

00-R-1316

(Do Not Write Above This Line)

A RESOLUTION

BY CITY UTILITIES COMMITTEE

AUTHORIZING THE MAYOR, ACTING ON BEHALF OF THE CITY, TO EXECUTE ANY AND OR DOCUMENTS FOR THE PURPOSE OF ENTERING INTO A SETTLEMENT AGREEMENT BETWEEN THE CITY OF ATLANTA AND THE ENVIRONMENTAL PROTECTION AGENCY (UNITED STATES) AND THE STATE OF GEORGIA (EPD) AND TO AUTHORIZE THE CHIEF FINANCIAL OFFICER TO PAY THE UNITED STATES THE AMOUNT OF \$450,000.00 AND THE STATE OF GEORGIA EPD THE AMOUNT OF \$450,000.00 PAYABLE TO RESOLVE CERTAIN DISPUTED VIOLATIONS OF THE CONSENT DECREES (CSO CONSENT DECREE AND FIRST AMENDED CONSENT DECREE (FACD)) IN THE CASE OF THE UNITED STATES AND THE STATE OF GEORGIA VS. THE CITY OF ATLANTA: U.S. DISTRICT COURT, CIVIL ACTION FILE NOS. 1:95-CV-2550-TWT AND 1:98-CV-TWT, CONSOLIDATED.

ADOPTED BY

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred

Referred To:

Date Referred

Referred To:

Date Referred

Referred To:

SEP 0 5 2000

COUNCIL

First Reading

Committee \_\_\_\_\_  
Date \_\_\_\_\_  
Chair \_\_\_\_\_  
Referred to \_\_\_\_\_

Committee City Utilities  
Date 8-15-00  
Chair Clair Muller  
Action: \_\_\_\_\_  
Fav, Adv, Hold (see rev. side) \_\_\_\_\_  
Other: \_\_\_\_\_  
Members [Signature]  
[Signature]  
Refer To \_\_\_\_\_

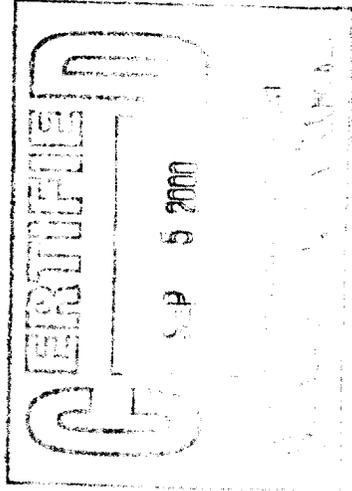
Committee \_\_\_\_\_  
Date \_\_\_\_\_  
Chair \_\_\_\_\_  
Action: \_\_\_\_\_  
Fav, Adv, Hold (see rev. side) \_\_\_\_\_  
Other: \_\_\_\_\_  
Members \_\_\_\_\_  
Refer To \_\_\_\_\_

Committee \_\_\_\_\_  
Date \_\_\_\_\_  
Chair \_\_\_\_\_  
Action: \_\_\_\_\_  
Fav, Adv, Hold (see rev. side) \_\_\_\_\_  
Other: \_\_\_\_\_  
Members \_\_\_\_\_  
Refer To \_\_\_\_\_

Committee \_\_\_\_\_  
Date \_\_\_\_\_  
Chair \_\_\_\_\_  
Action: \_\_\_\_\_  
Fav, Adv, Hold (see rev. side) \_\_\_\_\_  
Other: \_\_\_\_\_  
Members \_\_\_\_\_  
Refer To \_\_\_\_\_

FINAL COUNCIL ACTION  
 2nd  1st & 2nd  3rd  
Readings  
 Consent  V Vote  RC Vote

CERTIFIED



CERTIFIED  
SEP 0 5 2000

*Randolph Johnson*  
MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED

SEP 1 4 2000

WITHOUT SIGNATURE  
BY OPERATION OF LAW



A RESOLUTION BY:  
CITY UTILITIES COMMITTEE

A RESOLUTION TO AUTHORIZE THE MAYOR, ACTING ON BEHALF OF THE CITY, TO EXECUTE ANY AND ALL DOCUMENTS FOR THE PURPOSE OF ENTERING INTO A SETTLEMENT AGREEMENT BETWEEN THE CITY OF ATLANTA AND THE ENVIRONMENTAL PROTECTION AGENCY (UNITED STATES) AND THE STATE OF GEORGIA (EPD) AND TO AUTHORIZE THE CHIEF FINANCIAL OFFICER TO PAY THE UNITED STATES THE AMOUNT OF \$450,000.00 AND THE STATE OF GEORGIA EPD THE AMOUNT OF \$450,000.00 PAYABLE TO RESOLVE CERTAIN DISPUTED VIOLATIONS OF THE CONSENT DECREES (CSO CONSENT DECREE AND FIRST AMENDED CONSENT DECREE (FACD)) IN THE CASE OF THE UNITED STATES AND THE STATE OF GEORGIA. CITY OF AL TANTA: U.S. DISTRICT COURT, CIVIL ACTION FILE NOS. 1:95-CV-2550-TWT AND 1:98-CV-1956-TWT, CONSOLIDATED.

WHEREAS, the United States and the State of Georgia have asserted that stipulated penalties are owed by the City for violations of its Consent Decrees (CSO Consent Decree and First Amended Consent Decree (FACD)) in the case of The United States and the State of Georgia v. City of Atlanta: U.S. District Court, Civil Action File Nos. 1:95-CV-2550-TWT and 1:98-CV-1956-TWT, Consolidated; and

WHEREAS, while the City has disputed several alleged violations and the amounts owed, the City desires to resolve these matters and to pay the amounts specified above in consideration of the United States and the State of Georgia's agreement to forgive all remaining penalties and all accrued interest; and

WHEREAS, this Settlement Agreement will resolve alleged violations, which are subject to stipulated penalties in amounts alleged to exceed several million dollars.

NOW, THEREFORE, BE AND IT IS RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, as follows:

Section One: That the Mayor, acting on behalf of the City, is authorized to execute any and all documents necessary in order to enter into a settlement agreement of the above matter with the United States and EPD.

Section Two: That the Chief Financial Officer of the City is authorized to issue a check in the amount of \$450,000.00 payable to the United States and another check in the amount of \$450,000.00 payable to the State of Georgia for the purposes described herein, chargeable to Fund, Account and Center Number 2J01 529017 M51001.

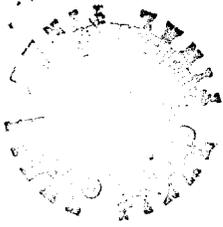
A true copy,

*Rhonda Daughin Johnson*  
Municipal Clerk, CMC

ADOPTED by the Council  
RETURNED WITHOUT SIGNATURE OF THE MAYOR  
APPROVED as per City Charter Section 2-403

SEP 05, 2000

SEP 14, 2000



**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**THE UNITED STATES OF AMERICA AND  
THE STATE OF GEORGIA,**

**Plaintiffs,**

**v.**

**THE CITY OF ATLANTA,**

**Defendant.**

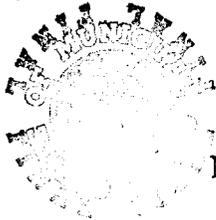
**CIVIL ACTION FILE  
NOS.1:95-CV-2550-TWT and  
1:98-CV-1956-TWT,  
Consolidated**

**SETTLEMENT AGREEMENT**

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (United States), the State of Georgia (EPD), and the City of Atlanta, Georgia (the City), "parties" herein.

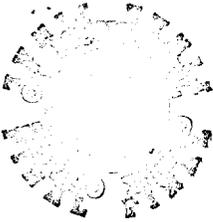
WHEREAS, the United States and State of Georgia have asserted that stipulated penalties are owed by the City for violations of its Consent Decrees (CSO Consent Decree and First Amended Consent Decree (FACD)) in the case of *The United States and the State of Georgia v. City of Atlanta*: U.S. District Court, Civil Action File Nos. 1:95-CV-2550-TWT and 1:98-CV-1956-TWT, Consolidated; and

WHEREAS, while the City has disputed several alleged violations and the amounts owed, the City desires to resolve these matters and to pay the amounts specified below in consideration of the United States' and the State of Georgia's agreement to forgive all remaining penalties and all accrued interest;

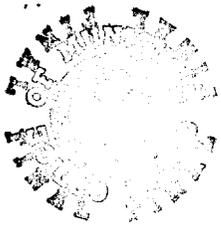


NOW, therefore in consideration of the mutual covenants and conditions contained herein, the parties do hereby agree as follows:

1. The City shall pay to the United States the sum of \$ 450,000 payable in accordance with Paragraph X.E. of the FACD on or before September 15, 2000.
2. The City shall pay to the State of Georgia the sum of \$ 450,000 payable in accordance with Paragraph X.E. of the FACD on or before September 15, 2000.
3. In the event that the City does not substantially complete the Confederate Avenue Regulator and Boulevard Regulator construction projects pursuant to the planned improvements and schedules contained in the United States and State of Georgia (EPA/EPD) approved Short-Term Remedial Measures Plan (VII.A.3. of the CSO CD) by July 31, 2000, the City shall pay an additional sum as follows:
  - a. The City shall pay to the United States the sum of \$ 975,000 payable in accordance with Paragraph X.E. of the FACD on or before September 15, 2000.
  - b. The City shall pay to the State of Georgia the sum of \$ 975,000 payable in accordance with Paragraph X.E. of the FACD on or before September 15, 2000.
4. In consideration of the covenants herein, the United States and the State of Georgia agree to forgive all additional penalties and interest that will have accrued for the violations listed in Paragraph 5, below, up to September 15, 2000.
5. This Settlement Agreement addresses and resolves the following violations:
  - a. All matters contained in the December 17, 1999, Demand Letter for Stipulated Penalties from the United States and the State of Georgia to the City (CSO Consent Decree and FACD).



- b. Failure to timely issue a Notice to Proceed (NTP) for the East Side combined sewer overflow control facilities by June 30, 1999. (Sections VII.A.3. and XI.B.1. of the CSO CD).
- c. Failure to timely notify the United States and the State of Georgia of non-compliance with a NTP (VII.A.3.) in the 2<sup>nd</sup> and 3<sup>rd</sup> quarter reports. (Sections VII.E. and XI.B.2 of the CSO CD).
- d. Failure to timely complete construction of the back-up generator at the Clear Creek combined sewer overflow control facility by December 31, 1999. (Sections VII.B.1.a.i. and XI.C.1 of the CSO CD).
- e. Failure to timely notify the United States and the State of Georgia of non-compliance in the 4<sup>th</sup> Quarter Report for the Clear Creek generator (VII.B.1.a.i.). (Sections VII.E. and XI.B.2. of the CSO CD).
- f. Unpermitted Discharges known and reported to the State of Georgia from the date of entry of the FACD (December 20, 1999) through July 6, 2000, including discharges included in the Attachment. (Section XI.H. of the FACD). (Attachment).
- g. Absence of record of notification that the Laboratory Information Management System (LIMS) had been fully implemented as indicated in the plan. (Section VII.C. of the FACD).
6. This Settlement Agreement does not cover the following matters:
- a. Unpermitted Discharges originating from the City's facilities during the period of March 23 to December 19, 1999, because these discharges occurred prior to the date of entry of the FACD and have been resolved by the State pursuant to the State's "zero tolerance" policy.



b. The two (2) dry weather combined sewer overflows that occurred on July 25 and 28, 1999, which were the subject of the Court's Order dated May 30, 2000.

c. Any known or unknown matters not reported to the United States and/or the State of Georgia.

d. Discharges to or from the Atlantic Steel facility which are currently under investigation.

e. All Unpermitted Discharges which occur subsequent to July 6, 2000.

f. The Unpermitted Discharge which is the subject of State of Georgia enforcement Order Number EPD-WQ-3766.

7. This Settlement Agreement does not waive or modify or in any way relieve the City of its obligations imposed by the Clean Water Act, the Georgia Water Quality Act or the CSO CD and FACD.

8. In the event that the City fails to comply with each and every term of this Settlement Agreement, the United States and the State of Georgia reserve their rights to seek any and all remedies available under this Settlement Agreement, the CSO CD or the FACD to address the violations cited herein.

9. The City hereby warrants that the party executing this Agreement on its behalf is duly authorized to bind the City, its successors and assigns to its terms.

10. The City neither admits nor denies the alleged violations that are resolved by this Settlement Agreement.



Settlement Agreement in U.S. and State of Georgia v. City of Atlanta, Nos. 1:95-CV-2550-TWT  
and 1:98-CV-1956-TWT - Signature Page

THE CITY OF ATLANTA

Date: \_\_\_\_\_

BILL CAMPBELL  
Mayor of Atlanta



Settlement Agreement in U.S. and State of Georgia v. City of Atlanta, Nos. 1:95-CV-2550-TWT  
and 1:98-CV-1956-TWT - Signature Page

THE STATE OF GEORGIA

Date: \_\_\_\_\_

\_\_\_\_\_  
HAROLD REHEIS  
Director  
Georgia Environmental Protection Division



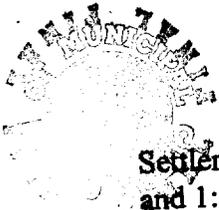
Settlement Agreement in U.S. and State of Georgia v. City of Atlanta, Nos. 1:95-CV-2550-TWT and 1:98-CV-1956-TWT - Signature Page

THE ENVIRONMENTAL PROTECTION AGENCY

Date: JUL 21 2000

A handwritten signature in black ink, appearing to read "John H. Hankinson, Jr.", is written over a horizontal line. The signature is stylized and cursive.

JOHN H. HANKINSON, JR.  
Regional Administrator  
Environmental Protection Agency  
Region 4



Settlement Agreement in U.S. and State of Georgia v. City of Atlanta, Nos. 1:95-CV-2550-TWT  
and 1:98-CV-1956-TWT - Signature Page

THE UNITED STATES OF AMERICA

Date: \_\_\_\_\_

\_\_\_\_\_  
LOIS J. SCHIFFER  
Assistant Attorney General  
Environment and Natural Resources  
Division  
United States Department of Justice

# Atlanta facing additional fines

**Federal government**  
The city has missed  
deadlines set by court  
orders to fix sewers.

**Charles Seabrook**  
cseabrook@ajc.com

The city of Atlanta is facing another \$2.8 million in federal fines for allegedly failing to comply with deadlines and other terms of two federal court orders to fix its outmoded sewer system. In a joint letter to Mayor Bill Campbell, the U.S. Environmental Protection Agency and the state Environmental Protection Division said the fines were being assessed because the city has failed to submit on time studies and plans for upgrading the system. Deadlines for the plans and studies are specified in the federal consent decrees, approved by Atlanta City Council and signed by Campbell. Among the alleged violations, EPA and EPD said, the city missed deadlines for a sewer maintenance management plan due Oct. 1; a plan for modifying the city's sewer mapping program due Nov. 23; and a sewer system condition survey due Oct. 1. The letter, sent last week and

made public Monday, also said that the city has not met interim standards for fecal coliform bacteria in city creeks — an indication that poorly treated sewage continues to flow into them — as stipulated in the consent orders. It also said the city has not carried out all of the required testing to determine the pollution levels in the waterways. Altogether, the city is being cited for seven violations of the consent orders.

In a separate action last week, state EPD Director Harold Reheis told the state Board of Natural Resources that "it appears that the city has no one in charge to assure compliance with the [decrees], and I will try to convince the mayor that he needs to get on top of this."

However, the federal authorities on Monday appeared to back off from their hard-line stance. A letter from regional EPA administrator John Hankinson was hand-delivered to Campbell, saying that the agency will not insist on payment of \$709,000 of the fines if the city offers assurance that plans for fixing the sewer system will be submitted to the agency on time.

In addition, Hankinson said that the city can argue against the other allegations and seek relief from the other fines.

Campbell's office on Monday

referred inquiries to the city's lawyers, who disputed EPA's and EPD's allegations. "The city was stunned to get these letters," said Richard Horder, who represented the city in negotiating the federal consent decrees.

He pointed out that the city has committed to spending \$1.2 billion to fix its cracked and broken sewers and to upgrade its three sewage treatment plants. He said the city has been diligent in trying to meet all deadlines set by the consent orders.

Atlanta City Attorney Susan Pease Langford said the city contends that it "has not violated [the consent decrees], and therefore the city doesn't owe any fines."

The \$2.8 million fine the state and federal environmental agencies are demanding comes on top of a \$700,000 fine imposed on the city earlier this year under a consent decree that was signed in a separate action Monday by U.S. District Court Judge Thomas Thrash. The order requires the city to carry out a rigorous program of improvements to its sewer pipes and treatment plants during the next 14 years.

Even though the city had agreed to the terms of the consent decree months ago and had agreed to several interim deadlines this year, Thrash did not officially sign the order until

Monday.

Last year, the city paid \$2 million under the mandates of another consent order that requires the city to clean up the pollution from its combine sewer overflows. CSOs dump mixtures of raw sewage and storm water into city creeks and the Chattahoochee and South rivers when it rains.

The CSO decree was part of the settlement of a 1995 lawsuit by the Upper Chattahoochee Riverkeeper against the city because of the city's failure to control pollution from the CSOs. Thrash later allowed the EPA and EPD to join the Riverkeeper in its legal action against the city. In a separate action, the government agencies sued the city because of its cracked and broken sewer system that caused manholes to overflow with raw sewage.

Both consent orders set dozens of rigorous deadlines that the city has to meet during the next 14 years to bring its sewer and sewage treatment systems into compliance with the federal Clean Water Act. Failure by the city to meet those deadlines can incur hefty fines.

In addition to the fines imposed under the consent decrees, the city has paid \$10 million in penalties since 1990 because of its sewer woes.

# City to refund storm water utility fee

**Soft reflux:** Court  
ruling Atlanta's collection  
of storm water utility fee  
unconstitutional will cost  
the city at least \$4.5 million.

**Julie B. Hairston**  
jhairston@ajc.com

Atlanta property owners can expect a gift from the city early next year, a refund, with interest, of the storm water utility fee they paid this time last year.

City officials have decided not to

didn't want to pay for it, Barnes ruled.

A storm water utility is supposed to charge property owners for the amount of impervious surface on their land, such as parking lots and buildings.

Once collected, the storm water charges are used to build and maintain the city's system of storm drains, which channel runoff from paved areas into local creeks and streams.

"It is very important for people to be able to look at their bill and realize they're getting something

indication that the city was simply generating more money for unspecified purposes rather than segregating money for storm drain maintenance.

Attorney Robert Proctor, who filed the suit on behalf of the Fulton County Taxpayers Association, said he has been negotiating with Atlanta city attorneys on the details of the refund. City property owners who paid the storm water charge can expect to receive their refund by Feb. 15, according to Proctor.

that many checks," Proctor said.

The refund is expected to cost the city more than \$4.5 million according to Proctor.

In addition, city officials hope to use the refund as an opportunity to set up a storm water utility fee that will pass legal muster. Muller wants a letter explaining the intended purpose of the charge to be enclosed with the refund when it is mailed to property owners.

That, she said, will begin the educational process that must

To: Ron Rade 202-528-5858  
P.O. Box 81111 Mile 404 875 3582 Fax 875-5711  
17-21-66

RCS# 2194  
9/05/00  
2:17 PM

Atlanta City Council

Regular Session

CONSENT

Pages: 1-12

Adopt

YEAS: 13  
NAYS: 0  
ABSTENTIONS: 0  
NOT VOTING: 3  
EXCUSED: 0  
ABSENT 0

SEE ATTACHED LISTING OF  
ITEMS ADOPTED/ADVERSED  
ON CONSENT AGENDA

Y McCarty	Y Dorsey	Y Moore	Y Thomas
Y Starnes	NV Woolard	Y Martin	Y Emmons
NV Bond	Y Morris	Y Maddox	Y Alexander
Y Winslow	Y Muller	Y Boazman	NV Pitts

ITEM (S) REMOVED FROM  
CONSENT AGENDA  
00-O-1007  
00-R-1309

CONSENT

<b>09/05/00 Council Meeting</b>	
<b>ITEMS ADOPTED ON CONSENT AGENDA</b>	<b>ITEMS ADVERSED ON CONSENT AGENDA</b>
1. 00-O-1102	40. 00-R-1235
2. 00-O-1143	41. 00-R-1245
3. 00-O-1207	42. 00-R-1246
4. 00-O-1295	43. 00-R-1247
5. 00-O-1303	44. 00-R-1248
6. 00-O-1313	45. 00-R-1249
7. 00-O-1124	46. 00-R-1250
8. 00-O-1125	47. 00-R-1251
9. 00-O-1126	48. 00-R-1252
10. 00-O-1127	49. 00-R-1253
11. 00-O-1128	50. 00-R-1254
12. 00-O-1133	51. 00-R-1255
13. 00-O-1196	52. 00-R-1256
14. 00-O-1298	53. 00-R-1257
15. 00-O-1122	54. 00-R-1258
16. 00-O-1300	55. 00-R-1259
17. 00-R-1198	56. 00-R-1260
18. 00-R-1230	57. 00-R-1261
19. 00-R-1290	58. 00-R-1262
20. 00-R-1312	59. 00-R-1263
21. 00-R-1316	60. 00-R-1264
22. 00-R-1265	
23. 00-R-1266	
24. 00-R-1267	
25. 00-R-1268	
26. 00-R-1270	
27. 00-R-1314	
28. 00-R-1229	
29. 00-R-1233	
30. 00-R-0886	
31. 00-R-1236	
32. 00-R-1237	
33. 00-R-1238	
34. 00-R-1239	
35. 00-R-1240	
36. 00-R-0241	
37. 00-R-1242	
38. 00-R-1243	
39. 00-R-1244	