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LEXINGTON - FAYETTE URBAN COUNTY GOVERNMENT

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Consent Decree at a glance

What is the Consent Decree?

A legal agreement among the city, state and federal government that requires Lexington to fix problems with its storm and sanitary sewer systems within the next 11-13 years. This resolves a lawsuit filed in 2006 by the U.S. Environmental Protection Agency (U.S. EPA) and the state against Lexington over violations of the Clean Water Act. The agreement requires the study, design and implementation of numerous construction projects to repair sewer pipes and to improve wastewater treatment plants. It also requires Lexington to guard against future problems.

Why has this happened?

Our city has failed to properly maintain both the sanitary and storm water sewer systems. Age, changing regulations and equipment failures have created an assortment of operational problems, but the end result of those problems has been that we have been allowing the discharge of raw sewage into our streams in violation of the Clean Water Act.

When does it take effect?

Today the Consent Decree received approval from the Urban County Council. Before the Consent Decree can take effect, the state and the federal government also must sign it, there must be a period for public comment, continued support for the decree by the U.S. EPA and the state, and, finally, U.S. District Judge Karl Forester must approve it.

How much will it cost and how will we pay for it?

Meeting the requirements of the Consent Decree will cost Lexington citizens approximately \$250-300 million over the next 11-13 years, including a \$425,000 fine levied by the U.S. EPA. Those costs may increase. If the city does not comply with the Consent Decree, it can be fined. Increases in the Sanitary Sewer User fee and the creation of a storm water fee will be used to pay the bill. The average sanitary sewer residential household bill is expected to increase by approximately \$5 a month, from \$10 to \$15 – May 1. A second \$5 increase in the monthly sanitary sewer fee is expected next year. Even with these increases, Lexington's rates remain comparable or below those of most surrounding cities and those of many cities its sizes around the country. The cost of the storm water fee is still being calculated.

Understanding the Consent Decree

The 100-page proposed Consent Decree basically requires the City of Lexington to fix current structural and operational and procedural problems within its storm and sanitary sewer systems within the next 11-13 years. These problems have polluted our streams. The agreement requires the study, design and implementation of numerous construction projects to repair sewer pipes and to improve our wastewater treatment plants. It also requires Lexington to take steps to guard against future problems, principally through monitoring, management and increased enforcement.

What is this Consent Decree?

A legal agreement among the parties to settle claims in a lawsuit filed in November 2006 by the United States Environmental Protection Agency (U.S. EPA) and the Kentucky Environmental and Public Protection Cabinet against the city of Lexington. The agreement requires the Urban County Government to take certain actions within specific deadlines to improve our sewers and protect the environment. If the city fails to take those steps in a timely fashion, it can be fined. The parties to the Consent Decree include Lexington, the U.S. EPA and the state.

When will the Consent Decree be final?

Before the Consent Decree can take effect, all of the parties must sign off on it, there must be a period for public comment, continued support for the decree by the EPA and the Kentucky Environmental and Public Protection Cabinet, and, finally, U.S. District Judge Karl Forester must approve it. Today, the Consent Decree received approval from the Urban County Council. The agreement has not received final approval from the U.S. EPA or the state. The judge will not act until there has been a period for public comment.

What is the difference between storm sewers and sanitary sewers?

Generally, Lexington has two entirely separate sewer systems. Sanitary sewers are pipes that carry industrial and residential waste to one of two wastewater treatment plants, Town Branch Plant, located between Old Frankfort Pike and Leestown Road, or the West Hickman Plant, located off Ashgrove Pike in Jessamine County near the Fayette County line. After being treated, the wastewater is discharged into either Town Branch Creek or West Hickman Creek, and ultimately flows into the Kentucky River. Stormwater sewers are pipes that collect rainwater and runoff along our streets and roads. The water that these pipes collect is not treated in a wastewater plant before it is discharged in local streams, which carry it on to the Kentucky River.

What's wrong with our sewers?

Over the years, our city has failed to properly maintain both the sanitary and storm water sewer systems. Age, changing regulations and equipment failures related to insufficient maintenance have created an assortment of operational problems, but the end result of those problems has been that we have been discharging sewage into our streams in violation of the Clean Water Act. There are even places where the storm and sanitary sewers interconnect and in those connection points, untreated sewage from the sanitary system has at times found its way into the storm sewer system and ultimately into our streams and rivers.

In addition, we have seen repeated instances where our sanitary sewer system backs up and overflows into our streets and roads during periods of heavy rain due to excessive rainwater inflow and infiltration. Again, raw sewage was transported from our streets and roads into the storm sewer system, and then into our streams without having been treated. Those releases also constituted violations of the Clean Water Act, as well as creating obvious health problems for our community.

How much will it cost and how will we pay for it?

Meeting the requirements of the Consent Decree is estimated to cost Lexington citizens approximately \$250-300 million over the next 11-13 years, including a \$425,000 fine U.S. EPA has levied against the city as part of the agreement. However, studies to be conducted under the Consent Decree may indicate that additional expenditures are required depending upon the extent of the structural problems. A proposal to increase the Sanitary Sewer User fee -- raising the average residential household bill by approximately \$5 a month, from \$10 to \$15 -- is expected to receive a final vote on Thursday, Feb. 21. It would go into effect May 1. A second increase in the Sanitary User fee is expected next year. That increase is expected to cost the average residential user an additional \$5, raising the monthly fee from \$15 to \$20. Even with these increases, Lexington's rates will remain comparable or below those of most surrounding cities and those of many cities its size around the country. The Lexington Sanitary Sewer User fee is part of the water bill.

The amount of the storm water fee is still being calculated and that amount should be determined later this year.

HIGHLIGHTS OF CONSENT DECREE REQUIREMENTS: SANITARY SEWERS

Eliminate all recurring sanitary sewer overflows in the sanitary sewer collection and conveyance system and all wastewater treatment plant overflows and bypasses over the next 11 to 13 years. Overflows result in untreated wastewater flowing into our streams.

Immediately address the lack of a backup power source at each of the city's wastewater treatment plants. Lexington has agreed to resolve this matter by April 1, 2008, and is currently on schedule to meet this deadline. Power failures result in partially treated wastewater flowing into our streams.

Take immediate corrective action at four different sanitary sewer pump stations at a cost of **over \$36 million**. Some of the worst sanitary sewer overflows (which result in untreated wastewater flowing into our streams) are caused by inadequate pump stations. Largely, our sanitary sewer system is designed so that gravity causes sewage to flow from the source to the wastewater treatment plant. Pump stations are used when gravity is not sufficient.

The Blue Sky Wastewater Treatment Plant, which is not part of our central sewage system, will be eliminated, and a pump station will be designed and constructed in its place at an estimated cost of \$2 million. In 2003, the city assumed emergency management of the privately owned treatment plant at the request of Kentucky's Department for Environmental Protection. The plant had been operating with severe deficiencies resulting in environmental violations. The city worked to correct the deficiencies, allowing existing businesses to continue operating. *(This project will be undertaken in connection with the settlement of the enforcement action under the Clean Water Act, United States et al v. Lexington-Fayette Urban County Government, brought on behalf of U.S. Environmental Protection Agency.)*

Over the next four years, the city must undertake a new, extremely detailed, system wide assessment of the sanitary sewer system, including all seven watersheds, 1,290 miles of gravity and pressure pipes, 33,422 manholes, 76 pump stations, and both city-owned treatment plants. The cost is estimated at \$9.5 million. This study will determine the best repair options for all remaining problems, which repairs will be approved by the U.S. EPA, and may result in additional sanitary sewer fee increases.

Complete system capacity assessments at an estimated cost of \$2 million, allowing the city to predict the impact of proposed future service connections to the sanitary sewer system.

Complete a self-assessment of every sanitary sewer operation. The purpose is to assist us in providing a high level of service to customers and to keep us in compliance with state and federal laws. In addition to the self-assessment, the city is required to develop the following programs:

- A Sanitary Sewer Overflow Response Plan
- A Capacity Assurance Program
- A Fats, Oils & Grease Program
- Gravity Line Preventative Maintenance Program
- Pump Station Operation Plan for Outages
- Updated Software and Hardware for EPA Compliance Reporting and Monitoring
- Public Education and Outreach Program

The estimated cost for the development, implementation, and annual operating budgets for these programs is \$16 million.

HIGHLIGHTS OF CONSENT DECREE REQUIREMENTS: STORM SEWERS

Update / adopt / enforce ordinances that prevent water pollution to the maximum extent practical. Violation of new ordinances may result in the assessment of maximum penalties up to \$10,000 per day of violation.

Develop an inventory and a map of publicly-owned storm sewer pipes, 18" and larger. After this initial effort, the inventory and map will be updated annually.

Conduct monthly inspections of at least 90% of active construction sites with reasonable potential to discharge mud, dirt or debris into the public storm sewer system or in streams.

Regularly inspect the drainage system for illicit discharges, beginning with high priority locations.

Develop and propose an ordinance that would require proper maintenance, cleaning, and repair of privately-owned stormwater control structures, such as retention and detention basins.

Develop and begin implementation of a program to require private owners of stormwater controls to conduct necessary maintenance, cleaning and repairs of such controls. Such a program shall address privately owned retention ponds, detention basins, and other Storm Water Quality Treatment Facilities.

Develop and propose an ordinance to the Urban County Council that would require regulated industrial facilities and locally identified high risk commercial facilities to develop and implement stormwater pollution prevention plans.

Undertake a study of flooding problems under a State Environmental Project and create funding for a minimum of \$30 million on projects to correct problems identified in the study.