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BEFORE THE  
PUBLIC SERVICE COMMISSION OF KENTUCY

In the Matter of:

APPLICATION OF LEXINGTON-FAYETTE )  
URBAN COUNTY GOVERNMENT FOR AN ORDER ) CASE NO. 2012-\_\_\_\_\_  
APPROVING A TRANSFER OF OWNERSHIP AND )  
CONTROL )

APPLICATION

Applicant Lexington-Fayette Urban County Government ("LFUCG") hereby applies to the Kentucky Public Service Commission ("Commission") for approval pursuant to KRS 278.020(5) of transfer of legal title of Blue Sky Waste Water Treatment Plant ("WWTP") from Shield Environmental Associates, Inc. ("Shield"). In support of its request, LFUCG states as follows:

The Applicant

1. LFUCG is an Urban County Government organized pursuant to KRS 67A with a mailing address of: 200 East Main Street, Lexington, Kentucky 40507.
2. LFUCG is authorized by KRS 67A.872 *et seq.* to provide treatment of sewage in Fayette County and is not subject to regulation by the Commission.
3. Copies of all orders, pleadings, and other communications regarding this

Application should be directed to:

Charles H. Martin, P.E.,  
Director  
Suite 180  
Division of Water Quality  
125 Lisle Industrial Ave.  
Lexington, KY 40511

Terry Sellars  
Henry Watz Gardner & Sellars  
Suite 314  
401 West Main St.  
Lexington, KY 40507  
859-366-4055

Keith Horn  
Managing Attorney  
LFUCG  
200 East Main St.  
Lexington, KY 40507  
859-258-3500

### **Background**

4. 401 Blue Sky Parkway, Lexington, Kentucky is improved with a private wastewater treatment plant which was operated by Blue Sky Sewer Service Company, Inc. ("Blue Sky") and regulated by the Commission until Blue Sky abandoned the facility in August 2003, when it filed a Bankruptcy Petition in United States Bankruptcy Court for the Eastern District of Kentucky.

5. LFUCG began operating the Blue Sky wastewater treatment facility under contract with the Bankruptcy Court Trustee on August 20, 2003.

6. When the Bankruptcy Trustee abandoned the facility on April 7, 2004, LFUCG continued operating the facility as a Receiver appointed by Franklin Circuit Court in Franklin Circuit Court Civil Action No. 01-CI-162 (Attached Exhibit "A").

### **The Transaction**

7. LFUCG had agreed to purchase and eliminate the Blue Sky WWTP as a Supplemental Environmental Project under the terms of a Consent Decree entered into with the United States Environmental Protection Agency ("EPA");

8. Blue Sky's sole shareholder was deceased and his heirs wished to avoid any environmental liability associated with being in the chain of title to Blue Sky's assets, for the purpose of making a transfer to LFUCG.

9. Shield was a creditor of Blue Sky secured by a mortgage on Blue Sky's real estate and improvements located at 401 Blue Sky Parkway;

10. Shield agreed to foreclose on its mortgage and obtain a deed from the Fayette County Master Commissioner, for the sole purpose of transferring Blue Sky's real estate and waste water treatment plant to LFUCG.

11. As part of a single transaction, Shield obtained a Master Commissioner's deed (Attached Exhibit "B") to Blue Sky's real estate with improvements located at 401 Blue Sky Parkway on January 5, 2012 and transferred title to same to LFUCG by deed dated January 12, 2010 (Attached Exhibit "C") acceptance of which had been pre-approved by LFUCG's Urban County Council on December 6, 2011 (Attached Exhibit "D").

**KRS 278.020(5) Transfer Requirements**

12. The Commission should approve the transfer from the Fayette County Master Commissioner to Shield and from Shield to LFUCG, as part of a single transaction, pursuant to KRS 278.020(5). LFUCG has the financial ability to continue to provide reasonable service, as is evidenced by its Comprehensive Annual Financial Reports for the last six years, which may be reviewed at <http://lexingtonky.gov/index.aspx?page=161>. LFUCG also has the technical and managerial ability to continue to provide reasonable service with personnel that include:

- 13 licensed professional engineers
- 23 Class III Wastewater Treatment Plant operators
- 3 Class III Wastewater Collection System operators
- A state recognized laboratory (certification pending due to new KAR standard)
- 6 electricians holding a minimum Master Electricians license.

13. Under the terms of the Consent Decree entered into between LFUCG and EPA, LFUCG will eventually eliminate the Blue Sky WWTP as a Supplemental Environmental Project and serve its users through LFUCG's comprehensive wastewater collection and treatment system. The Transaction will thus serve the public interest by enabling the continued expansion and integration of LFUCG's system and ensuring continued provision of quality sewer treatment services to existing Blue Sky customers and to future customers in the existing Blue Sky service area.

14. LFUCG will operate the Blue Sky sewer facilities, receive all income, and pay all expenses relating to that operation, and otherwise bear all responsibility for the operation and maintenance of the facilities.

15. Blue Sky's customers will be charged in accordance with the same rates and classifications applicable to other LFUCG waste water customers, which will result in a reduction in sewer user fees for over 80% of Blue Sky's customer's.

#### **Other Requirements**

16. The Proposed Transaction does not include an acquisition within the meaning of KRS 278.020(5) or an acquisition of control as defined by KRS 278.020(6), because LFUCG is not subject to the jurisdiction of the Commission.

17. If the Commission nonetheless applies KRS 278.020(6) to the Proposed Transaction, the Commission should approve LFUCG's acquisition of control of the assets of the Blue Sky waste water treatment facility. As demonstrated by this Application, the Proposed Transaction is in accordance with law, for a proper purpose, and is consistent with the public interest. Therefore, the Commission should approve the acquisition by LFUCG of the Blue Sky waste water treatment facility.

#### **CONCLUSION**

WHEREFORE, Applicant LFUCG requests an Order of the Commission within 60 days of the filing of the Application which:

a) Declares that KRS 278.020(5) and 278.020(6) are inapplicable or, in the alternative, grants approval pursuant to KRS 278.020(6) for the transfer of legal title to the Blue Sky waste water treatment facility from the Fayette County Master Commissioner to Shield and from Shield to LFUCG; and

c) Declares that no other Commission approvals are necessary, or, in the alternative, grants any other approvals necessary.

Respectfully submitted,

Terry Sellars  
Henry Watz Gardner & Sellars  
401 West Main Street,  
Suite 314  
Lexington, KY 40507  
859-366-4055

and  
Keith Horn  
Managing Attorney  
Department of Law  
LFUCG  
200 East Main Street  
Lexington, KY 40507  
859-258-3500

**VERIFICATION**

I, Charles H. Martin, Director of LFUCG's Division of Water Quality, do hereby swear or affirm that the contents of the foregoing Application are true and accurate to the best of my knowledge.

CHARLES H. MARTIN

COMMONWEALTH OF KENTUCKY )  
  )  
COUNTY OF FAYETTE                  )

Signed and sworn to before me on the \_\_\_ of March, 2012, by Charles H. Martin as Director of LFUCG's Division of Water Quality.

Notary Public

My Commission expires: May 7, 2014

(SEAL)

**CERTIFICATE OF FILING AND MAILING**

I hereby certify that on the 18<sup>th</sup> day of May, 2012, the original and ten (10) copies of this Application were mailed to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Blvd., Frankfort, KY 40602 and that a copy was also sent, via U.S. Mail, to:

Assistant Attorney General  
Office of Rate Intervention  
1024 Capital Center Drive, Suite 200  
Frankfort, KY 40601

  
\_\_\_\_\_  
Attorney for Applicant

TABLE OF EXHIBITS  
TO APPLICATION

Exhibit	Description
A	Franklin Circuit Court Order Appointing LFUCG Receiver
B	Deed from Fayette County Master Commissioner to Shield
C	Deed from Shield to LFUCG
D	LFUCG Council Resolution