# International Municipal Lawyers Association
# 2014 Annual Conference
# Baltimore, Maryland

## Environmental Issues Facing Local Governments

## “What You Gonna Do When the EPA Knocks on Your Door?”

**Herman Morris, Jr., City Attorney**
**and**
**CC Drayton, Senior Assistant City Attorney**
**Memphis, Tennessee**

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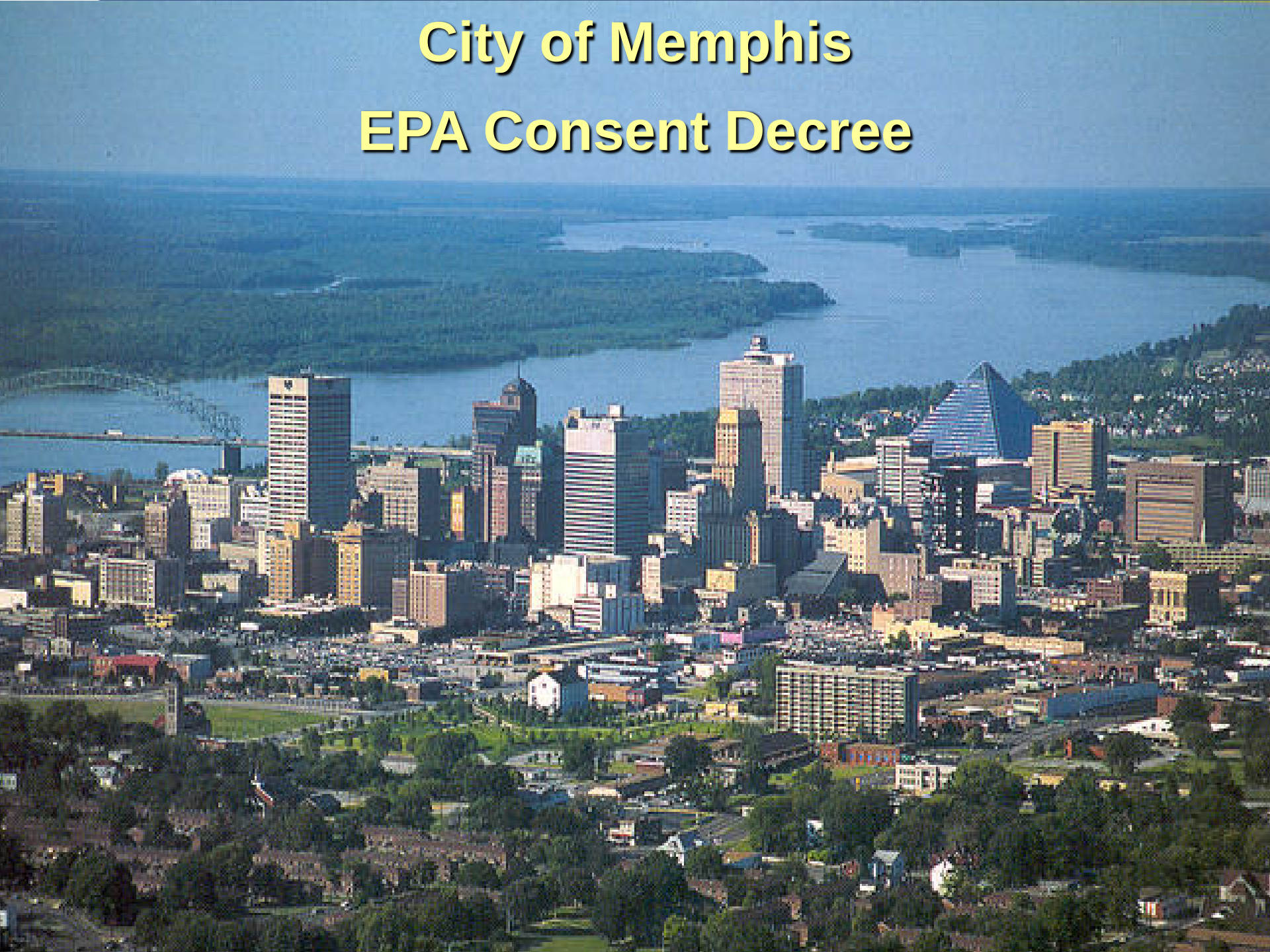
# City of Memphis

# EPA Consent Decree



# BACKGROUND

- EPA National Wet Weather Enforcement Initiative Across the Country
- EPA Clean Water Act § 308 Request for Information (6/08)
- EPA Letter Stating Intent to File Suit (9/09)
- First “Settlement” Meeting with EPA/TDEC (12/09).
- EPA Statement: Memphis is not worse than other cities, just Memphis’ turn.
- Tennessee Clean Water Network 60-Day Notice of Suit (12/09)
- EPA/TDEC File Complaint (2/10)

# Negotiated Settlement

- **Penalty: $1,290,000 based upon size of municipality, months of violations, economic benefit and impact of violations on human health/environment**

- **BUT $645,000 paid as State Project for:**
  - **Color study to develop numerical color limits and**
  - **City Geographic Information System (GIS)**

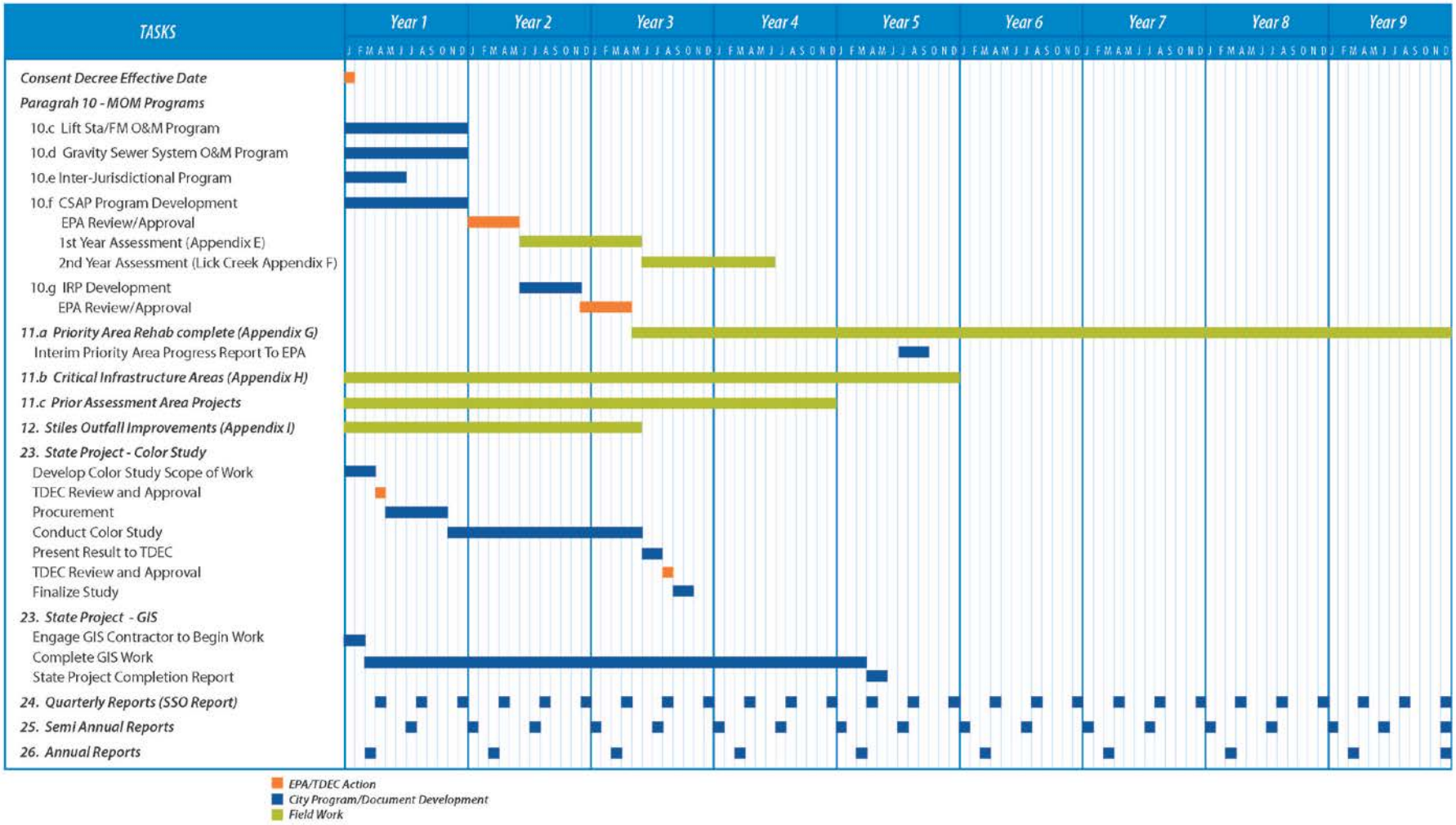
- **Stipulated Penalties for future violations**

# OTHER SETTLEMENTS

| CITY | PENALTY | EPA PROJECTS | INJUNCTIVE RELIEF | TOTAL EXPENDITURE |
|---|---|---|---|---|
| Memphis (‘12) | $1,290,000 | $0 | $251M | $252.29M |
| Nashville (‘07) | $564,000 | $2,800,000 | $1 - $1.5B | $1.003-$1.503B |
| Louisville & Jefferson Co. (’05) | $1,230,000 | $2,250,000 | $850M | $853.48M |
| Knoxville (‘04) | $334,000 | $2,000,000 | $530M | $532.33M |
| Atlanta (‘99) | $2,500,000<br>$700,000 | $27,500,000 | ~$4B | ~$4.03B |
| Jefferson Co. (Birmingham, AL) (‘96) | $750,000 | $30,000,000 | $3.2B** | $3.24B |

* Costs were to comply with consent decree and expand to newly-developed areas.

# Compliance Schedule



# Establishing Priorities

- Age of the system
- Overflow frequencies
- Overflow volumes
- Location relative to impaired streams
- Location relative to environmental justice areas identified by EPA
- Lick Creek Area

# Project Implementation



# Violations Addressed

- Complaint Originally Alleged Violations:
  - Sewer overflows
  - Effluent limits
  - Pretreatment (City regulation of Industry)

Convinced EPA that pretreatment and effluent limits (except foam and color) were not issues.

- Consent Decree resolves:
  - EPA/TDEC violations alleged in Amended Complaint (to be filed with Settlement)
  - TCWN violations alleged, or could have been alleged, in TCWN Complaint