

# Jefferson County Sewer Consent Decree

## Executive Summary

**A report by Commissioner Jim Carns**  
**Prepared by Legislative Assistant Sharon Evans**

*“By forcing state governments to absorb the financial burden of implementing a federal regulatory program, members of Congress can take credit for solving problems without having to ask their constituents to pay for the solutions with higher federal taxes. And even when the States are not forced to absorb the costs of implementing a federal program, they are still put in the position of taking the blame for the burdensomeness and for its defects.” The U.S. Supreme Court 1997*

The following questions and answers will shed light on the nature of a consent decree while providing information on the Jefferson County Sewer Consent Decree. A common sense dialogue must take place as we seek to protect the environment and insure the taxpayers are not unduly burdened.

### **What are consent decrees?**

A consent decree is a judge's order based on an agreement between parties in a lawsuit, which is enforceable by contempt, and can be modified only by court order. At first glance, consent decrees might appear harmless, but they have become quite problematic and unreasonable. Many times when a lawsuit is filed against a city, county, or state agency, the official charged believes it is in their interest to work out a solution. Plaintiffs and defendants are encouraged to negotiate a detailed plan to fix the entire system. This end result is known as a consent decree or institutional reform. But many problems arise when people seek to bring about social reform in court. A consent decree takes the place of formal legislation by binding elected officials or those in charge of state or local agencies to a “remedy” that may not be the best way to rectify a grievance or problem. As a result, taxpayers are doubly hurt by paying higher taxes to support what can be questionable judicial remedies and by finding that the officials that they elected are no longer in charge because their hands are tied by a poorly constructed legal document.

The use of a consent decree allows a broad remedy to be applied to what might have been a very narrow violation. The lawsuit that began as a well-defined possible violation of a statute becomes the catalyst for sweeping, often unnecessary, and always costly reform. Often the amount of resources that a city or county is compelled to spend in order to comply with the decree overwhelms any other item in that agency's budget.

### **Do consent decrees make government less accountable to the people?**

“Enforcement of consent decrees can undermine the sovereign interests and accountability of state governments. Although officials consent to the entry of decrees in the first place, they tie not only their own hands, but those of their successors in office

into the indefinite future...if not limited to reasonable and necessary implementations of federal law, remedies outlined in consent decrees... may improperly deprive future officials of their designated legislative and executive powers and lead to federal court oversight of state programs for long periods of time even absent an ongoing violation of federal law.” (Alabama Attorney General Troy King before the Senate Administrative Oversight and Courts Subcommittee July 19, 2005.)

### **Why is Jefferson County under a consent decree?**

Jefferson County entered into a consent decree agreement in 1996 to rectify violations of the Clean Water Act, as cited by the Environmental Protection Agency (EPA).

In the 1800’s all sewage material in the county was dumped in the closest river or streams. After a cholera outbreak in 1901, the Alabama State legislature empowered Jefferson County to build a sewer system of trunk lines and waste treatment facilities. Surrounding municipalities within Jefferson County subsequently constructed their own sewage facilities and piping that connected to the larger lines that Jefferson County had built. Overflows and back-ups subsequently occurred. In response to growing environmental concerns of this type, Congress began passing sweeping environmental legislation, which granted standing to our nation’s citizenry to enforce municipal, county, and state compliance with federal environmental legislation.

In 1993, private residents of Alabama were joined by the Cahaba River Society and the EPA in a lawsuit to force Jefferson County to comply with federal environmental legislation called Clean Water Act. In 1994 the Department of Justice joined the suit. Sewage back up and overflows were a serious matter and the municipalities within Jefferson County were financially unable to pay for the required improvements. In 1996 Jefferson County negotiated a consent decree with the EPA to implement a 12-year plan to correct the problems with Jefferson County’s sewer system. The first phase of the plan was unification of the County’s sewer system making the County responsible for all sewer lines in the county. The county inherited facilities in dire need of repair and replacement and is responsible for over 12 million feet of sewer lines and more than 120 treatment stations connected to lines that in some cases date back to the late 1800’s.

### **Is this consent decree a reasonable one?**

In 1996 the Environmental Services Department for Jefferson County sent a memo to the Jefferson County Commissioners expressing major concerns with the ability to comply with this consent decree. These same concerns still exist.

- 1) “Elimination of All Sanitary Sewer Overflows (SSO’s) Will Not Be Possible.” In order to be in compliance with the consent decree, the county has to eliminate all overflows. This is an impossible standard. If strictly applied, the County will never be in full compliance to the consent decree.
- 2) “Full Compliance With Wastewater Treatment Plant NPDES Permits Will Not Be Possible.” The stringent permit limits that are based on dry weather creek flows. When applied to high flows during wet weather will cause noncompliance to the

consent decree. The EPA has yet to approve a permit limit variance for the County treatment facility.

- 3) “The County will definitely have to pay additional penalties.” In 1997 the Environmental Services estimated \$120,000 per year on average even for minor violations like too much or too little chlorine in the water. It is estimated now that annual penalties will be \$250,000 until the County is out from under this consent decree.

**How much is this costing the County, i.e. the taxpayers?**

In 1996 the sewer bill for a family of four was \$14.71. In 2008 the same family of four will pay \$62.90.

**How easy is it to overturn a consent decree?**

In order to appeal and overturn a consent decree, defendants have to show that the judge abused his or her discretion. This is a difficult standard to meet. In seeking to vacate or modify a consent decree, Sen. Lamar Alexander stated that “it’s not easy for a newly-elected official to go into court and even get a hearing, even have the right to have a judge consider the matter.”

**We must come out from under this consent decree.**

The language of the consent decree needs to be altered to include a more commonsense approach to ensure our lakes and rivers are not polluted. If the language is not altered, as recommended by Jefferson County’s Environmental Services Department, the County will forever be forced to divert county resources from other important county interests.