

# SO YOU WANT TO MODIFY YOUR CONSENT DECREE? BEWARE OF REGULATORY CREEP

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Chesapeake WEA Collection Systems Committee  
Spring Seminar

May 24, 2018



**COOPER MOORES, LLC**

# Background – The 2002 Consent Decree



- CWA Section 301 “... the discharge of any pollutant by any person shall be unlawful.”
- One of the first SSO CDs for a major metropolitan area
- Sewershed studies
- Design storm – (2 year, 5 year, 10 year)
- Finish projects by January 1, 2016

# How Did That Work?

- No major compliance issues throughout CD 
- Lots of early wins like separating combined sewers and closing structured overflows 
- Finished and submitted sewershed studies on time ... BUT 
- Used 2 year design studies 
- In 2011, regulators formally disapproved the sewershed studies

**COLLISION COURSE!**

# THE NEGOTIATION: AS SEEN THROUGH FOUR ISSUES

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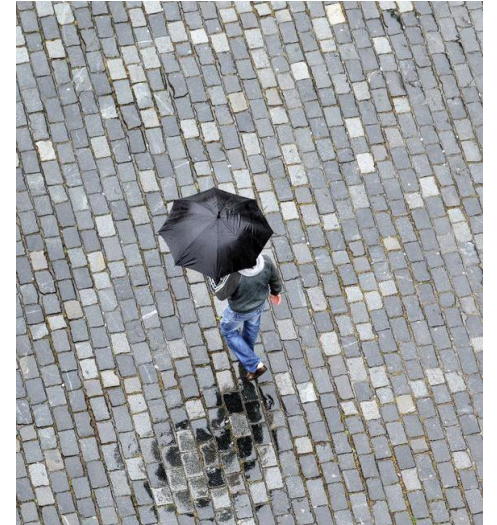
1. Methodology, structure, timing
2. SDUOs
3. Water quality
4. Cleaning reimbursement

# Methodology, Structure, and Timing

- Continuous simulation methodology
- Two phase approach
- Finish Phase I by January 1, 2021
- Back River Headworks Project
- Finish Phase II by December 31, 2030

**FIX IT!**

**UPSIZE IT!**



Source: Kristian Bjornard/Creative Commons/Wikimedia

# How We Got There

- City going for as much time as possible
- Regulators going for as little time as possible
- Pushed hard on IPF and affordability
- **83% Improvement in Phase I**



# Lessons Learned



- Numbers! Data! Engineering!
- Bold new thinking a harder sell without hard data
- \$300 million project doesn't hurt



**Regulatory Creep?**

**No.**



# Sanitary Discharges of Unknown Origin

- First and only CD in the country to have this kind of provision
- City developed SDUO protocol to be approved by regulators
- Submit plan to fix cross-connections within 60 days
- SDUO info in quarterly reports



# How We Got There



Source: Bay Journal, Dave Harp

- Environmental groups
- City had already been developing a program
- What is an SSO?
- Careful to keep actual protocol out of MCD to allow for flexibility

# Lessons Learned

- Figure out where you can give the other side a win
- Don't put all your cards on the table if you can avoid it
- Give yourself maximum flexibility, especially with a new program



**Regulatory Creep?**

**Not really**

# Stream Quality Monitoring

- Post results of Ammonia Screening and Stream Impact Sampling programs on City website
- These were pre-existing programs for MS<sub>4</sub> compliance
- Data gathered cannot be used to make Baltimore do more work under MCD



# How We Got There



- Environmental group concern around water quality improvement
- City: We're already doing this for the MS<sub>4</sub>.  
Regulators: Ok, then write about it in the CD.

# Lesson Learned

- Know which hill to die on.



**Regulatory Creep?**

**Kind of.**



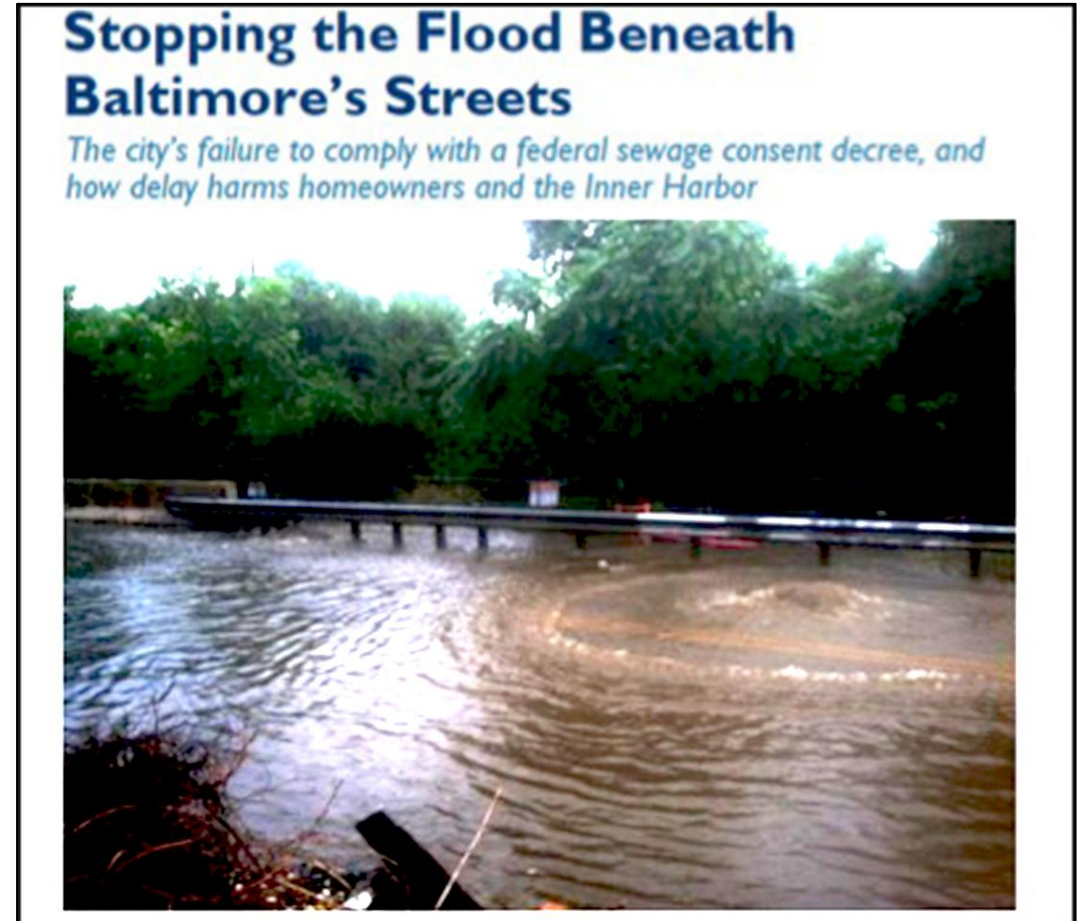
# Cleaning Reimbursement Program



- Pilot program contained in final appendix of MCD
- If you have a basement backup due to a capacity-related overflow, City will compensate you up to \$2,500
- Not an admission of liability

# How We Got There

- City was in the process of researching the best way to do something like this
- Environmental Integrity Project Report
- Regulator Freak Out



# Lessons Learned



- Know the skeletons in your closet
- Could a lay person think this is related?
- Do not underestimate the power of an advocacy group wielding inflammatory language

**Regulatory Creep?**

**Yes.**

# BIG Takeaways!

1. Make sure your lawyers understand enough of the engineering to be able to explain it back to you.
2. Make sure you understand the underlying law.
3. Talk to your communications/customer service people. Know what is making people angry.
4. Build a positive relationship with the people on the other side of the table.

You can also hire me...



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