AGENDA

- Recommendations for Task Force
  - Essential Services
  - Third-Party Credit Trading
  - Developer-Earned Credit Program
- Task Force Meeting Schedule
Essential Services

- CD includes provision for those facilities that are deemed essential to connect to public sewer even if adequate capacity can not be certified or there are not enough banked credits available to offset the proposed flow increase.

- Withdrawal from credit bank still taken.

- CD defines these Essential Services as:
  - Health care facilities
  - Public safety facilities
  - Public schools
  - Illicit connections (septic tank removals, etc.) *Fayette County Health Dept. approval required.*
  - Other facilities as agreed upon in writing by EPA and EPPC.
Essential Services

Recommendation

- **Recommendation from DWQ/CAP Consultant**
  - Allow the CAP exception for essential services provided in CD.
  - Define **health care facilities** as:
    - KRS 216.510 definition for “health care facilities”
    - Licensed by the Commonwealth’s Division of Health Care
    - Must possess a valid license
  - Define **public schools** as:
    - Must be a registered non-profit in tax code 501(c)(3)
    - Same definition used by Tap-On Desk
    - Must be able to produce tax certificate

Essential Services

Last Meeting

- **Discussion Highlights**
  - Impose a limit on how negative a credit balance will be permitted to occur from Essential Service exemptions. (CM Henson)
  - Concern that case-by-case evaluation of Essential Service facility exemptions will be subjective and expose LFUCG to legal challenges. (DWQ)
  - 501(c)(3) definition is appropriate for Tap-On Desk because it is basis for a fee determination, but non-profit status for public schools not relevant for sewer capacity. (CM Stinnett)
  - Request to provide information on the number of facilities that would be considered Essential Service under DWQ/CAP Consultant recommended definition. (VM Gorton)
  - Request to provide information on how other communities with similar Consent Decree provisions are handling Essential Services. (VM Gorton)
**Existing Essential Service Facilities in Urban Service Area**

- **6%** by Land Area (3,000 acres)
- **0.2%** of Parcels (256 parcels)

**Data Sources:**
- LFUCG GIS (K-12 schools, public safety)
- KY Division of Health Care (health care facilities)
- Google maps (post-secondary schools)

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**EPA Regions**

- Other Region 8 sites
  - Guam
  - American Samoa
  - Trust Territories
  - Commonwealth of the Northern Mariana Islands
June 28, 2012

Essential Services

Where we looked

30 Communities and Sewer Agencies with EPA Consent Decrees

12 Communities and Sewer Agencies in EPA Region 4

Where we looked

30 Communities and Sewer Agencies with EPA Consent Decrees

12 Communities and Sewer Agencies in EPA Region 4

Essential Services

Where we looked

30 Communities and Sewer Agencies with EPA Consent Decrees

12 Communities and Sewer Agencies in EPA Region 4

Essential Services

Where we looked

30 Communities and Sewer Agencies with EPA Consent Decrees

12 Communities and Sewer Agencies in EPA Region 4

What we found

<table>
<thead>
<tr>
<th>City/Agency</th>
<th>State</th>
<th>CD Lodge Date</th>
<th>CAP in CD?</th>
<th>Banked Credits System in CD?</th>
<th>ES in CD?</th>
<th>System Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lexington</td>
<td>KY</td>
<td>3/14/2008</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>1,400 mi.</td>
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<tr>
<td>Louisville MSD</td>
<td>KY</td>
<td>4/25/2005</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>3,200 mi.</td>
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<td>Sanitation District No. 1</td>
<td>KY</td>
<td>10/5/2005</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>1,600 mi.</td>
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<tr>
<td>Winchester</td>
<td>KY</td>
<td>4/10/2007</td>
<td>Yes</td>
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<td>Yes</td>
<td>138 mi.</td>
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<td>Nashville</td>
<td>TN</td>
<td>10/24/2007</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>2,890 mi.</td>
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<tr>
<td>Memphis</td>
<td>TN</td>
<td>4/16/2002</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>3,500 mi.</td>
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<tr>
<td>Knoxville</td>
<td>TN</td>
<td>12/1/2004</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>1,250 mi.</td>
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<td>Birmingham / Jeff. Co.</td>
<td>AL</td>
<td>1996</td>
<td>???</td>
<td>???</td>
<td>???</td>
<td>3,100 mi.</td>
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<tr>
<td>Mobile</td>
<td>AL</td>
<td>1/24/2002</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>1,260 mi.</td>
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<tr>
<td>New Orleans¹</td>
<td>LA</td>
<td>3/23/2010</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>1,600 mi.</td>
</tr>
<tr>
<td>Baton Rouge²</td>
<td>LA</td>
<td>11/13/2001</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>1,600 mi.</td>
</tr>
</tbody>
</table>

### Essential Services

<table>
<thead>
<tr>
<th>City/Agency</th>
<th>State</th>
<th>CD Lodge Date</th>
<th>CAP in CD?</th>
<th>Banked Credits</th>
<th>ES in CD?</th>
<th>System Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lexington</td>
<td>KY</td>
<td>3/14/2008</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>1,400 mi.</td>
</tr>
<tr>
<td>City of Atlanta³</td>
<td>GA</td>
<td>7/16/1999</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>2,000 mi.</td>
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<tr>
<td>Dekalb Co.</td>
<td>GA</td>
<td>12/13/2010</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>2,600 mi.</td>
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<tr>
<td>Scranton</td>
<td>PA</td>
<td>9/29/2009</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>275 mi.</td>
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<tr>
<td>ALCOSAN</td>
<td>PA</td>
<td>5/31/2007</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>4,100 mi.</td>
</tr>
<tr>
<td>Hampton Roads</td>
<td>VA</td>
<td>9/29/2009</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>500 mi.</td>
</tr>
<tr>
<td>Miami-Dade Co.</td>
<td>FL</td>
<td>12/22/1994</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>6,271 mi.</td>
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<tr>
<td>Cincinnati MSD</td>
<td>OH</td>
<td>2/15/2002</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>3,000 mi.</td>
</tr>
<tr>
<td>Toledo</td>
<td>OH</td>
<td>10/21/2010</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>1,000+ mi.</td>
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<tr>
<td>Youngstown</td>
<td>OH</td>
<td>3/5/2002</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>750 mi.</td>
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<tr>
<td>Akron</td>
<td>OH</td>
<td>11/13/2009</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>880 mi.</td>
</tr>
<tr>
<td>Columbus</td>
<td>OH</td>
<td>8/1/2002</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>3,380 mi.</td>
</tr>
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</table>

³ CAP is included in the First Amended Consent Decree.
### Essential Services

<table>
<thead>
<tr>
<th>Other Communities</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Knoxville Utilities Board (KUB)</strong></td>
</tr>
<tr>
<td>- Essential Services definition in their Consent Decree (CD) includes “government facilities” but requires EPA approval.</td>
</tr>
<tr>
<td>- Have not issued a CAP denial to any proposed new connection.</td>
</tr>
<tr>
<td><strong>Louisville MSD</strong></td>
</tr>
<tr>
<td>- Essential Services definition in their CAP Plan and includes “government facilities.”</td>
</tr>
<tr>
<td>- Implementation decision to not provide exception for Essential Services at this time.</td>
</tr>
<tr>
<td><strong>Cincinnati MSD</strong></td>
</tr>
<tr>
<td>- Only septic conversions identified in their CD.</td>
</tr>
<tr>
<td>- No exemption for Essential Services.</td>
</tr>
</tbody>
</table>

### Other Communities

<table>
<thead>
<tr>
<th>Essential Services</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Winchester, Kentucky</strong></td>
</tr>
<tr>
<td>- Essential Services definition in their CD also includes “government facilities.”</td>
</tr>
<tr>
<td>- Reviews Essential Service exemptions on a case-by-case basis.</td>
</tr>
<tr>
<td><strong>Atlanta, Georgia</strong></td>
</tr>
<tr>
<td>- Essential Services definition in their CD also includes “government facilities.”</td>
</tr>
<tr>
<td>- Essential Services exemption is part of City’s CAP policy, but have never used it due to aggressive rehabilitation program.</td>
</tr>
<tr>
<td>- No established definition for health care facilities or public schools. Operate on a “you know it when you see it” policy.</td>
</tr>
<tr>
<td><strong>Mobile, Alabama</strong></td>
</tr>
<tr>
<td>- No Essential Services definition in their CD.</td>
</tr>
<tr>
<td>- Using model to evaluate capacity, no exemptions.</td>
</tr>
</tbody>
</table>
**Essential Services**

**Recommendation No. 4: Essential Services.**
Allow exception in CD for Essential Services. Health care facilities must meet KY Division of Health Service definition. Public schools must meet 501(c)(3).

- **Task Force Action**
  - Disposition
  - Council action required? Yes (part of implementing ordinance)

**Decision Item**

**Third-Party Credit Trading**
Third-Party Credit Trading

**Concept**

- When adequate sewer capacity cannot be certified, banked credits may be used to offset the proposed flow increase from new connections.
- Credit allocations are made by DWQ during the applicants request for sewer capacity.
- Credit allocations are recorded as a transaction in the appropriate credit bank based on the proposed location of the flow increase. Credits may only be used in the bank for which they were originally allocated.
- A Third-Party Credit Trading policy refers to the ability of the applicant to donate or sell all or part of their credit allocation to another non-LFUCG entity.

**Considerations**

- No mention of credit trading in Consent Decree.
- Cincinnati, Knoxville, and Louisville CAPs do not allow for third-party credit trading.
- Additional administrative effort necessary to track third-party credit trading.
  - How would LFUCG be notified?
  - How would trades be documented/ratified?
  - Would need to track trade(s) to ensure credits expended in the same bank they were originally allocated.
  - How would disputes be resolved?
- Potential to create unfair business advantage.
- No advantage to LFUCG for third-party credit trading.
Third-Party Credit Trading

Recommendation

- Do not allow third-party credit trading.
- All credit allocations to be made by LFUCG.

Outcome

Recommendation No. 5: Third-Party Credit Trading.
Do not allow third-party credit trading. All credit allocations are made by LFUCG.

Task Force Action
- Disposition
- Council action required?
  Yes (part of implementing ordinance)
Developer-Earned Credit Program

- When there are not enough banked credits to offset a flow increase, the applicant will be placed on the Waiting List until sufficient credits are earned.
- Credits are earned by improvements to LFUCG’s sanitary sewer system.
- Under a Developer-Earned Credit Program (DECP), an applicant may elect to use private funds to rehabilitate LFUCG’s sewer system to earn the needed credits.
- Credits earned under a DECP are immediately assigned to the participating developer for their use upon completion of the rehabilitation work.
Developer Earned Credit Program

Considerations

- Cincinnati MSD
  - Developer performs the work (3-year expiration).
  - 100% funded by developer (except MSD administration and oversight).
  - MSD inspects work to ensure meets their standards.

- Knoxville Utilities Board (KUB) cost shares with developer.

- DWQ will need adequate management and field inspection resources to administer a DECP.

- A DECP is an *implementation decision* and would not be identified in the CAP Plan to EPA due January 3, 2013.

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Developer Earned Credit Program

Considerations

- A DECP provides a means for developers to move forward with proposed development if adequate sewer capacity and credits are currently unavailable.

- A DECP offers the advantage to LFUCG and their rate payers to expedite rehabilitation/ improvement of the existing sewer system.

- DECP credits are earned by rehabilitation of the public sewer system and may reduce credit potential in the banking area for other developments.
Include provision in LFUCG’s CAP for a voluntary Developer Earned Credit Program (DECP).

Under LFUCG’s DECP:
- Developer would enter into contract with LFUCG.
- Developer submits payment for the rehab work necessary to earn the requested credits, LFUCG contractor performs the work.
- Earned credits would expire after 3 years with up to two, 1-year extensions (upon written request) for a maximum expiration period not to exceed 5 years.
- Upon expiration, DECP credits would be added to the appropriate credit bank and available to the public.
- LFUCG may purchase unused DECP credits by agreement of both parties at a reduced rate than original purchase price.
- DECP credits (in the same bank) must be used prior to allocation of credits from the public bank.

**Recommendation No. 6:**
**Developer-Earned Credit Program.**
Include provision in LFUCG’s CAP for a voluntary Developer Earned Credit Program. Developer and LFUCG enter into contract. Developer pays fee and DWQ performs sewer improvements to earn credits. DECP credits have maximum expiration of 5 years.

**Task Force Action**
- Disposition
- Council action required?
  Yes (part of implementing ordinance)
**MEETING SCHEDULE**

<table>
<thead>
<tr>
<th>Location:</th>
<th>Council Chambers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time:</td>
<td>9 am – 11 am</td>
</tr>
<tr>
<td>Future Dates:</td>
<td></td>
</tr>
<tr>
<td>June 28th</td>
<td>August 23rd</td>
</tr>
<tr>
<td>July 12th</td>
<td>Sept. 6th</td>
</tr>
<tr>
<td>July 26th</td>
<td>Sept. 20th</td>
</tr>
<tr>
<td>August 9th</td>
<td></td>
</tr>
</tbody>
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**Next Meeting**

[Image: livegreenlexington]