



Why was Louisville and Jefferson County Metropolitan Sewer District (MSD) created?

MSD was created in 1946 by Kentucky Revised Statutes (KRS) 76.010. This state statute allowed joint metropolitan sewer districts to be created in cities with a population greater than 20,000 “in the interest of the public health and for the purpose of providing adequate sewer and drainage facilities in and around each city.”

If MSD was established as a sewer district, why is it responsible for stormwater management and flood protection for Jefferson County? Isn't MSD also responsible for stormwater and flood protection?

At one time, Louisville Metro Government was responsible for stormwater and drainage services and the flood protection system. A Memorandum of Understanding (MOU) was created, moving the responsibilities to MSD on December 23, 1986. Those responsibilities were given to MSD with no additional staffing or funding to perform those services. The MOU states that funding shall be provided by MSD charging for flood control, storm and surface water services per rates and charges. MSD is to prepare a budget with estimated revenues derived from the schedule of rates and charges imposed for funding flood control, storm and surface water services and facilities. This is reflected in the process MSD follows to develop its annual budget. The MOU expires in 2036.

Are there other services MSD performs for Jefferson County?

Yes. MSD is responsible for executing three ordinances owned by Louisville Metro Government. MSD is the executing agency for the Hazardous Materials Ordinance, the Floodplain Ordinance, and the Erosion Prevention and Sediment Control Ordinance.

The Hazardous Materials ordinance was created in 1985 and, since then, MSD has been responsible for administering the program which includes responding to incidents, inspecting facilities, and other requirements.

The Erosion Prevention and Sediment Control (EPSC) Ordinance was created in 1994. This ordinance was designed to prevent soil erosion and sedimentation in compliance with KRS Chapter 67C and the Clean Water Act. MSD has authority to review, approve and negotiate all EPSC plans and permits, along with performing pre-construction site meetings, inspections and compliance/enforcement efforts. MSD also includes EPSC standards and specifications within its Design Manual, Standard and Specifications and Standard Drawings.

The Floodplain ordinance was created in 1997. As the executing agency, MSD must review requests for variances to the floodplain ordinance and focus on overall flood hazard



reduction. The management of these ordinance requirements impacts flood insurance rates for the community.

What type of oversight does MSD have?

KRS 76.030 lays out the guidelines for MSD's board of directors. The business, activities and affairs of MSD are managed and controlled by MSD's eight (8) member board.

No more than 5 board members can be affiliated with the same political party (KRS 76.030(1)) and not more than one board member can reside in any one state senatorial district.

All board members are appointed by Louisville Metro's Mayor, subject to approval of Louisville Metro Council. MSD does not participate in the approval or appointment process of its board members.

Are there other government or regulatory agencies that have oversight for MSD?

MSD is responsible for adhering to all applicable federal, state, and local laws, industry standards, ordinances, and regulatory orders. MSD has multiple and frequent formal and informal meetings with regulators. For example, some of the environmental and administrative regulations include:

Clean Water Act; Clean Air Act; Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); National Environmental Policy Act (NEPA); Resource Conservation and Recovery Act (RCRA); Energy Policy Act; Toxic Control Act; Environmental Protection Agency (EPA) Guidance Documents; Kentucky Revised Statutes; Kentucky Administrative Regulations; Federal Consent Decree; Air Pollution Control Board (APCD) Regulations; APCD Agreed Order

Why is MSD under a consent decree?

MSD started its consent decree with the U.S. Environmental Protection Agency (EPA), U.S. Department of Justice (DOJ), and the Commonwealth of Kentucky in 2005. This legally binding agreement requires MSD to reduce sewer system overflows by completing certain projects under a specific timeline. While these projects are required, the federal government did not provide funding to MSD to complete these projects. Many water utilities operate under similar consent decrees as a way for regulators to monitor large-scale and long-term compliance with the Clean Water Act to protect public health and the environment.

Why is it taking so long for MSD to complete the consent decree?

When the original consent was drafted, all parties expected it to be amended. In 2009, the EPA, DOJ, and MSD agreed to an Amended Consent Decree to clarify, amend, and expand provisions in the original Consent Decree from 2005.

On June 2, 2016, MSD made a presentation to the Metro Council Budget Committee, describing the preliminary findings of its Critical Repair and Reinvestment Plan (CRRP) and presenting funding needs to implement the plan within the 20-year planning horizon. The CRRP focused on infrastructure improvements and the maintenance and operation of new facilities being constructed based on consent decree requirements.

In 2017, MSD presented updated plans to Louisville Metro Council requesting a rate increase of 20%. The rate increase was denied, but during the hearing, a request was made to spread out the rate increases. So, in 2018, MSD requested a 10% rate increase over three years which was also denied. The higher increases were to accomplish the goals of the CRRP and the expanded provisions in the Amended Consent Decree at the same time.

In 2019, MSD worked with the EPA and DOJ to develop the Second Amended Consent Decree. The EPA developed a new integrated planning approach that allowed MSD to include additional projects in the consent decree to support work that had already been completed to prevent overflows. The second amendment was necessary to account for needs for other assets such as the flood protection system and extend timelines for required projects. In exchange for the requested timelines extensions, the EPA required \$70M of critical sewer rehabilitation and \$25M of annual spend for MSD's asset management needs to be added into the consent decree. The negotiations were based on the authority of the MSD board to raise rates up to 6.9% as set by Louisville Metro Ordinance 50.24. MSD is planned to meet the requirements in the Second Amended Consent Decree by 2035.

What happens if MSD does not meet the requirements and timelines included in the Second Amended Consent Decree?

MSD would have to pay fines as detailed in the *Stipulated Penalties* section of the Second Amended Consent Decree. These fines cover items such as missed reporting requirements, unauthorized discharges, and other items. The fines can be assessed per event or per day for each violation.

There is also a section that details penalties related to a denied rate increase. In the *Miscellaneous Provisions* section, there is specific language directing MSD to use its best efforts to seek and obtain approval of Louisville Metro Council on all rate increases

above 7%. There is also language on EPA's authority to force approvals for increases above 7% if it is deemed necessary to meet requirements in the Second Amended Consent Decree.

What projects could be impacted if MSD's rate-setting flexibility is restricted?

MSD's budget is driven by capital requirements based on regulatory obligation, construction costs, debt markets, emergencies and system needs. If MSD were unable to receive approval for timely and necessary rate increases, projects and programs across Jefferson County would be impacted. For example:

- The Upper Middle Fork Tunnel project will be delayed. This project is necessary to mitigate illegal sanitary sewer overflows and impacts the area from St Matthews to the Highlands including Seneca and Cherokee Parks.
- Economic development in the eastern part of Jefferson County will be impacted. The Floyds Fork Interceptor project will continue to be pushed out of capital budget planning for more than 15 years. Also, the Hites Creek, Floyds Fork, and Cedar Creek water quality treatment plants that serve the eastern part of the county will not be able to increase capacity.
- MSD will lose the ability to upgrade flood pump stations. These stations protect 280,000 people as well as LG&E Plants, Louisville Muhammad Ali International Airport, UPS, Ford, Churchill Downs, University of Louisville, and downtown.
- MSD's DRI (Drainage Response Initiative) program will lose funding.
- MSD will lose funding for odor mitigation projects like catch basin replacements which have significantly decreased odor complaints.