Sanitary Sewer System Capacity Assurance Program (CAP)

CAP TASK FORCE
Lexington-Fayette Urban County Government
Division of Water Quality

June 14, 2012

AGENDA

- Recommendations for Task Force
  - Credit Banking Unit
  - Retroactive Date for Harvesting Credits
  - Use of Record / Removal of Connections
  - Essential Services
- June 28th Meeting
Credit Banking Unit

- If capacity cannot be certified, then a banked credits system may be used in lieu of certification.
- Credits are earned by improvements to LFUCG’s sanitary sewer system. Earned credits can be used to offset flow from new connections.
- Banking Unit is the defined area(s) within the sanitary sewer system where credit transactions are recorded.
- Where capacity cannot be certified, new connections can only be offset with credits earned in the same banking unit that the new connection is located.
Other community models:
- Louisville MSD banks at major Catchments.
- Cincinnati MSD banks at SSO locations.
- Knoxville Utilities Board banks are dynamic and defined as everything upstream of the new connection.

Considerations:
- Administrative effort to implement.
- Potential to worsen existing SSOs or create new ones.
- Transparency and ability to effectively communicate, comprehend, and implement.

Recommendation from DWQ/CAP Consultant
- Banking unit at SSO locations.
  - Cincinnati MSD model
  - Good balance between accountability and affordability
- SSO clusters will be a single bank.
  - Bank at downstream SSO in cluster
  - Avoids "sliver" banks
- Additional bank defined at each treatment plant and major pump station.
- Additional bank defined if trunk sewer has surcharge condition but there is no downstream SSO.
  - Necessary to meet Consent Decree requirements
  - Avoids worsening capacity limited trunk sewers
Banking Unit

Town Branch/ Downtown Area

- Surcharge Condition (No Adequate Capacity)
- Recurring SSO
- Credit Bank Account

Approx. 60 – 80 credit bank accounts within LFUCG sewer system.

Credit Banking Unit

Outcome

Recommendation No. 1: Credit Banking Unit.
Bank accounts at SSO locations, treatment plants, major pump stations, and capacity limited trunk sewers.

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

- The **Credit Harvest Date** is the retroactive date that LFUCG can earn credits for completed sewer improvements.
- Sewer improvements completed after the Credit Harvest Date will earn credits that can be added to credit bank accounts.
- DWQ has aggressively been performing improvements to its sewer system since the Consent Decree (CD) lodged in March 2008.
### Credit Harvest Date

**Considerations**

- CD Section VII, Paragraph 16.B. (iii)(i), page 48
  “LFUCG may use a banking credit system for projects completed after the Effective Date of this Consent Decree”

- When CD written, it was not anticipated that there would be a 3-year delay between the lodge and effective dates (January 3, 2011).

- The credit harvest date for other communities (Cincinnati and Knoxville) is prior to the effective date of their respective CDs.

### Credit Harvest Date

**Recommendation**

- **Recommendation from DWQ/CAP Consultant**
  - Subject to EPA approval, authorize LFUCG staff to pursue changing Credit Harvest Date identified in Consent Decree.
  - Unlikely will be able to earn credits for improvements made prior to Consent Decree lodging (March 2008).
**Credit Harvest Date**

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<tr>
<th>Outcome</th>
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<tr>
<td><strong>Recommendation No. 2: Credit Harvest Date.</strong> Authorize staff to communicate with EPA in order for LFUCG to receive credit for sanitary sewer improvements made between when the Consent Decree was lodged and entered.</td>
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- **Task Force Action**
  - Disposition
  - Council action required? **Yes (Resolution)**

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**Decision Item**

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<tr>
<th>Task Force Action Needed</th>
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<tbody>
<tr>
<td><strong>Use of Record</strong></td>
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**CAP Task Force Meeting**
Use of Record

- New connections will require a capacity or credit allocation.
- Capacity/credit allocation need is based on the proposed flow increase from the planned development/redevelopment.
- CAP requirements applicable to increases in flow to sanitary sewer system.
- Use of Record refers to the sewage flow from the property already accounted for in the hydraulic model (baseline condition).
In other communities (Cincinnati, Knoxville) the unearned capacity is retained with the property.

- Can be used by property at a future date.
- Credits earned from a change in property use were earned with private dollars.
- Loss of unused capacity by the property to the public credit bank could be considered a partial taking.
Use of Record

Recommendation from DWQ/CAP Consultant
- Any credits earned from unused capacity resulting from redevelopment of a property to a usage that generates less flow to the sanitary sewer system will be retained by the property.
- Credits earned in this manner will not expire and may only be used by the property owner.
- Property owner may be permitted to use unused credits on another property if owned by the same property owner and located within the same credit bank.
- Property owner may release these credits to the public credit bank.

Use of Record

Outcome

Recommendation No. 3: Use of Record. Credits earned from redevelopment to a lesser sewer use will be retained with the property unless released by property owner.

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

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**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

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<td><strong>Knoxville Utilities Board (KUB)</strong></td>
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<td>- Similar Essential Services definition in their CD.</td>
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<td>- Have not issued a CAP denial to any proposed new connection.</td>
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<td><strong>Louisville MSD</strong></td>
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<td>- Similar Essential Services definition in their CD.</td>
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<td>- Implementation decision to not provide exception for Essential Services at this time.</td>
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<tr>
<td><strong>Cincinnati MSD</strong></td>
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<td>- Only septic conversions identified in their CD.</td>
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### Recommendation

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

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<th>Recommendation No. 4: Essential Services.</th>
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<td>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).</td>
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### Task Force Action

- Disposition
- Council action required?
  - Yes (part of implementing ordinance)

### MEETING SCHEDULE

- **Location:** Council Chambers
- **Time:** 9 am – 11 am
- **Future Dates:**
  - June 14th
  - June 28th
  - July 12th
  - July 26th
  - August 9th
  - August 23rd
  - Sept. 6th
  - Sept. 20th