

A RESOLUTION

07-R-2504

BY COUNCILMEMBER CARLA SMITH

AS SUBSTITUTED BY CITY UTILITIES COMMITTEE

AUTHORIZING PAYMENT OF STIPULATED PENALTIES IMPOSED BY THE ENVIRONMENTAL PROTECTION AGENCY (EPA) AND THE ENVIRONMENTAL PROTECTION DIVISION OF THE DEPARTMENT OF NATURAL RESOURCES OF THE STATE OF GEORGIA (EPD) IN THE AMOUNT OF ONE HUNDRED THIRTY TWO THOUSAND FIVE HUNDRED DOLLARS AND 00/100 (\$132,500.00) AS STIPULATED PENALTIES FOR THE VIOLATION OF UNPERMITTED DISCHARGE STANDARDS AS PURSUANT TO THE CSO CONSENT DECREE, CIVIL ACTION FILE NO. 1:98-CV-1956-TWT; TO IDENTIFY THE SOURCE OF FUNDING; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta (“City”) has experienced a violation of Unpermitted Discharge Standards as set out in Exhibit “A” hereto; and

WHEREAS, this violation is subject to stipulated penalties imposed at the discretion of the Environmental Protection Agency (EPA) and the Environmental Protection Division of the Department of Natural Resources of the State of Georgia (EPD) pursuant to the CSO Consent Decree, Civil Action File No. **1:98-CV-1956-TWT** Sections XI.H and XI.I ; and

WHEREAS, the Department of Watershed Management of the City does not dispute the fact these violations of unpermitted discharges did occur; and

WHEREAS, the payment to EPA and EPD of this assessment by the City does not constitute a finding or adjudication, is not to be evidence of a violation of state or federal laws by the City, nor does the City by its consent agree to any violations of state or federal laws or admit any liability to any third party or parties; and

WHEREAS, funds for this purpose are available in account number 2J01 529017 Q30001; and

WHEREAS, the CSO Consent Decree, Section XI. O. similarly provides for payment of interest on late payment of stipulated penalties; and

WHEREAS, it is deemed to be in the interest of the City to accept the proposed stipulated penalties and to pay the incident assessments to them.

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

SECTION 1: That the Chief Financial Officer of the City of Atlanta is authorized to issue checks in the amounts of Sixty-Six Thousand Two Hundred Fifty Hundred Dollars and 00/100 (\$66,250.00) payable to the **State of Georgia** and Sixty-Six Thousand Two Hundred Fifty Hundred Dollars and 00/100 (\$66,250.00) payable to the **Treasurer, United States of America** as stipulated penalties imposed pursuant to the CSO Consent Decree at the discretion of the Environmental Protection Agency and the Environmental Protection Division of the Department of Natural Resources of the State of Georgia for said violations unpermitted discharges to waters and dry lands of the State.

SECTION 2: that the said payments be chargeable to Fund Account and Center Number 2J01 (Water & Wastewater Revenue) 529017 (Property/Liquidation) Q30001 (Deputy Commissioner, Treatment & Collection).

SECTION 3: That all resolutions and parts of resolutions in conflict herewith be and are hereby waived in this instance only.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 4
 ATLANTA FEDERAL CENTER
 61 FORSYTH STREET
 ATLANTA, GEORGIA 30303-8960

06.17.000
 01.2

October 17, 2007

CERTIFIED MAIL 7005 3110 0003 6266 0769
RETURN RECEIPT REQUESTED

Mr. Robert J. Hunter, Commissioner
 Department of Watershed Management
 City of Atlanta
 55 Trinity Avenue, S.W.
 Atlanta, Georgia 30303

Re: Demand for Stipulated Penalties
 Civil Action File No. 1:98-CV-1956-TWT

DEPARTMENT OF WATERSHED
 MANAGEMENT
 2007 OCT 19 AM 11:32
 OFFICE OF COMMISSIONER

Dear Mr. Hunter:

The United States Environmental Protection Agency (EPA) and the Georgia Environmental Protection Division (EPD) hereby make a written demand to the City of Atlanta (the City) for stipulated penalties concerning violations of the First Amended Consent Decree (1:98-CV-1956-TWT) as follows:

January 1, 2006 to December 31, 2006

During this period, the City experienced 255 sanitary sewer overflows from its facilities for which stipulated penalties are being assessed under Sections XI.H and XI.I of the First Amended Consent Decree. These overflows include 243 unpermitted discharges to waters and 12 sewage overflows to dry land, and have a total estimated volume of 498,829 gallons or more. There are 117 dry land overflows totaling 58,123 gallons which are not included in this assessment due to their limited impact and the City's progress to date in reducing overflows.

This assessment also takes into consideration \$17,500 in stipulated penalties paid by the City in July and August 2006 pursuant to Section XI.D of the Combined Sewer Overflow Consent Decree for violations of fecal coliform levels. As explained in the City's August 25, 2006 letter, the City took fecal coliform samples during July and August 2006 at both original and newly proposed sampling locations. Sampling results showed fecal violations at the original but not the newly proposed sampling locations. Pursuant to its October 10, 2006 letter, EPA/EPD approved the modification of sampling points to the new locations. Because sampling results in July and August 2006 showed fecal violations at the original locations and EPA/EPD had not yet approved the modification of the sampling locations, the City paid the stipulated penalties automatically due under the Combined Sewer Overflow Consent Decree. We have taken this situation into consideration in determining the final amount of stipulated penalties to be assessed herein.

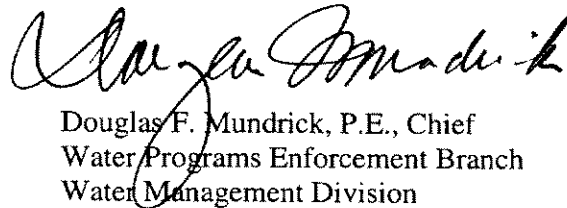
The total stipulated penalty assessed with this demand is **\$132,500**. Payment should be made within sixty (60) days of the date of this demand in accordance with Section XI.K of the First Amended Consent Decree with fifty percent (50%) of this amount paid to the United States and fifty percent (50%) paid to the State of Georgia.

If you have any questions, please contact Doug Mundrick at (404) 562-9328 or Marzieh Shahbazaz at (404) 362-2680.

Sincerely,



Marzieh Shahbazaz, Acting Program Manager
Permitting, Compliance, and Enforcement Program
Georgia Environmental Protection Division



Douglas F. Mundrick, P.E., Chief
Water Programs Enforcement Branch
Water Management Division

cc: See Attached List

List of Carbon Copies:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

United States Attorney
Northern District of Georgia

Attorney General
Department of Law
State of Georgia

Georgia Environmental Protection Division
Permitting, Compliance and Enforcement Program

Lynnette Young
Chief Operating Officer
City of Atlanta

Elizabeth B. Chandler
City Attorney
City of Atlanta

Joseph Basista, P.E.
Deputy Commissioner
Department of Watershed Management
City of Atlanta

UNITED STATES
 ENVIRONMENTAL PROTECTION AGENCY
 REGION 4
 ATLANTA FEDERAL CENTER
 61 FORSYTH STREET, S.W.
 ATLANTA, GA 30303-8960

OFFICIAL BUSINESS
 PENALTY FOR PRIVATE USE: \$300

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature X
	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
	B. Received by (Printed Name) _____ C. Date of Delivery _____
	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If different, enter delivery address below: <input type="checkbox"/> No

Mr. Robert Hunter, Deputy Commissioner
 Department of Watershed Management
 City of Atlanta
 City Hall, Suite 5400
 55 Trinity Ave., S.W.
 Atlanta, GA 30303-3520

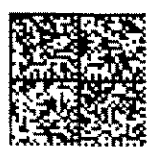
Type _____
 Certified Mail
 Registered Mail
 Insured Mail
 Express Mail
 Return Receipt for Merchandise
 C.O.D.
 Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) 7005 3110 0003 6266 0769

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

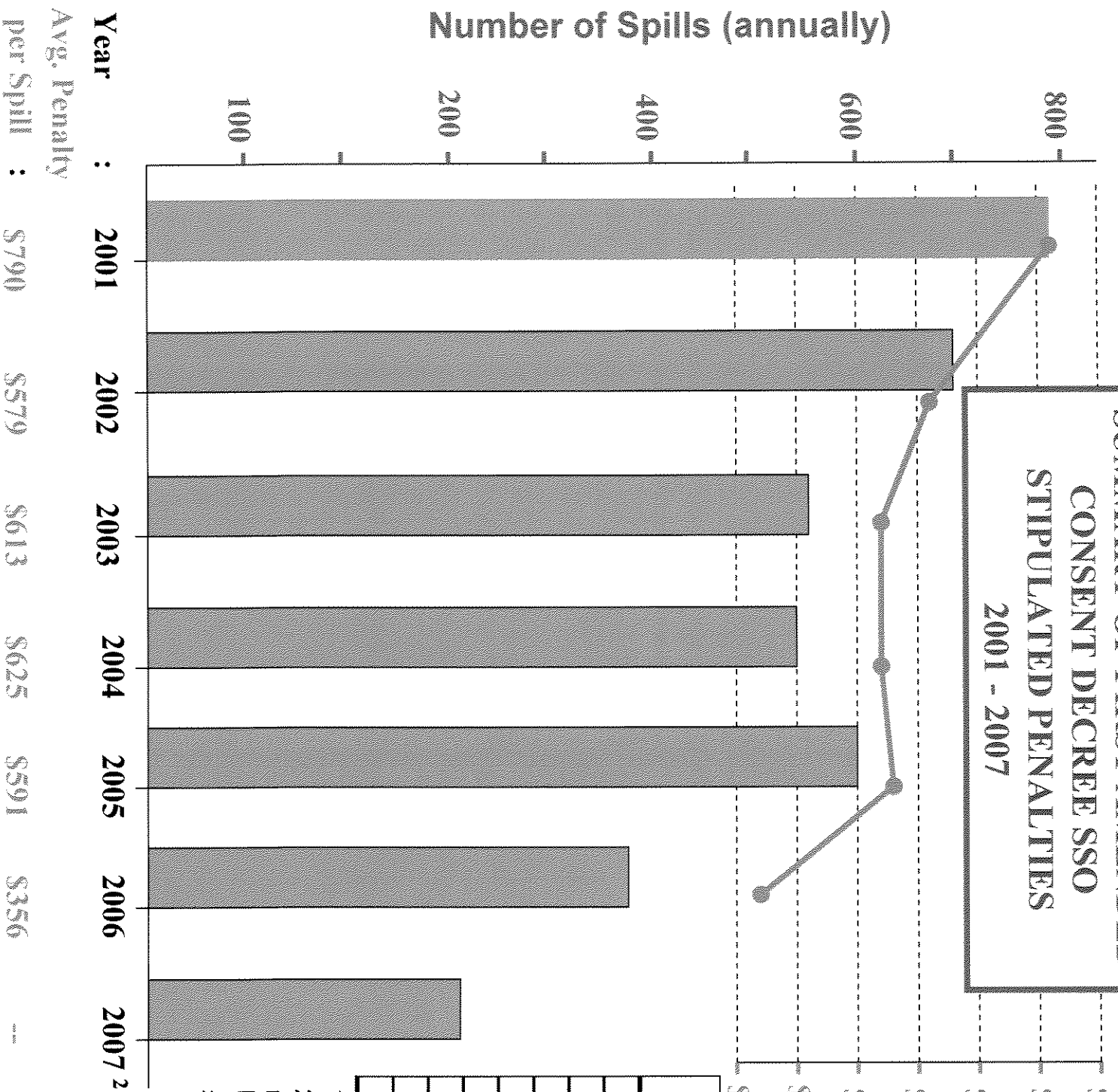
Mr. Robert Hunter, Deputy Commissioner
 Department of Watershed Management
 City of Atlanta
 City Hall, Suite 5400
 55 Trinity Ave., S.W.
 Atlanta, GA 30303-3520

7005 3110 0003 6266 0769



EASIER
\$5.77
 OCT 17 2007
 US POSTAGE
 First-Class Mail
 MAILED FROM 30303
 011A0413095247

**SUMMARY OF FIRST AMENDED
CONSENT DECREE SSO
STIPULATED PENALTIES
2001 - 2007**



Year	Total Spills	Total Penalty	Avg. Penalty/Spill
2001	794	\$627,500	\$790
2002	708	\$410,000	\$579
2003	551	\$338,000	\$613
2004	546	\$341,000	\$625
2005	607	\$358,500	\$591
2006 ¹	372	\$132,500	\$356
2007 ²	202		
Total	3780	\$2,207,500	

¹ Stipulated penalties applied to only 255 of the total spills; 117 spills were not included as EPA/D found them to have little environmental impact.

² Year to Date through Sept.

Year : 2001 2002 2003 2004 2005 2006 2007²

Avg. Penalty per Spill : \$790 \$579 \$613 \$625 \$591 \$356 --

A RESOLUTION BY



07- R -2504

COUNCILMEMBER CARLA SMITH

AUTHORIZING PAYMENT OF STIPULATED PENALTIES IMPOSED BY THE ENVIRONMENTAL PROTECTION AGENCY (EPA) AND THE ENVIRONMENTAL PROTECTION DIVISION OF THE DEPARTMENT OF NATURAL RESOURCES OF THE STATE OF GEORGIA (EPD) IN THE AMOUNT OF \$ _____ AS STIPULATED PENALTIES FOR THE VIOLATION OF CSO FECAL COLIFORM OPERATIONAL STANDARDS _____ PURSUANT TO THE CSO CONSENT DECREE, CIVIL ACTION FILE NO. 1:95-CV-2550-TWT; TO IDENTIFY THE SOURCE OF FUNDING; AND FOR OTHER PURPOSES.

WHEREAS, the City has experience a violation to the CSO Consent Decree set out in Exhibit "A" hereto; and

WHEREAS, this violation is subject to stipulated penalties imposed at the discretion of the Environmental Protection Agency (EPA) and the Environmental Protection Division of the Department of Natural Resources of the State of Georgia (EPD) pursuant to the CSO Consent Decree, Civil Action File No. 1:95-CV-2550-TWT; and

WHEREAS, the Department of Watershed Management of the City does not dispute the fact this violation did occur; and

WHEREAS, the payment to EPA and EPD of this assessment by the City does not constitute a finding or adjudication, is not to be evidence of a violation of state or federal laws by the City, nor does the City by its consent agree to any violations of state or federal laws or admit any liability to any third party or parties; and

WHEREAS, funds for this purpose are available in Fund, Account and Center Number 2J01-529017-Q31001; and

WHEREAS, the CSO Consent Decree, Section XI. O. similarly provides for payment of interest on late payment of stipulated penalties; and

WHEREAS, it is deemed to be in the best interest of the City to accept the proposed stipulated penalties and to pay the incident assessments to the Environmental Protection Agency (EPA) and the Environmental Protection Division of the Department of Natural Resources of the State of Georgia (EPD).

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

Section 1: That the Chief Financial Officer of the City of Atlanta is authorized to issue checks payable in the amount of \$ _____ to the **State of Georgia** and in the amount of \$ _____ to the **Treasurer, United States of America** as stipulated penalties imposed pursuant to the CSO Consent Decree at the discretion of the Environmental

Protection Agency and the Environmental Protection Division of the Department of Natural Resources of the State of Georgia.

Section 2: That said payments shall be charged to and paid from Fund, Account and Center Number 2J01 529017 Q30001.

Section 3: That all resolutions and parts of resolutions in conflict herewith be and are hereby waived in this instance only.

EXHIBIT A

The City is subject to stipulated penalties for violations of the CSO Consent Decree, per Section _____ as follows:

CSO Consent Decree Section

Date	Facility	Colonies/100 ml	Penalty	Comment
-------------	-----------------	------------------------	----------------	----------------