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## Sanitary Sewer System Capacity Assurance Program (CAP)


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

**June 28, 2012**

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## AGENDA

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



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Decision Item	Task Force Action Needed
<h1>Essential Services</h1>	
	

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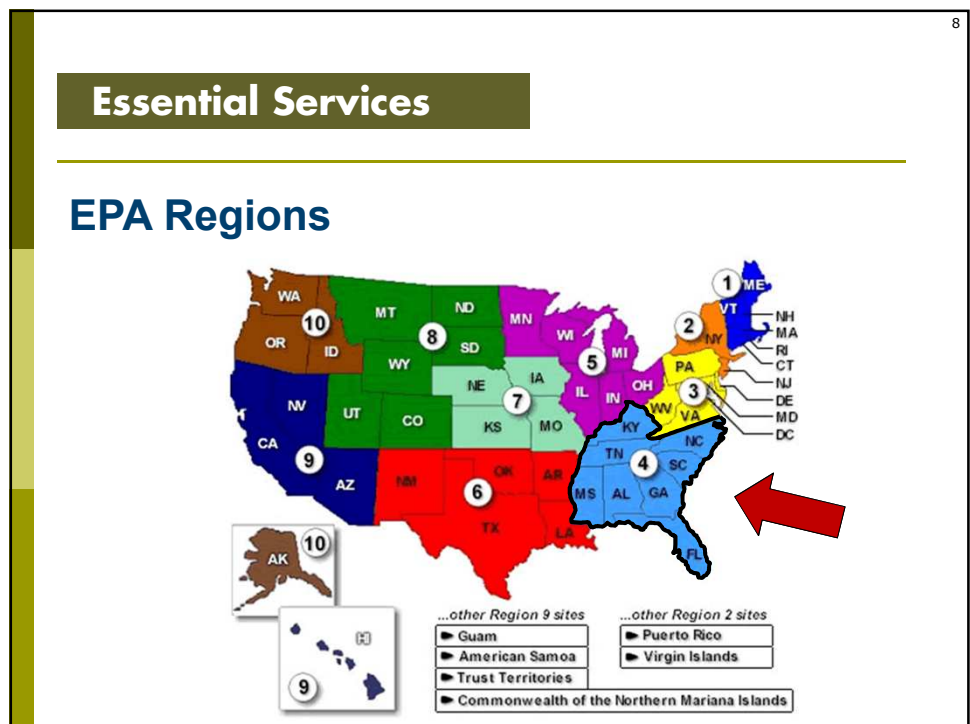
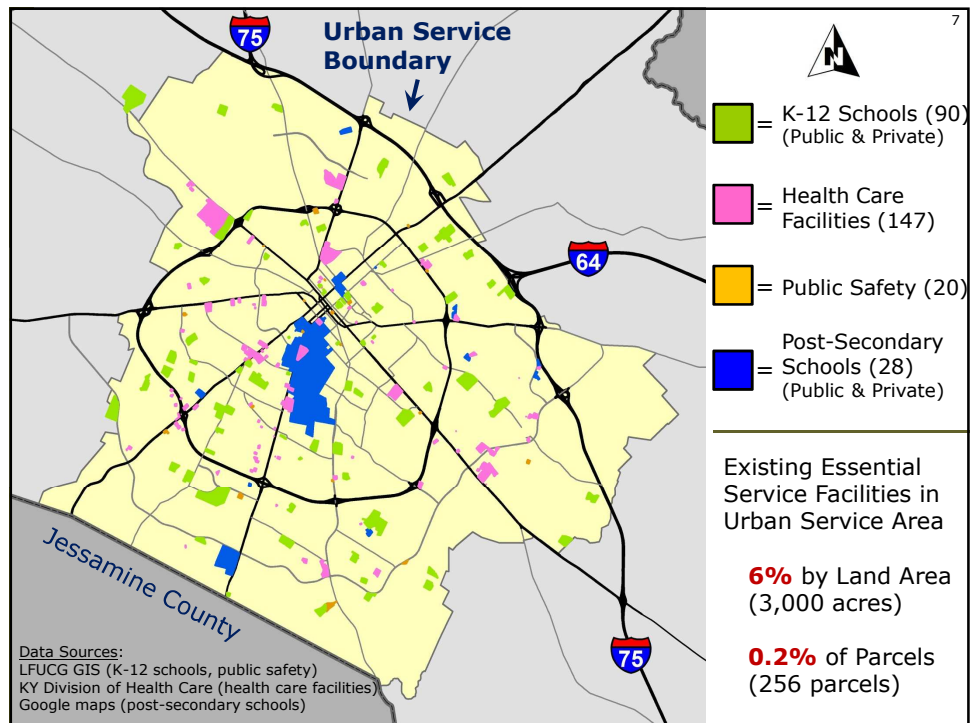
Essential Services	Concept
<ul style="list-style-type: none"><li>□ CD includes provision for those facilities that are deemed essential to connect to public sewer even if adequate capacity can not be certified or there are not enough banked credits available to offset the proposed flow increase.</li><li>□ Withdrawal from credit bank still taken.</li><li>□ CD defines these <b>Essential Services</b> as:<ul style="list-style-type: none"><li>■ Health care facilities</li><li>■ Public safety facilities</li><li>■ Public schools</li><li>■ Illicit connections (septic tank removals, etc.) <i>Fayette County Health Dept. approval required.</i></li><li>■ Other facilities as agreed upon in writing by EPA and EPPC.</li></ul></li></ul>	

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Essential Services	Recommendation
<p><b>□ Recommendation from DWQ/CAP Consultant</b></p> <ul style="list-style-type: none"> <li>■ Allow the CAP exception for essential services provided in CD.</li> <li>■ Define <b>health care facilities</b> as:                             <ul style="list-style-type: none"> <li>□ KRS 216.510 definition for "health care facilities"</li> <li>□ Licensed by the Commonwealth's Division of Health Care</li> <li>□ Must possess a valid license</li> </ul> </li> <li>■ Define <b>public schools</b> as:                             <ul style="list-style-type: none"> <li>□ Must be a registered non-profit in tax code 501(c)(3)</li> <li>□ Same definition used by Tap-On Desk</li> <li>□ Must be able to produce tax certificate</li> </ul> </li> </ul>	

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Essential Services	Last Meeting					
<p><b>□ Discussion Highlights</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;"> <ul style="list-style-type: none"> <li>■ Impose a limit on how negative a credit balance will be permitted to occur from Essential Service exemptions. (CM Henson)</li> </ul> </td> </tr> <tr> <td style="padding: 5px;"> <ul style="list-style-type: none"> <li>■ Concern that case-by-case evaluation of Essential Service facility exemptions will be subjective and expose LFUCG to legal challenges. (DWQ)</li> </ul> </td> </tr> <tr> <td style="padding: 5px;"> <ul style="list-style-type: none"> <li>■ 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)</li> </ul> </td> </tr> <tr> <td style="padding: 5px;"> <ul style="list-style-type: none"> <li>■ Request to provide information on the number of facilities that would be considered Essential Service under DWQ/CAP Consultant recommended definition. (VM Gorton)</li> </ul> </td> </tr> <tr> <td style="padding: 5px;"> <ul style="list-style-type: none"> <li>■ Request to provide information on how other communities with similar Consent Decree provisions are handling Essential Services. (VM Gorton)</li> </ul> </td> </tr> </table>		<ul style="list-style-type: none"> <li>■ Impose a limit on how negative a credit balance will be permitted to occur from Essential Service exemptions. (CM Henson)</li> </ul>	<ul style="list-style-type: none"> <li>■ Concern that case-by-case evaluation of Essential Service facility exemptions will be subjective and expose LFUCG to legal challenges. (DWQ)</li> </ul>	<ul style="list-style-type: none"> <li>■ 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)</li> </ul>	<ul style="list-style-type: none"> <li>■ Request to provide information on the number of facilities that would be considered Essential Service under DWQ/CAP Consultant recommended definition. (VM Gorton)</li> </ul>	<ul style="list-style-type: none"> <li>■ Request to provide information on how other communities with similar Consent Decree provisions are handling Essential Services. (VM Gorton)</li> </ul>
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### Essential Services

### What we found

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

<sup>1</sup> Original Consent Decree in 1998. Modified Consent Decree in 2010.  
<sup>2</sup> 1988 Consent Decree superseded by new Consent Decree in 2001.

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

<sup>3</sup> CAP is included in the First Amended Consent Decree.

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Essential Services			What we found			
City/Agency	State	CD Lodge Date	CAP in CD?	Banked Credits System in CD?	ES in CD?	System Size
<b>Lexington</b>	<b>KY</b>	<b>3/14/2008</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>1,400 mi.</b>
NE Ohio Regional SD (Cleveland)	OH	12/22/2010	No	No	No	3,300 mi.
St. Louis MSD	MO	8/4/2011	Yes	No	No	9,649 mi.
Independence	MO	3/31/2009	Yes	No	No	578 mi.
Kansas City	MO	5/18/2010	Yes	No	No	2,800 mi.
Indianapolis	IN	10/5/2006	No	No	No	3,000 mi.
Jeffersonville	IN	11/16/2010	No	No	No	30,000 population
South Bend	IN	12/29/2011	No	No	No	525 mi.
Baltimore	MD	7/26/2005	Yes	No	No	3,100 mi.
Washington	DC	6/25/2003	No	No	No	1,800 mi.

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**Essential Services**

**Other Communities**

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

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**Essential Services**

**Other Communities**

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

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Essential Services	Outcome
<p><b><u>Recommendation No. 4: Essential Services.</u></b> <i>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).</i></p>	
<p>□ <b>Task Force Action</b></p> <ul style="list-style-type: none"><li>■ Disposition</li><li>■ Council action required? Yes (part of implementing ordinance)</li></ul>	

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Decision Item	Task Force Action Needed
<p><b>Third-Party Credit Trading</b></p>	
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## 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.

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## Third-Party Credit Trading

### 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.

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## Third-Party Credit Trading Recommendation

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



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## Third-Party Credit Trading Outcome

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**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)

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Decision Item	Task Force Action Needed
<h2 style="margin: 0;">Developer-Earned Credit Program</h2>	
	

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Developer Earned Credit Program	Concept
<ul style="list-style-type: none"> <li>❑ 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.</li> <li>❑ Credits are earned by improvements to LFUCG’s sanitary sewer system.</li> <li>❑ Under a <b>Developer-Earned Credit Program (DECP)</b>, an applicant may elect to use private funds to rehabilitate LFUCG’s sewer system to earn the needed credits.</li> <li>❑ Credits earned under a DECP are immediately assigned to the participating developer for their use upon completion of the rehabilitation work.</li> </ul>	

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<b>Developer Earned Credit Program</b>	<b>Considerations</b>
<ul style="list-style-type: none"> <li>□ Cincinnati MSD                             <ul style="list-style-type: none"> <li>■ Developer performs the work (3-year expiration).</li> <li>■ 100% funded by developer (except MSD administration and oversight).</li> <li>■ MSD inspects work to ensure meets their standards.</li> </ul> </li> <li>□ Knoxville Utilities Board (KUB) cost shares with developer.</li> <li>□ DWQ will need adequate management and field inspection resources to administer a DECP.</li> <li>□ A DECP is an <i>implementation decision</i> and would <u>not</u> be identified in the CAP Plan to EPA due January 3, 2013.</li> </ul>	

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<b>Developer Earned Credit Program</b>	<b>Considerations</b>
<ul style="list-style-type: none"> <li>□ A DECP provides a means for developers to move forward with proposed development if adequate sewer capacity and credits are currently unavailable.</li> <li>□ A DECP offers the advantage to LFUCG and their rate payers to expedite rehabilitation/ improvement of the existing sewer system.</li> <li>□ DECP credits are earned by rehabilitation of the public sewer system and may reduce credit potential in the banking area for other developments.</li> </ul>	

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<b>Developer Earned Credit Program</b>	<b>Recommendation</b>
<ul style="list-style-type: none"> <li>❑ Include provision in LFUCG’s CAP for a <b>voluntary</b> Developer Earned Credit Program (DECP).</li> <li>❑ Under LFUCG’s DECP:                             <ul style="list-style-type: none"> <li>■ Developer would enter into contract with LFUCG.</li> <li>■ Developer submits payment for the rehab work necessary to earn the requested credits, LFUCG contractor performs the work.</li> <li>■ 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.</li> <li>■ Upon expiration, DECP credits would be added to the appropriate credit bank and available to the public.</li> <li>■ LFUCG may purchase unused DECP credits by agreement of both parties at a reduced rate than original purchase price.</li> <li>■ DECP credits (in the same bank) must be used prior to allocation of credits from the public bank.</li> </ul> </li> </ul>	

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<b>Developer Earned Credit Program</b>	<b>Outcome</b>
<div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p style="text-align: center;"><b><u>Recommendation No. 6:</u></b>  <b><u>Developer-Earned Credit Program.</u></b></p> <p style="text-align: center;"><i>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.</i></p> </div> <ul style="list-style-type: none"> <li>❑ <b>Task Force Action</b> <ul style="list-style-type: none"> <li>■ Disposition</li> <li>■ Council action required? Yes (part of implementing ordinance)</li> </ul> </li> </ul>	

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**MEETING SCHEDULE** **Next Meeting**

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

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