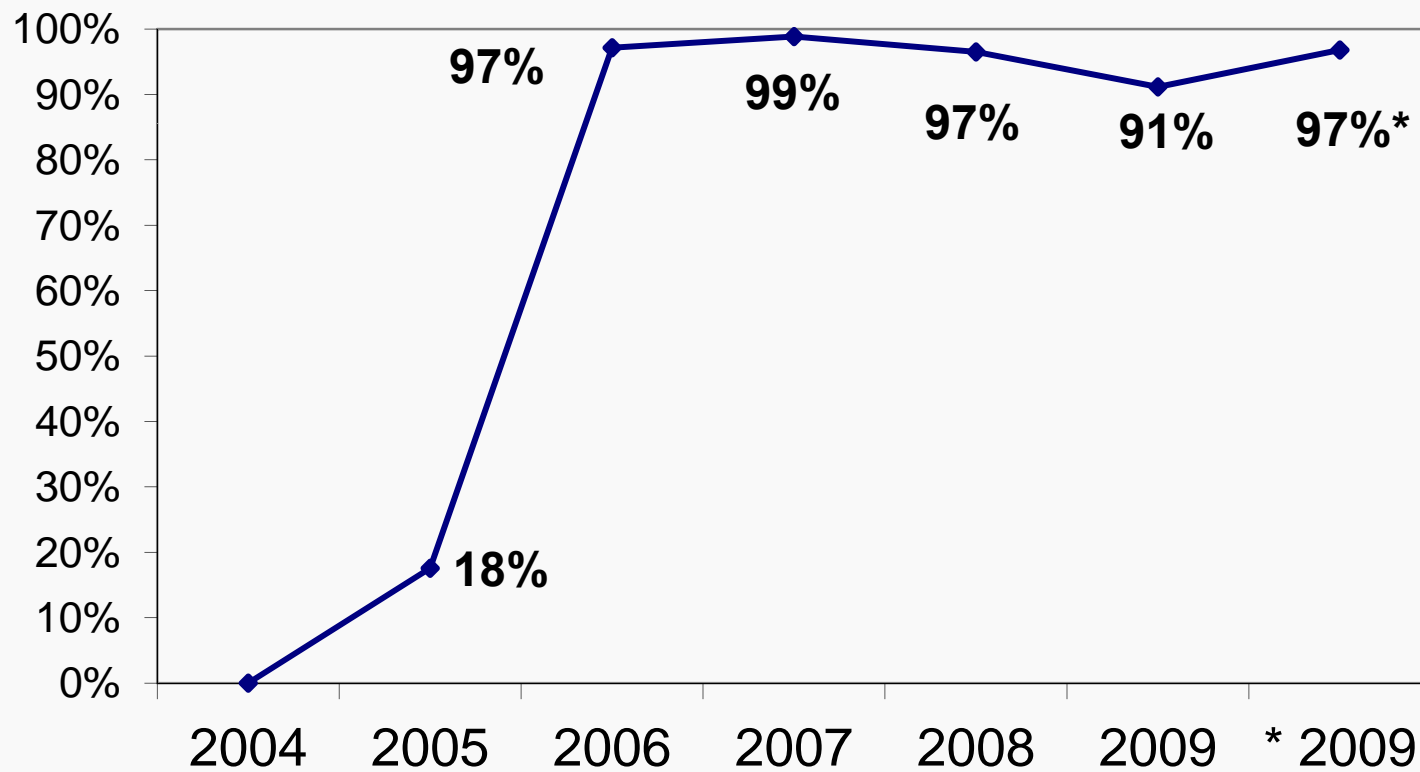
Major Achievements!

Volume of Sewage Spills in Gallons



Major Achievements!

% Reduction of Spill Volume



Request for Relief – Underlying Facts



High Water & Wastewater Rates

- Atlanta has the highest combined sewer and water rates for a major metropolitan area.

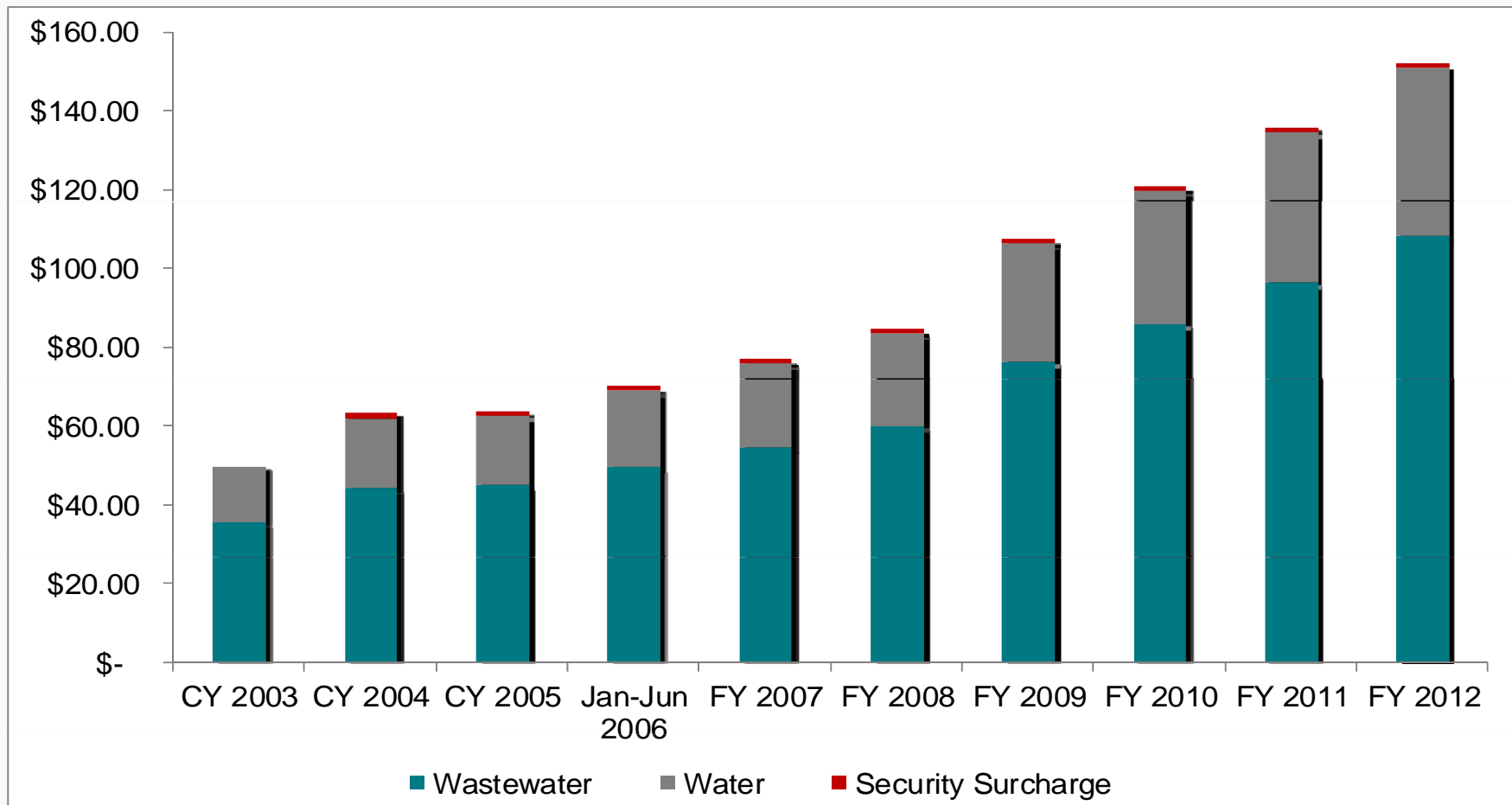


Rates tripled over past ten years – raised over an average of 252%



Average bill for 8 CCF user – \$49 in 2003; today, monthly bill is \$152.

Bill Impacts (8 CCF Usage)

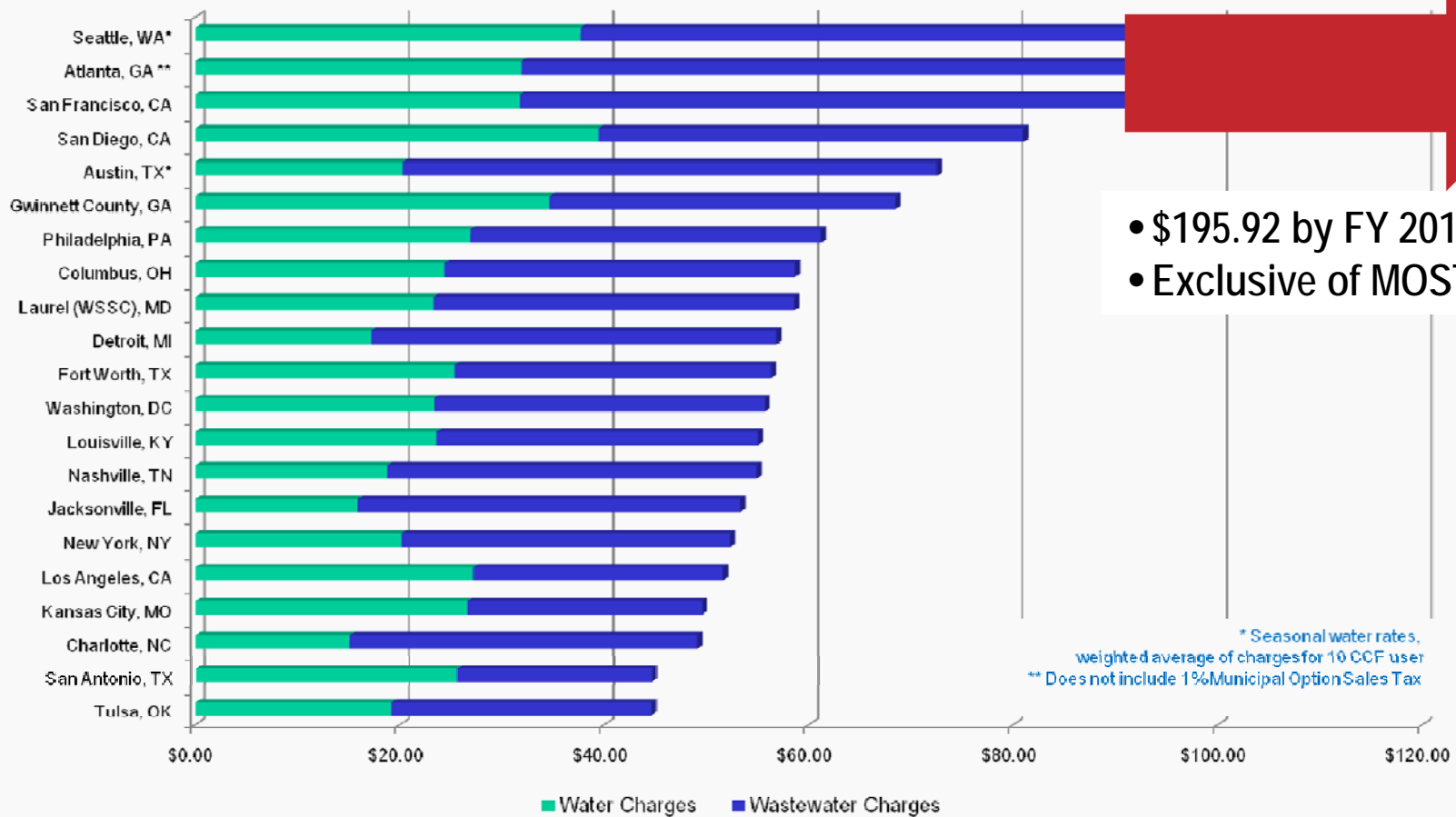


Highest Rates In The Country

2008 AWWA Water and Wastewater Rate Survey

Selected Metropolitan Systems : Group A > 75 MGD Sold

Residential User Charges - 10 CCF

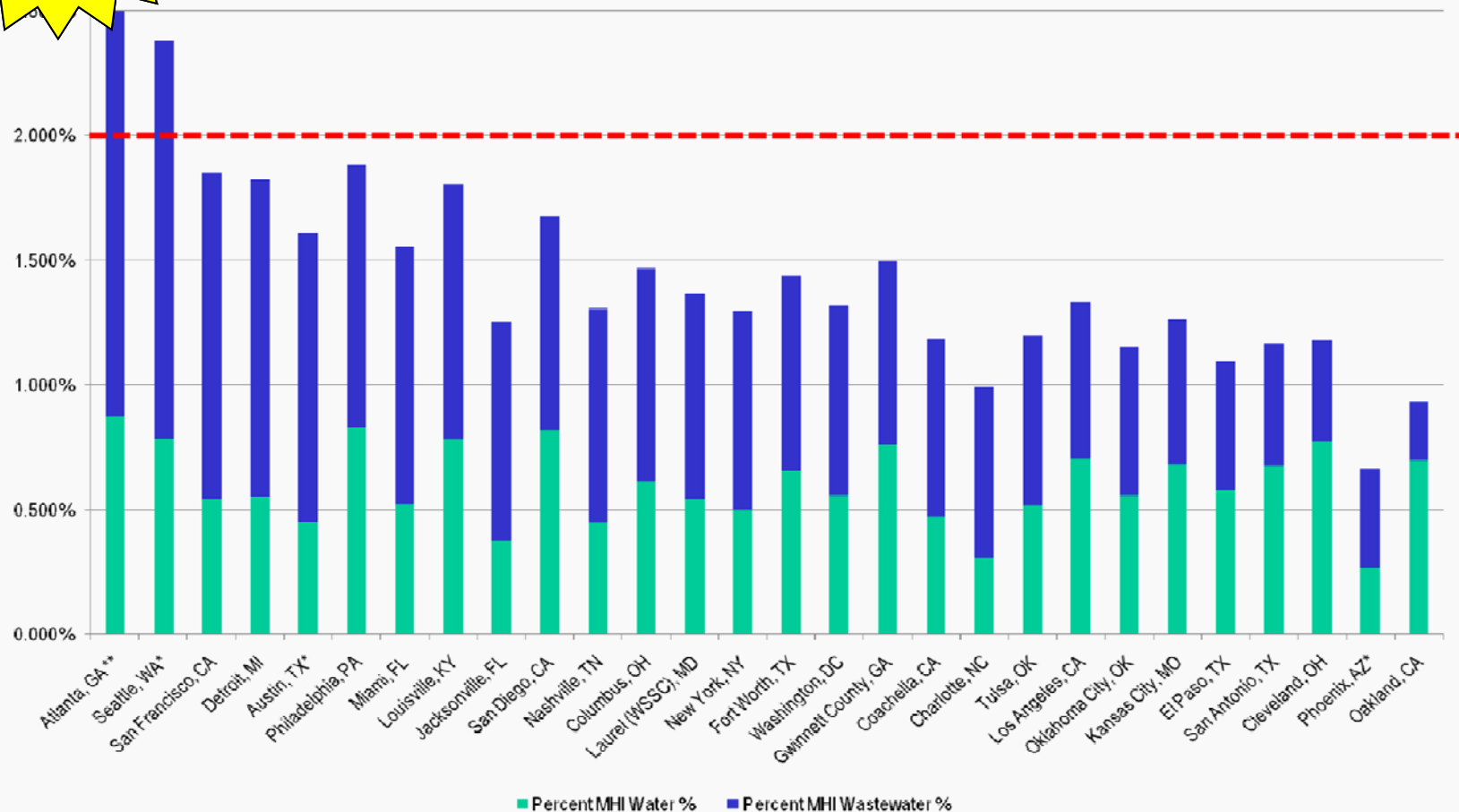


- \$195.92 by FY 2012
- Exclusive of MOST

Highest Rates In The Country

Exclusive
of MOST

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



Declines In Water Revenues

The Drought 2007

State-mandated 10% reduction in water usage. Outdoor water use ban.

State-mandated watering restrictions continue today.



Declines In Water Revenues

The Flood 2009



Declines In Water Revenues

Great Recession

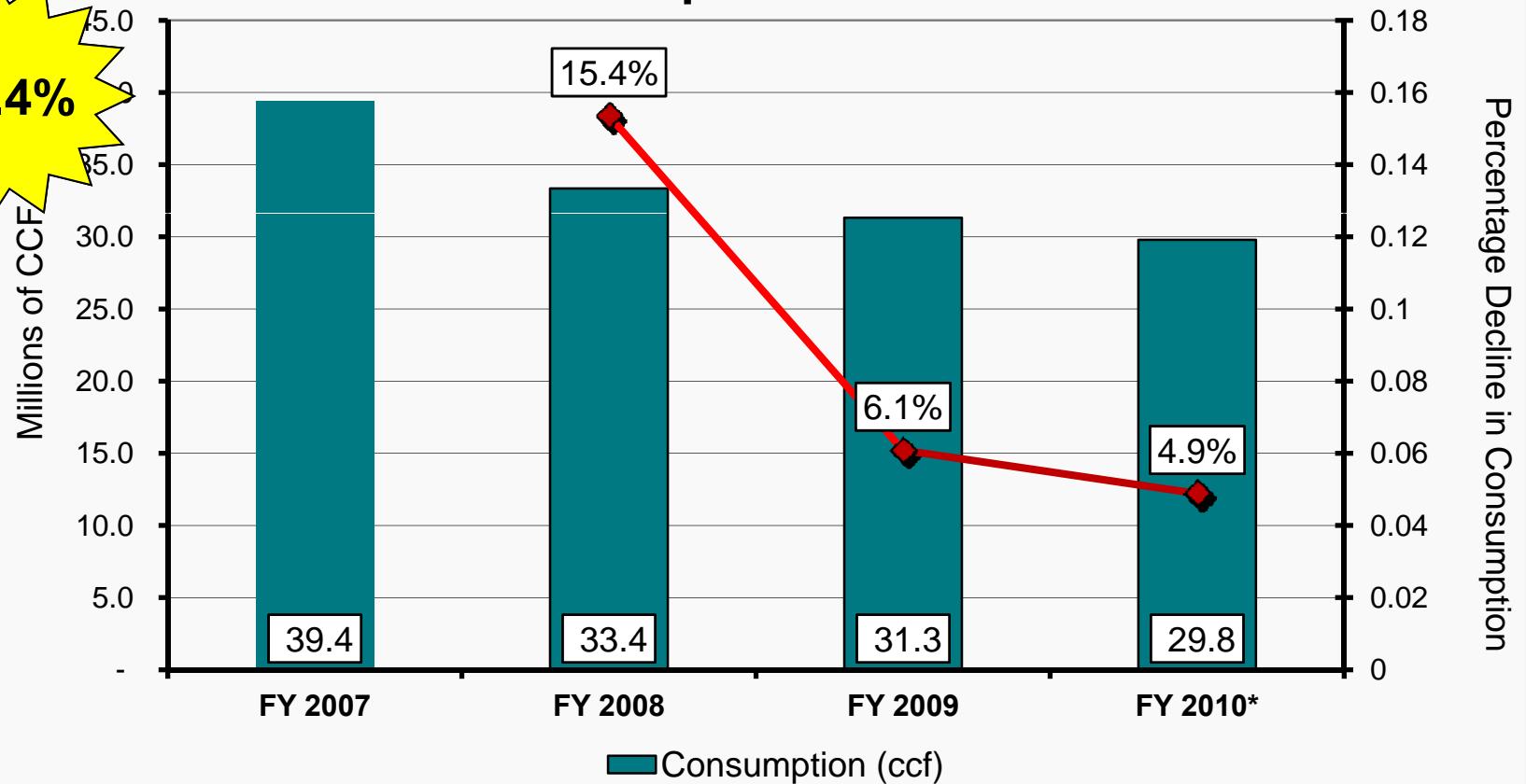
- Housing foreclosures
- People watching their water use.
- New accounts decreased significantly.



Revenues Impacted By Major Consumption Decline

–24.4%

Consumption Trends



*Predicted FY 2010 total based on extrapolated data for 9 months of the fiscal year

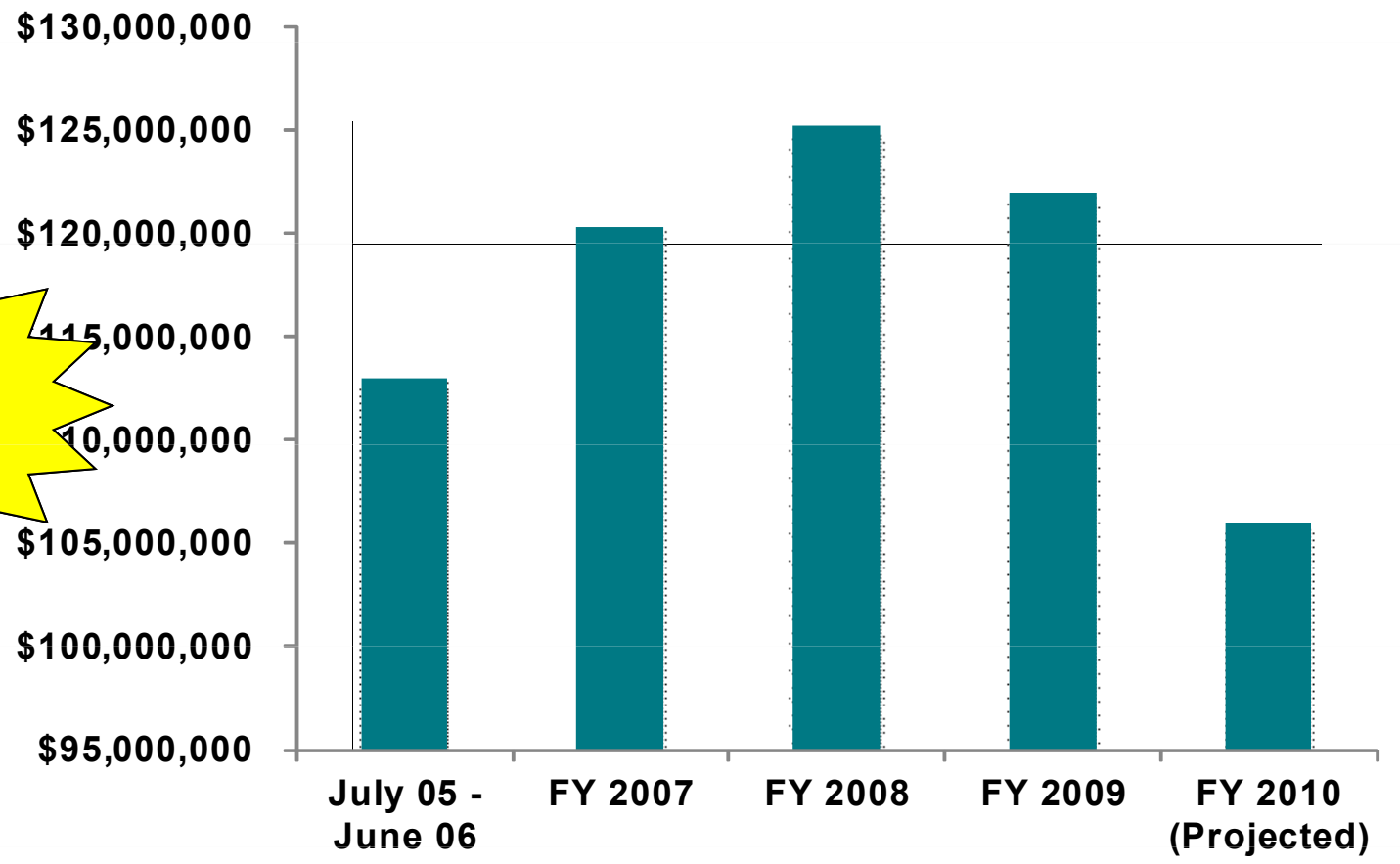
Municipal Option Sales Tax

- 1% Sales Tax approved in 2004.
- Dollar for dollar reduction of water and wastewater rates.
- Four year tax; Law allows voters to approve three additional terms.
- Resoundingly approved in 2008 and 2012.
- Hope for same results in 2016.
- Great Recession not good for the MOST.



Municipal Option Sales Tax Trends: FY '06 – FY '10

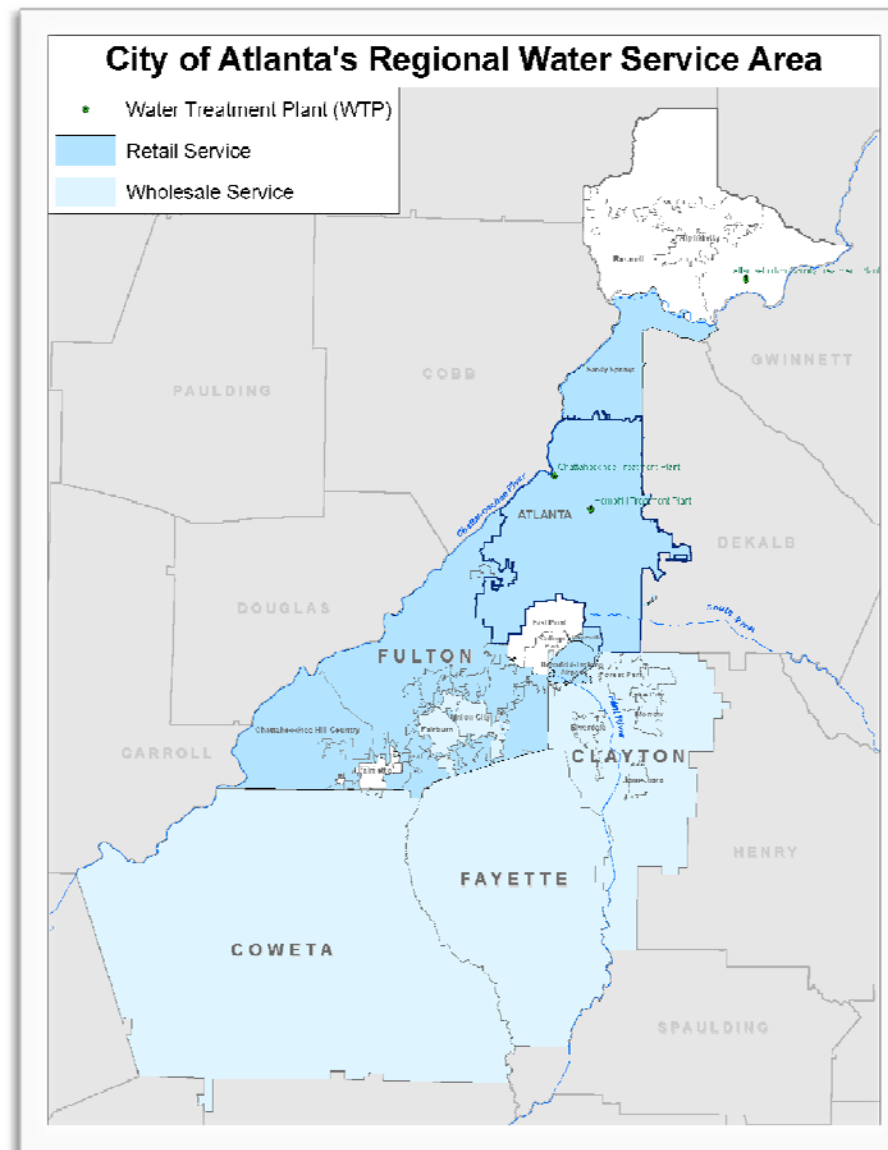
—\$19 MM



Competing Demands On Capital

- Let's not forget the water system!
- Since 2003, most available monies have gone to Consent Decree compliance.
- Result is an imbalance of expenditures between the water system and wastewater system.
- Spending needs to be “ramped up” on aging drinking water infrastructure.
- Atlanta also has spending needs on “non-Consent Decree” wastewater system.

City of Atlanta Regional Water Service Area



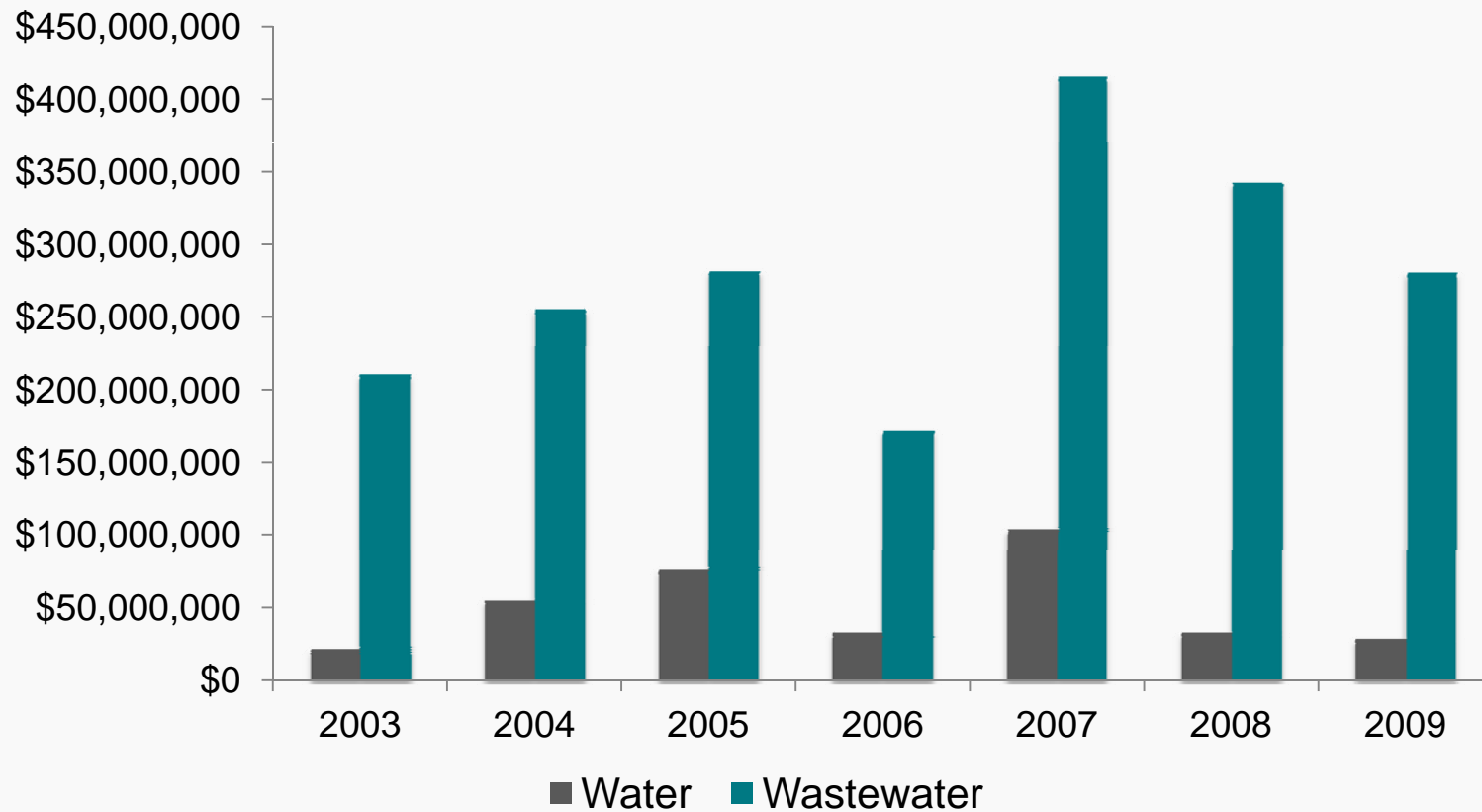
June 8, 2010 Sinkhole



- Potentially caused by leaking or broken 1920s-era 6" water main.
- Sinkhole 30 x 8 feet; 10 to 15 feet deep at Centennial Olympic Park Drive

Unbalanced Investment In System Infrastructure

**Water and Wastewater System Capital Improvements
2003 - 2009 Fixed Asset Data**



City of Atlanta Bond Financing

- Outstanding principal on bonded indebtedness of Atlanta's Water and Wastewater Fund

\$3.2 billion



City of Atlanta Bond Financing

- Debt Service is largest single line item in drinking water and wastewater system's annual revenue requirements (almost 40% of Atlanta's cash basis revenue requirements).

City of Atlanta Bond Financing.

- Combined effects of Atlanta's
 - Highly leveraged position
 - Declining water usage
 - Potential loss of sales tax revenue at some point in the future



Atlanta has effectively reached the limits of its near term ability to access capital markets. Capital market indicated that changes need to happen!

Reaction Of Bond Market

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.



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.

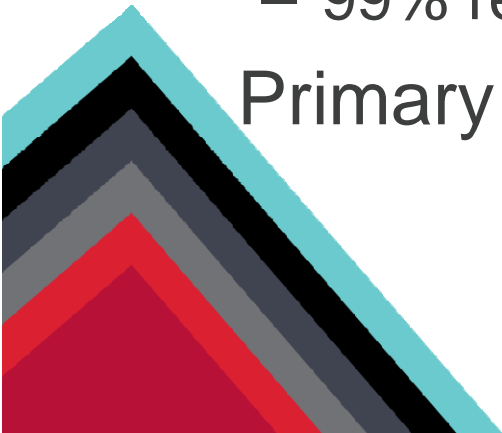
The system continues to face regulatory issues common among older, major metropolitan utilities. Favorably, much progress has been made to date in meeting milestones associated with outstanding consent decrees and court mandated projects. A majority of costly water system projects required by two consent orders issued by the Georgia Environmental Protection Division (EPD) are reportedly complete, including the separation of almost 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

The Negotiations

- Combination of Drought, Floods, Economic Recession, Competing Demands and Maxed Out Credit Brought Us to EPA Over Two Years Ago
- This is Against the Backdrop of Significant Environmental Achievements.
 - Commitment to complete Major Projects
 - 99% reduction in Sewer Overflow Volume.

Primary Request – Schedule Extension



The Negotiations

No stone left unturned

Two long years of negotiating

Multiple experts

Sometimes strained relationships



Step One – Industrial Economics

- In-Depth Review of Atlanta's Financial Information.
- Confirmed:
 - Atlanta's constraints on ability to raise funds to complete both Consent Decree projects and other high-priority projects.
 - Atlanta's financial model and underlying assumptions are reasonable.
 - Atlanta will have available \$95M per year for entire system (\$30M on Consent Decree projects)

Step One – Industrial Economics

- Confirmed Atlanta's wastewater costs represent an **Exceptionally High Burden – 2.2% MHI**
- We actually think it is worse:
 - Analysis done before the two most recent rate increases.
 - Doesn't really consider effect on Atlanta's lower income population.

Step Two – PG Environmental

- Multi-month deep dive review of Atlanta's construction costs and estimating processes.



Step Two – PG Environmental

- Comparison of costs paid by other utilities across the country.
- Bidding processes.
- Contracting processes.
- Standard Terms & Conditions.
- Cost Estimating Process.
- Unit Pricing.
- Contractor Outreach.
- And on and on . . .



Step Two – PG Environmental

- Concluded that Atlanta's cost estimates are "not unreasonable."
- Although conservative, such conservatism appropriate in light of length of schedule.

The Amendment

- Major Projects To Be Completed By Original 2014 Deadline.
 - Front-load capital to those capital projects that will achieve the greatest return on investment with regard to spill volumes and numbers.
 - Completion of projects will bring Atlanta within 99% decrease from 2004 spill volumes.
 - Atlanta originally proposed three but only one remains.
 - SSES completed on schedule.
 - South River Tunnel completed last year.
 - Only Peachtree Creek storage project remains.

The Amendment

- Thirteen Year Extension
 - Spreads out spending over extended period.
 - Continues to Impose Deadlines by Sewer Groups.
 - Ranging from Sewer Group 2 at July 1, 2014 to Sewer Group 6 at July 1, 2027.



The Amendment

- Midpoint Financial Review
 - Similar to what was performed by Industrial Economics.
 - If significant sustained financial improvement, Atlanta may be required to accelerate.
 - Review in 2020 at the termination of MOST.

The Amendment

- Surcharging
 - Not allowed under current SSO Consent Decree.
 - Thus doesn't allow Atlanta to take advantage of available "storage" and requires spending money before it is needed.
 - Not found under other Consent Decrees.
 - Replaced with Overflow trigger.
- Reporting – Quarterly to Semi-Annual.

Approved!

If I thought that this request for an extension was reflective of a reduction in the City's commitment to protect the environment . . I wouldn't even consider approving it.

When I first heard about the request. . . my first reaction was, Over my dead body.

I think that the extension will put the City's water and sewer system on a sustainable basis, will allow the City to continue to operate and maintain it in the most cost-effective manner but while at the same time allowing the City to devote its resources to other necessary services.

Judge Thomas Thrash
US District Court, N.D. of GA
September 20, 2012



Approval

- Never a perfect world in approaching the court house!
 - Activist who thinks we need Underground Injection Control permits for tunnels.
 - Large rain storms causing high profile flooding in combined area.
 - Act-of-God Major Spill.
 - Service Delivery Disputes.
 - Internal City Audit.
 - NIMBY Outcry on Peachtree Creek Project.

Conclusion

- Amending a Consent Decree is a Long Process.
- Regulators Extremely Skeptical.
- Our Story was Sympathetic
 - High Rates
 - Significant Debt
 - Competing Demands
 - Declining Revenues
 - Compelling Achievements.
- Need to be far along in the process with significant expenditures behind you.
- Industrial Economics confirmation was extremely important.
- DOJ has been very careful to say that Atlanta is Different.

Biography



Susan H. Richardson, Partner

Atlanta

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Susan Hearne Richardson concentrates her practice in the area of environmental law, including regulatory and compliance counseling, due diligence for real estate and corporate transactions, permitting, enforcement and hazardous site remediation. Ms. Richardson has significant experience in advising clients with regard to the wastewater permitting and enforcement issues, particularly as applicable to municipal governments.

Ms. Richardson was recognized in *The Best Lawyers in America*® for Environmental Law in 2013 and the five years immediately preceding. She is listed in the 2012 and the three years immediately preceding editions of *Chambers USA: America's Leading Lawyers for Business* for Environmental Law.. She was named a Georgia "Super Lawyer" in Environmental Law in 2012 and the three years immediately preceding by *SuperLawyers* magazine and is AV® rated by Martindale-Hubbell.

Professional & Community Activities

Institute for Georgia Environmental Leadership, 2009 Class Member and Current Executive Committee and Board Member
State Bar of Georgia, Environmental Law Section, Past Chair and Former Secretary
Tulane Law Review, Former Member

Education

Tulane University Law School, J.D. (1991) *magna cum laude*, *Order of the Coif*
University of Tulsa, B.S., Biology (1988) *cum laude*

Bar Admissions

Georgia (1994)
Texas (1991)

Court Admissions

U.S. District Court for the Northern District of Georgia (1994)
U.S. District Court for the Northern District of Texas (1991)