

Kentucky Rural Water Association

Helping water and wastewater utilities help themselves

December 28, 2012

RECEIVED

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PUBLIC SERVICE
COMMISSION

Mr. Jeff Derouen, Executive Director
Public Service Commission
P. O. Box 615
Frankfort, KY 40602-0615

Dear Mr. Derouen:

Kentucky Rural Water Association conducted a training session on December 21, 2012 at the Kentucky Rural Water Association office in Bowling Green, Kentucky. This class offered six (6) hours of continuing education instruction to commissioners from Muhlenberg County Water District.

This six hour session included topics previously approved by the Public Service Commission for their Water Personnel Training held December 5-6, 2012. Please note, the topics highlighted on the enclosed original agenda indicate the sessions covered during the presentation on December 21st. Instruction was provided by Gary Larimore and Andy Lange. A copy of all handouts provided to participants from the original PowerPoint presentations and biographies for both instructors are included. The sign-in sheet for the session is also enclosed.

With this letter and enclosures, Kentucky Rural Water Association is requesting the approval of six (6) hours of continuing education training for the commissioners that attended this session. If additional information is needed, please do not hesitate to contact our office.

Sincerely,

Janet Cole
Education Coordinator

Enclosures

**Commissioner Training
Kentucky Rural Water Association Office
December 21, 2012**

AGENDA

- | | |
|-------------------------|---|
| 8:30 a.m. – 10:30 p.m. | Recent Developments in Utility Regulation |
| 10:30 a.m. – 11:30 a.m. | Kentucky Division of Water Update |
| 11:30 a.m. – 12:00 p.m. | Lunch |
| 12:00 p.m. – 1:00 p.m. | Commissioner Board Meetings |
| 1:00 p.m. – 2:00 p.m. | Open Records/Open Meetings Acts |
| 2:00 p.m. – 3:00 p.m. | PSC Regulatory Requirements |

Instructors: **Gary Larimore, Executive Director**
 Andy Lange, Assistant Director

2012 Water Personnel Training
Presented by the Public Service Commission
At the Offices of the Public Service Commission
December 5-6, 2012

Wednesday, December 5th

7:30 - 8:00 Registration and Breakfast

8:00 – 8:10 ***Everyone in Hearing Room 1*** - Program Overview

8:10 – 10:20 ***Annual Training – Hearing Room 1***

Recent Developments in Utility Regulation – Gerald Wuetcher, PSC

A review of the recent developments in public utility law and regulation. Recent changes in Kentucky statutes affecting the operation of water utilities will be discussed. Recent Public Service Commission decisions that affect water utilities, personnel, and organizational changes at the Public Service Commission will also be examined.

8:10 – 9:10 ***New Commissioner Training – Conference Room 1***

Water Quality Law – Julie Roney, Division of Water

This presentation will cover the primary regulations dealing with the Safe Drinking Water Act and the Clean Water Act.

9:20 – 10:20 ***New Commissioner Training – Conference Room 1***

Internal Controls – Scott Lawless, PSC

This presentation explains the need for, and purpose of, internal controls and identifies common controls that every water district should consider. The Auditor of Public Accounts' recommendations for public and non-profit boards will also be reviewed and discussed.

10:30 – 11:30 ***Annual Training – Hearing Room 1***

Kentucky Division of Water Update – Julie Roney, Division of Water

A presentation on recent developments and activities at Kentucky Division of Water. Includes a brief overview of revisions to the agency's administrative regulations and proposed revisions to federal drinking water laws and regulations.

10:30 – 11:30 ***New Commissioner Training – Conference Room 1***

Operation of Water Districts/ Water Associations – Legal Aspects – Gerald Wuetcher, PSC

A review of the provisions of Chapter 74 involving the creation, management, operation, and dissolution of water districts. Other statutory provisions, such as the Whistle Blowers Act, Claims against Local Government Act, Bidding Requirements provision of KRS Chapter 424, Eminent Domain, Local Model Procurement Law, and general laws related to special districts, will also be discussed. Presenter will also provide a comparison with legal requirements for water associations.

- 11:30 – 11:45 Chairman’s Welcome and Comments
- 11:45 – 1:15 **Lunch**
- 1:15 – 2:15 ***Annual and New Commissioner Training – Hearing Room 1***
Budgeting and Asset Management – Kim Padgett, Rural Community Assistance Program
 As a new commissioner, one of your most important responsibilities is to ensure your system brings in sufficient revenue to cover the cost of delivering a safe and adequate supply of drinking water to your customers. In this session, we will discuss budget requirements and financial tools that a system can use to establish asset rehabilitation, prioritize maintenance needs, and have sufficient funds for repairs and improvements.
- 1:15 – 2:15 ***Office Personnel Session – Conference Room 1***
Consumer Relations – Virginia Smith, PSC
 Presentation will focus on the regulatory aspects of customer relations. Topics include the Customer Bill of Rights, customer billing disputes, installation and termination of utility service, and the Commission’s informal and formal complaint processes. Presenter will also address landlord-tenant utility service issues, imputation of utility bills to family members, and the importance of tariffs and water user agreements.
- 2:25 – 3:25 ***New Commissioner Training – Hearing Room 1***
Risk Management – Corey McIlvoy and Steve Clary, Kentucky Association of Counties
 Presentation will review risk management activities, including insurance, retained losses, and prevention activities that water utilities can implement.
- 2:25 – 3:25 ***Annual Training – Conference Room 1***
Electronic Filing: An Update – Brent Kirtley, PSC
 Presentation will address the Public Service Commission’s efforts regarding the electronic filing of tariffs and tariff-related documents, including the Commission’s proposals to require all tariffs to be filed electronically. A brief description of the electronic filing procedures that are available to utilities that file rate applications under the Commission’s alternative rate filing procedures will also be discussed.
- 3:35 – 4:35 ***Annual and New Commissioner Training – Hearing Room 1***
Anatomy of a Rate Case – Scott Lawless and Sam Reid, PSC; David Spenard, AG
 Presentation focuses on preparing, filing, and prosecuting an application for general rate adjustment to the Public Service Commission. PSC Staff members will discuss frequently recurring issues and how water utilities can avoid common missteps before the PSC. Presentation will also address a rate case proceeding from the Attorney General’s prospective and include

suggestions on possible methods to avoid unnecessary litigation in ratemaking proceedings.

Thursday, December 6th

7:30 - 8:00 Sign-In and Breakfast

8:00 – 9:30 ***Annual and New Commissioner Training – Hearing Room 1***
Commissioner Board Meetings – Damon Talley, Kentucky Rural Water Association

Presentation addresses the rules and procedures that should be followed at the meetings of a water district's board of commissioners. Presenter will also discuss how board members should prepare for meetings, the roles of board members and district management at board meetings, and frequently recurring problems at such meetings and how to address them. The requirements of the Open Meetings Act will also be briefly discussed.

9:40 – 10:40

Annual and New Commissioner Training – Hearing Room 1
Open Records/Open Meetings Acts – Todd Osterloh, Sturgill, Turner, Barker & Moloney, PLLC

This presentation reviews the principal provisions of the Open Records Act and Open Meetings Act. Also, handling a request for information under the Open Records Act and the effect of the Open Meetings Act on meetings of the board of water district commissioners is discussed.

10:50 - 11:50

Annual and New Commissioner Training – Hearing Room 1
PSC Regulatory Requirements – Gerald Wuetcher, PSC

A review of the Public Service Commission's jurisdiction over water districts and the statutory and regulatory requirements that are imposed upon water districts as a result of their status as public utilities.

11:50 - 1:20 **Lunch**

1:20 - 2:20 ***Annual and New Commissioner Training – Hearing Room 1***
Drinking System Basics – Julie Roney, Division of Water

This presentation provides an overview of treatment and distribution, focusing on the major processes, why the processes are important in terms of public health and safety, and terms used in the industry.

2:30-4:00 ***Annual and New Commissioner Training – Hearing Room 1***
Ethics: A Practical Exercise – Gerald Wuetcher, PSC

A review of ethics laws and principles that affect water utility policy makers and managers through the use of diverse and commonly recurring fact situations.

Gary Larimore, Executive Director

Gary Larimore has been Executive Director of the Kentucky Rural Water Association since its formation in March, 1979. He received both Bachelor of Science and Master of Public Service Degrees from Western Kentucky University in Bowling Green, Kentucky.

Mr. Larimore is responsible for the administration and day-to-day operation of the Association's office and supervision of a nineteen-member staff. These duties include budgeting and financial management, personnel management, and acting as the primary representative with the membership, the board of directors, National Rural Water Association, various funding agencies, and other outside organizations. Additionally, Mr. Larimore serves as Secretary/Treasurer of the Kentucky Rural Water Finance Corporation, which was incorporated in 1995 for the purpose of assisting communities in obtaining competitive financing. Other primary duties include representing the Association's legislative and regulatory interests as a full-time lobbyist and working with water-related groups and organizations.

Mr. Larimore is the co-author of the *Kentucky Rural Wastewater Manual for Policymakers*, June 1993; *Kentucky Rural Water Assistance Manual*, January, 1990; *Water System Decision Makers – An Introduction to Water System Operation and Maintenance*, January 1988; and *Conserving Water and Energy – A Manual for Managers of Rural Water Utilities*, September, 1982. He has served on a variety of National Rural Water Association (NRWA) committees.

Andrew C. Lange, Assistant Director

Andy Lange is the Assistant Director for the Kentucky Rural Water Association (KRWA) and has been employed there since 1989. Prior to joining KRWA, Mr. Lange worked for the Barren River Area Development District for five (5) years, providing administrative and financial assistance to local governments in the ten-county BRADD region. Mr. Lange has earned a Bachelor of Science in Geography and a Master of Public Administration from Western Kentucky University in Bowling Green, Kentucky.

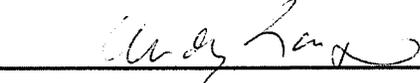
As Assistant Director, Mr. Lange is involved with all management and administrative activities of the Association. He was originally responsible for performing loan sub-servicing under the Asset Management Program contract with National Rural Water Association (NRWA) for eight (8) years, ending in 1997. He also currently oversees KRWA's partnership with Western Kentucky University (WKU). These programs are the WKU Small System Circuit Rider, the Utility Management Institute (UMI), and the Technology Demonstration Project. Mr. Lange received the "Field Representative of the Year" award at NRWA's 1996 Annual Conference.

Mr. Lange's other responsibilities at KRWA include: coordinating and monitoring internal membership activities, producing and editing KRWA printed publications, and assisting in the administration of KRWA finance programs. In addition, Mr. Lange has been involved in the production of over seventy-five operation and maintenance manuals for water systems, has produced the final report for the Kentucky River Authority Water Counts project, and has participated in, and written, Operation Review studies for three (3) water and wastewater utilities since 1995.

**2012 Water Personnel Training
Presented at the Offices of
Kentucky Rural Water Association
December 21, 2012**

Attendee Name	Utility	Hours Earned	Signature
Gene Kimmel	Muhlenberg Co. Water District	6	<p align="right"><i>MERRELL TRAVIS KRW</i></p> <p><i>Gene Kimmel</i> <i>3685 MTHWAY BEECHMONT, KY 42323</i></p>
Shawn Noffsinger	Muhlenberg Co. Water District	6	<p><i>Shawn Noffsinger</i> <i>224 JUVIC RD Greenville Ky 42345</i></p>

 *12/21/12*
 Gary Larimore, Executive Director
 Kentucky Rural Water Association

 *12/21/12*
 Andy Lange, Assistant Director
 Kentucky Rural Water Association

RECENT DEVELOPMENTS IN UTILITY LAW

**Gerald Wuetcher
KY Public Service Commission**

RECENT DEVELOPMENTS IN UTILITY LAW: ORDER OF PRESENTATION

- Amendments to 807 KAR 5:076: Phase I
- 2012 PSC Regulation Revisions
- Recent Legislation
- Kentucky State Auditor Reports
- Recent Kentucky Court Decisions
- Recent Noteworthy AG Decisions
- Recent PSC Decisions/Trends
- Other Activities of Interest At PSC

AMENDMENTS TO 807 KAR 5:076

Amendments to 807 KAR 5:076: Background

- Regulation Promulgated in 1982
- Purpose: Provide for a Simplified and Less Expensive Procedure
- Utilities need only file with PSC
 - Application Form
 - Ann Rpts for Last 2 years
- Process
- Contrast with 807 KAR 5:001, Section 10

Amendments to 807 KAR 5:076: Problems with Previous Version

- Eligibility Too Limited
 - Annual Revenues < \$300,000
 - No. of Customers < 501
- Lack of Procedures
- Lack of Clarification on Need for Attorney
- Required Filing of Info Already With PSC
- Application Form – Too Little Info Provided/Difficult Form

Amendments to 807 KAR 5:076

- Eligibility Limits Raised
 - Annual revenue < \$5,000,000
 - Water/Sewer Functions Treated Separately
 - Expands eligible utilities from 107 to 254
- Less Paperwork
 - Copies of annual reports no longer to be filed
 - Only Five copies of Docs must be filed
 - Service of copy by e-mail on AG
 - Permits use of Electronic Filing Procedures

Amendments to 807 KAR 5:076

- Procedural Changes
 - Automatic Discovery Right
 - Required Rules Re: Redaction of Docs
 - Use of Electronic Filing Procedures Upon Notice
 - Newspaper Notice Must Refer to PSC's and Utility's Website
 - Utility Must Post Notice on Its Website

Amendments to 807 KAR 5:076

- Procedural Changes
 - Automatic Suspension of Proposed Rates
 - Automatic Refunding/Recordkeeping Requirements
 - PSC Required to Notify Parties If Staff Report Will Be Prepared
 - Staff Report
 - Requirements for Response to Staff Rpt

Amendments to 807 KAR 5:076

- Electronic Filing Rules Established
 - Notice of Election - Form
 - Electronic Upload Considered Filed the Same Day
 - File Only A Paper Original & 1 Copy
 - Waiver of Service By Mail
 - No Paper Copies to Parties

Amendments to 807 KAR 5:076

- Role of Non-Attorneys
 - Clarifies need for Attorney
 - Authorized official may file application, responses to info requests, appear at conferences (Attorney is not required)
 - Attorney must represent Utility at hearing unless utility sole proprietorship
- Simplified Form

Amendments to 807 KAR 5:076: What They Mean To Your Utility

- Easier to Get Through the Door When Applying For Rate Adjustment
- Less Costly Rate Cases
 - Less Need for Attorney/Rate Consultant
- More Frequent Rate Cases
- Fewer Surprises – Everyone Knows the Rules

2012 PSC REGULATION REVISIONS

PSC REGULATION REVISIONS

- Regulations for Review Identified
 - Rules of Procedure (1993)
 - General Rules (1992)
 - Rules Regarding Tariffs (1984)
- Advisory Group Established
- ARF Reg Revisions Added
- Proposes Amendments Filed – 7/13/2012

PSC REGULATION REVISIONS

- Published in Administrative Register – 8/1/2012
- Comments Accepted Until 8/31/2012
- Hearing Scheduled 8/27/2012
- Final Version Filed With LRC 10/12/2012
- Administrative Regulations Review Cmte. approved 11/13/2012
- Regulations Become Effective 1/04/2013

PROPOSED REVISIONS: 807 KAR 5:076

- Statement of Related Transactions Must Be Filed with Application
 - Listing of All Related Transactions > \$25
 - All WD Commissioners/WA Directors/CEOs must file
 - Related Transactions: Transactions with
 - WD Commissioners/WA Directors
 - Employees/Former Employees/
 - Their Businesses/Family Members

PROPOSED REVISIONS: 807 KAR 5:076

- Procedural Changes
 - Required Comments if Staff Recommends Higher Rate or Additional Charges
 - Waiver of Any Objections To Staff Findings if No Response
 - Expressly States PSC Is Not Bound By Staff Findings

PROPOSED REVISIONS: 807 KAR 5:011

- Mandatory Electronic Filing of Tariffs
- Paper Filings no longer accepted
- Requires Postings To Utility Web Site
- Authorizes Combined Methods of Notice
- Eliminates Requirement to Provide Paper Copy upon Request
- Eliminates Restriction on No. of Non-Recurring Charges Between Rate Cases

PROPOSED REVISIONS: 807 KAR 5:006

- Mandatory E-Mail Address (Checked Weekly)
- Designation of Primary POC
- Mandatory Electronic Filing of Annual Rpts
- Audit Rpts Must Be Filed w/PSC
- Easements
 - Cannot Require Applicant To Obtain
 - Must Directly Relate to Service Provided

**PROPOSED REVISIONS:
807 KAR 5:006**

- Deposits
 - Cannot Require of Renter Solely B/c Renter
 - Rules on Calculation of Interest on Deposits held by WDWA
 - Tariff Must State Criteria for Mandating Deposit
- Discontinuance of H₂O Service for Sewer Clarified

**PROPOSED REVISIONS:
807 KAR 5:006**

- Water Utilities required to annually inspect meters and meter settings
- Partial payment plan rules revised
 - Utility and Customer must sign agreement
 - Voice recordings permissible ILO signed agreement
 - Utility records must identify representative negotiating plan

**PROPOSED REVISIONS:
807 KAR 5:001**

- Establishes Rules for Electronic Filing (but does not mandate)
- Privacy Protection for Filings
- Default Time Requirements for Motions/Responses/Replies
- Transcripts of Record – Video Only Unless otherwise ordered
- Eliminates Limited Intervention

**PROPOSED REVISIONS:
807 KAR 5:001**

- Amends Confidential Protection Rules
 - Process for Formal Proceedings
 - Process for Materials Filed Outside Formal Proceeding
- Notice of Intent: Eliminates Requirement for Utilities < \$5M Annual Revenues
- Revises Notice Rules For Rate Adjustment
- Copies of Annual Rpt No Longer Required

**PROPOSED REVISIONS:
807 KAR 5:001**

- Establishes Procedure for Declaratory Orders
- Revisions to Informal Complaint Procedure
 - Utility has 3-Business Day Response Requirement
 - PSC Staff may directed shorter response period if reasonable under the circumstances

**RECENT
LEGISLATION**

HOUSE BILL 201

- Enacted 2010 General Session
- Requires all WD Commissioners appointed for first time after 7/14/2010 to attend 12 hours of "New Commissioner Training" within 1st year
- Automatic Forfeiture of Office if Failure to Attend
- Requires WD to Reimburse Commissioner for Cost of Attending Training

HOUSE BILL 201

- WD required to notify PSC within 30 days of WD Commissioner appointment or vacancy
- PSC authority to remove WD Commissioners clarified
- PSC authority to fill vacancy expanded to include vacancies due to death, resignation, and removal

HOUSE BILL 201

- PSC issued guidance on reporting requirements
- PSC to track vacancies and appointments

OTHER RECENT LEGISLATION OF INTEREST

- 2010 General Session - Senate Bill 45 (Preference to Kentucky Resident Bidders) (Codified KRS 45A.494; Implemented with 200 KAR 5:400)
- 2010 General Session -- House Bill 454 (Statutory Liens for Unpaid Utility Bills)
 - Water Districts/Municipal Utilities/Sanitation Districts Eligible
 - Retail Business Ratepayers Only
 - Bills Greater than \$10K
 - Statutory Lien Created by filing with County Clerk
 - Can enforce lien by equitable proceedings

RECENT LEGISLATION OF INTEREST

- 2010 Special Session - HB1 (Special Appropriation for Small Utility Assistance)
- 2010 Special Session - HB1 (Bright-Line Test for CPCN)
- 2011 General Session – HB 330 (Abandoned Utility)
 - Clarifies KRS 278.021 Re: Abandoned Utilities
 - Provides procedure for emergency appt. of receiver
 - Utilities required to provide immediate notice to PSC if supplier has issued service termination notice
 - Utilities must notify PSC if terminating service to jurisdictional utility 30 days in advance

RECENT LEGISLATION OF INTEREST

- 2012 General Session – SB 150 (Modifies KRS 74.407 to define WD's right to terminate water service for failure to pay sewer bills)
- 2012 General Session – HB 399 (Amends KRS 278.460 Re: Obligation to Pay Interest on Deposits)
- 2012 General Session – HB 265 (Budget) - (Bright-Line Test for CPCN)
- 2012 General Session – HB 496 (amends Open Records Act – definition of public agency)

STATE AUDITOR REPORTS

STATE AUDITOR REPORTS

- *Recommendations For Public and Non-Profit Boards* (Rev. Mar. 3, 2010)
- *Examination of Certain Policies, Procedures, Controls, and Financial Activity of Mountain Water District* (Jan. 27, 2011)
- *Examination of Certain Policies, Procedures, Controls, and Financial Activity of Sanitation District 1* (Aug. 17, 2011)
- *Examination of Certain Policies, Procedures, Controls, and Financial Activity of Metropolitan Sewer District* (Dec. 16, 2011)

Ghost Government: Report on Special Districts

- On 6/12/2012, State Auditor announced special initiative to determine:
 - Number of Special Districts
 - Location of Special Districts
 - Amount of Money that Flows Through Special Districts
 - Special Districts' Level of Compliance with State Law

Ghost Government: Report on Special Districts

- On 11/14/2012, State Auditor issues his report
- Answers to Initial Questions
 - 1,268 Special Districts
 - Located in Every County
 - \$2.7 Billion Flows Through Special Districts Annually
 - Most Special Districts Are Not Complying with Financial and Reporting Laws

Ghost Government: Report on Special Districts

- Findings:
 - Most Special Districts not complying with requirement to certify existence annually
 - SD are not timely filing annual budgets, financial statements, and audits
 - Requirements to make timely filings not being enforced
 - SD with tax powers not filing uniform financial information reports

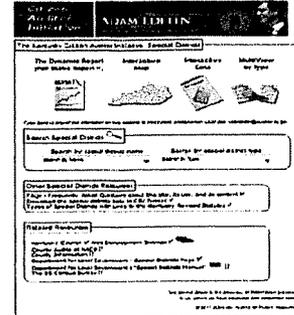
Ghost Government: Report on Special Districts

- Recommendations:
 - Establish an online registry & uniform reporting requirements for all SDs
 - Involve Auditor when filings not timely made
 - Reduce Threshold Amount for Requiring an Annual SD Audit to \$500K
 - Establish Special Audit Procedures for Smaller SDs that do not meet Threshold Amount
 - Require Annual Certification of Compliance Through Online Central Registry

Ghost Government: Report on Special Districts

- Recommendations:
 - Include SD Board Members Under State Ethics Laws
 - Provide Educational Training Related to Ethical Responsibilities Online
 - Establish an Online Registry for SDs to Certify Continued Operations
 - Establish a Process for All Types of Special Districts to be Dissolved

Citizen Auditor Initiative: Special District Database



HOW DO WATER DISTRICTS STACK UP?

- Significant Failure to Make Required Filings
- Filing of Annual Report With Public Service Commission (Available Online)
- Not Covered By Local Ethics Code – But Removal Process Available
- Educational/Ethics Training Required For New Commissioners
- Education Program In Place
- Informal Central Registry Exist
- Problems with Dissolution

RECENT KENTUCKY COURT DECISIONS

RECENT KENTUCKY COURT DECISIONS

- *PSC v. Com. of Kentucky*, 324 S.W. 3d 373
 - Endorsement of broad PSC ratemaking powers
 - No legal prohibition against single issue ratemaking
- *PSC v. Com. of Kentucky*, 320 S.W. 3d 660
 - Economic Development Rates Permissible
- *Louisville/Jefferson County Metro Ethics Comm'n v. Schardein*, 259 S.W.3d 510
 - MSD is not an agency of Metro Gov't/not subject to local ethics code
 - Reasoning would also apply to water districts

RECENT KENTUCKY COURT DECISIONS

- *Carroll County Water Dist. No. 1 v. Gallatin County Water Dist.*, No. 2009-CA-000854
 - A water district may extend its boundaries to include areas within the boundary of another water district
- *Christian County Water Dist. v. Hopkinsville Water & Sewer Comm'n*, No. 2009-CA-001543
 - PSC has no jurisdiction over contract between city and water district allocating territory
 - Unclear as to PSC role if customers are exchanged

RECENT KENTUCKY COURT DECISIONS

- Georgetown Municipal Water and Sewer Service v. Bur-Wal, 243 S.W.3d 661
 - Held: KRS 96.539 does not require municipal utility to make refunds to developers, only applicants for service; applies only to direct payments to utility
- South Woodford Water Dist. v. Byrd, 2009-CA-000854
 - Held: Water district is a state agency engaged in a governmental function and therefore entitled to governmental immunity from a claim of damages resulting from an employee's negligence

RECENT ATTORNEY GENERAL DECISIONS

RECENT AG OPINIONS

- OAG 08-ORD-139, *North Shelby Water Co.*
 - Where 25% of project funds from state or local authority, project is subject to Open Records Act even if entity building the project in a non-governmental entity.
- OAG 2011-ORD-143, *Utility Management Group*
 - Private entity's records are subject to Open Record Act if 25% or more of its sources of revenues are derived from public authority funds

RECENT AG OPINIONS

- OAG 2012-ORD-007, *Veolia Water North America - South*
 - Entity's representation that less than 2% of its total revenues derived from municipal or public projects in Kentucky sufficient to support finding that entity is not a public agency within meaning of Open Records Act

RECENT NOTEWORTHY PSC DECISIONS

RECENT NOTEWORTHY PSC DECISIONS

- *South Shores Water Co. v. City of Greenup*, Case No. 2009-00247 (Oct. 5, 2010) (PSC Jurisdiction on City Rate Requires Written Contract)
- *Cannonsburg Water District*, Case No. 2008-00220 (Mar. 10, 2009) (Free Water)
- *Hopkinsville Water Environment Authority*, Case No. 2009-00373 (July 2, 2010) (Attorney Fees, Rate Case Expenses, Cost of Service Studies)
- *Louisville Gas & Electric Co.*, Case No. 2009-00353 (Oct. 21, 2009). Application for rate surcharge is considered general rate adjustment application.

RECENT NOTEWORTHY PSC DECISIONS

- *Big Sandy Water District*, Case No. 2007-00014 (Apr. 3, 2007) (Held: Large scale replacement of existing metering systems with AMR equipment constitutes extension of service and requires CPCN.)
- *Graves County Water Dist*, Case No. 2011-00233 (Nov. 3, 2011) (Use of Electromagnetic metering equipment will required greater testing than traditional metering equipment)
- *Intercounty Energy Cooperative*, Case No. 2009-00143 (Dec. 23, 2009) (Installation of AMR equipment requires cost-benefit analysis)

RECENT NOTEWORTHY PSC DECISIONS

- *Breathitt County Water Dist.*, Case No. 2010-00035 (Feb 5, 2010) (Emergency service can be provided to other systems without a filed rate under certain circumstances)
- Donations/Charitable Contributions
- *Kentucky-American Water Co.* Case No.2010-00036 (Dec. 14, 2010) (Held: No basis exists for terminating water service for failure to pay storm drainage or garbage collection fees)
- *Conn v. Western Fleming Water Ass'n*, Case No. 2010-00049 (Jun. 21, 2011) (Held: In determining reasonableness of proposed extension, cost of line flushing and the likelihood of additional connections may be considered)

RECENT NOTEWORTHY PSC DECISIONS

- *American Electric Power*, Case No. 2009-00545 (June 28, 2010) (Held: Purchase Power Agreement with minimum take provisions is an evidence of indebtedness & requires PSC approval; least cost standard in KRS 278.020 will be used to determine whether agreement is in the public interest)

RECENT NOTEWORTHY PSC DECISIONS

- Water District Commissioner Appointment Cases – Need to document/maintain accurate record of commissioner terms & appointments
- Rural Development Financing Cases
 - Lack of RD Analysis of Alternatives
 - Municipal utility objections
 - Efforts to circumvent PSC process RE: nonrecurring charges, wholesale rates
 - Terminating RD approved rates
- Purchased Water Adjustments
 - Need for timely filing
 - Adjustments without prior PSC approval & need for evidence of WD/WA prior action

RECENT NOTEWORTHY PSC DECISIONS

- Financing Cases – PSC now requiring water utility to file a copy of loan/debt instrument documents (includes RD financing cases)
- Franchise Agreements - All agreements should be filed with PSC for informational purposes
- Depreciation
 - PSC Staff examining Useful Lives Used
 - When Utility's Usefu Life Outside Range Recommended By Industry Standard, Staff Recommending Changes for Ratemaking and Accounting
 - Issue Frequently Arising in Rate Cases/Be Alert

OTHER ACTIVITIES AT PSC

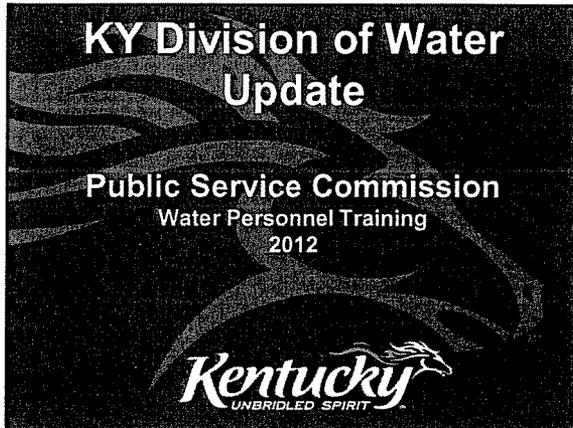
OTHER ACTIVITIES

- Personnel Changes
- Water Territorial Database
- Release of Municipal Rate Adjustment Regulation
- Electronic Initiatives
- Water District Training
- Meter Laboratory Testing Resumes

CASES TO WATCH

- *Forest Creek LLC v. Jessamine-South Elkhorn Water Dist.*, Case No. 2010-00035 (Does Developer have rt to change mind?)
- *City of Versailles*, Case No 2011-00419 (May City unilaterally amend wholesale contract to require minimum purchases?)
- *PSC v. Louisville-Jefferson County Metropolitan Sewer Dist.*, No. 2011-CA-2020 (Are cities and special districts exempt from obtaining prior-PSC approval before acquiring a PSC-regulated utility?)

QUESTIONS?



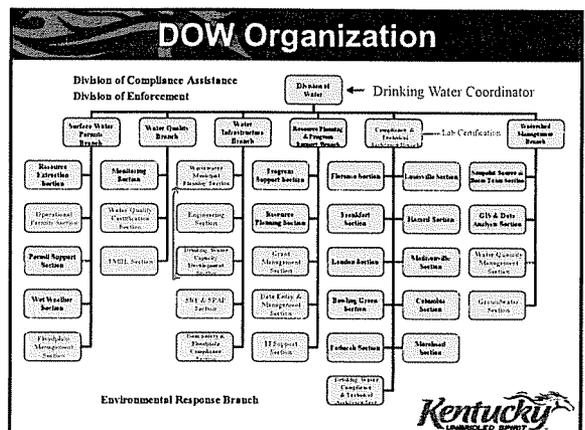
Presentation Summary

- DOW Organization
- Current and Pending Regulations
 - Federal Level
 - State Level
- Other Regulatory Actions with DW and WW Potential Impacts
- Drinking Water News

DOW Mission Statement

- *The mission of the Kentucky Division of Water is to **manage, protect and enhance** the quality of the Commonwealth's water resources for present and future generations through voluntary, regulatory and educational programs.*

- Julie's Mission Statement
 - "Safe water for everyone at all times"
 - Fair and consistent



The Basics

- Address: 200 Fair Oaks Lane, 4th Floor
Frankfort, KY 40601
- Phone: 502/564-3410
502/564-8158 (backdoor)
- Web: <http://water.ky.gov>
<http://dca.ky.gov/certification>

Drinking Water Staffing Changes

- **Frank Hall** is no longer DWCTAS supervisor; he is now over the DW/WW Lab Certification Program
 - Natalie Bruner is the new DWCTA section supervisor
- Arianna Lageman was promoted into the Lab Certification Program
 - Todd Ritter is now the Chemical Rule Manager (IOC/VOC/SOC/Secondaries); still doing LCR
- Linda Metts is now handling inventory changes
- Amber Vaughn has moved to the SRF section
 - Eileen Burk is now handling MORs and the SWTRs

Drinking Water Staffing Changes

- Capacity Development Section and the Wastewater Municipal Planning Sections have been unofficially “combined”
 - Anshu Singh is the Section Supervisor
- 4 engineers from the Engineering Section of the Water Infrastructure Branch have been transferred to the new Resource Extraction (Coal) section in the Surface Water Permits Branch
 - Mark Rasche is the new Engineering Supervisor
 - Recession continues to affect both DW and WW projects
 - Example: in SFY11, only 450 DW plans were received compared to 1019 in 2007
 - Looking more at the relationship between engineering projects and future water quality



Drinking Water Staffing Changes

- The Division of Compliance Assistance (DCA) has filled 2 vacancies
 - A drinking water/wastewater trainer
 - Wastewater compliance assistance



Federal Water Regulatory Actions



Federal DW Regulatory Actions

- On track for final regulation:
 - Revised Total Coliform Rule (RTCR): Early 2013
 - Long-Term Lead and Copper Rule (No date yet)
 - Unregulated Contaminant Monitoring Rule 3 (UCMR 3): Rule final in May with monitoring in 2013-2015
 - Concern growing regarding lab capability
 - Perchlorate: Proposal possible in February 2013
- Considered for regulation or regulatory revision
 - Hexavalent chromium: Now included in UCMR3
 - Risk assessment underway and should be final in 2015
 - Fluoride: Pending DPH action on supplementary fluoridation



Federal DW Regulatory Actions

- Under consideration for revision:
 - LT2 (review scheduled to be complete in 2016)
 - May consider postponing the 2nd round of source monitoring
 - Higher E.coli trigger for systems less than 10K
 - CCR (decision on regulatory change January 2013)
 - Alternate delivery methods
- Regulatory by groups
 - Carcinogenic VOCs: Proposed rule by Fall 2013
- Arsenic
 - Looking at impact on small systems
 - KY is represented (Attorney Generals Office)



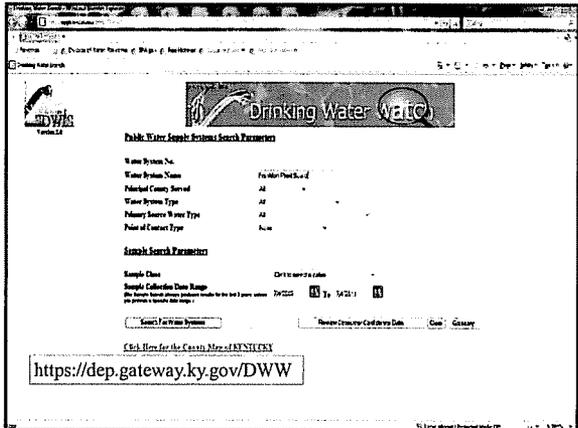
Enforcement Response Policy & Targeting Tool (ERP/ETT)

- In 2010 the ERP/ETT replaced the Significant Non-complier (SNC) list
- Points assigned for violations
 - Similar to the PN Tiers
 - Acute=10 points (including turbidity even when not elevated to Tier 1)
 - Chronic=5 points
 - M&R=1 point
 - PWSs with 11 points or more must be Returned to Compliance or under formal enforcement within 6 months
 - 28 PWSs in the ERP process right now
- DBPs are KY’s main violations

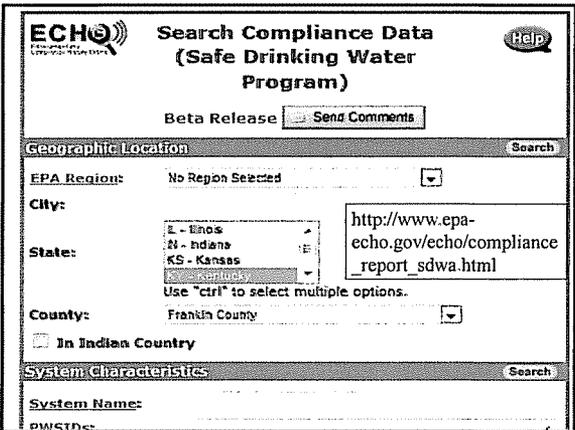


Federal Drinking Water Strategy

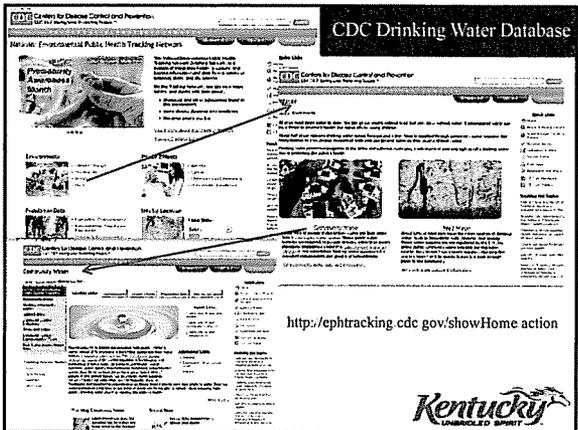
- EPA Region 4 Priorities
 - Children’s health
 - Sustainability
 - Surface coal mining
 - Reduction of nutrients and coastal pollution
 - Environmental justice
 - Ensure effective use of federal funds
- Seeing more emphasis on energy efficiencies

<https://dep.gateway.ky.gov/DWW>



http://www.epa-echo.gov/echo/compliance_report_sdwa.html



<http://ephtracking.cdc.gov/showHome.action>



“Needs” Surveys

- The “Needs” survey results will set the SRF amounts for future years
 - Preliminary results show a **\$1 Trillion** need nationwide
 - Drinking water survey was complete in 2011
 - Wastewater survey was completed in November 2012



SRF Project Priority Lists

- DOW has received 102 Clean Water and 60 Drinking Water project to review and rank for the Intended Use Plan



Lead Reduction Act

- Congress passed new legislation lowering the lead content for solder and adding a “wetted” surface requirement (less than 0.25% lead)
 - Effective in 2014
 - May be incorporated into Long Term LCR revisions
 - New “lead free definition”, EPA still unsure of impact
 - NSF and other certifying authorities involved
 - This should be forward-moving legislation and **will not** require that all meters, etc in the system be changed
 - Systems should have a plan in place in advance for implementing this change



Funding—FFY 2013 (Requested)

Presidential budget as proposed

- DW SRF is down 7.5%
- CW SRF is down 20%
- PWSS (Drinking Water) is up 4%
 - Additional money is for the SDWIS NextGen conversion
- 106 (Wastewater) is up 11%
 - \$15M nationwide to states that commit to strengthening their nutrient management efforts
- Competitive \$15M for technical assistance partnerships has been distributed to 4 organizations
- Unobligated funds to be returned



State Regulations/Issues Affecting Public Water Systems & Wastewater Systems



Stage 2 DBP Rule

- Compliance is underway
 - Schedule 1 systems begin complying with the Stage 2 rule April 1, 2012 (~30 systems) (LWC, NKWD, KAWC and Boone/Florence)
 - Schedule 2 systems began October 1, 2012 (~30 systems) (BGMU, OMU, PWW, FPB, GMWS)
- **Review your ISDE Report NOW**
 - Contact your lab with the new sample sites
 - Contact DOW with questions
- Systems are not ready
- Transition from Stage 1 monitoring to Stage 2



Stage 2 DBP Rule

- Operational Evaluation Level (OEL)
 - OEL projects the potential future non-compliance
 - Starts when systems have 3 quarters of data
 - For Schedule 1 systems that will be as of December 31, 2012
 - For Schedule 2 systems that will be June 31, 2013
 - Then each quarter forward
 - Only submit an OEL form if you predict the site will be over the MCLs for the next quarter
 - Form is on DOW website



Stage 2 DBP Rule

- **New Stage 2 Report Forms**
 - Look like the Stage 1 but say Stage 2 at the top
 - Reason is how the Stage 2 sites are tied to the SDWIS-state compliance database
 - Make sure your labs know that there are new forms

<http://water.ky.gov/DrinkingWater/Pages/Forms.aspx>



LT2 Rule

- Only 5 PWSs in Bin 2 requiring additional 1 log of treatment
 - Again EPA built in 3 years for systems to improve treatment or build infrastructure
 - PWSs should use multiple toolbox options and strive for more than the 1 log additional treatment
- Start source water monitoring again in 2015
 - Will use the higher E.coli trigger of 100 cfu/100 ml for the Schedule 4 systems
 - EPA R4 guidance states at least 5 years between end of initial Crypto monitoring/bin classification and 2nd round of sampling
- Concerns with how states will track 2nd round of monitoring
 - SDWIS?? State database!!!



Drinking Water Lab Certification

- Federal EPA has moved the Crypto lab certification from the federal level down to the states
 - KY has 1 of 9 state-certified Crypto lab auditors
- May open 401 KAR 8:040 to be consistent with any general lab certification requirements from the WW lab regulation
- Looking to implement on-line analyzer calibration and standards



DW Regulations Under Consideration

- 401 KAR 8:700 on Bottled Water
 - Removing citations to now non-existent regulations
 - Clarifying monitoring
- Capacity Development/Sustainability
 - Still considering
- Emergency Response Plans
 - May consider
- Submetering



KY Wastewater Laboratory Certification

- Bill was successfully filed in 2011 to require WW lab certification for all WW discharges; signed into law on March 18, 2011 (KRS 224.10-670)
 - Will affect **all** labs/personnel that sample and analyze for WW parameters
 - Including WWTPs and WTPs (remember KYG 64???)
- KY drafting WW Lab Certification Manual
- Multiple stakeholder meetings
- May file in January 2013



Nutrient Reduction—Affects All

- Renewed focus on reducing the amount of nitrogen and phosphorus entering US waters
 - Nutrients can adversely affect DW sources
 - Taste and odors
 - DBPs (bromide-related)
 - Harmful Algal Blooms (HAB) and toxins
 - Related to quality and quantity
 - For drinking water systems??
 - Phosphate corrosion inhibitors
 - Free ammonia associated with chloramine disinfection
- Who is responsible for removing? DW, WW, source???
- Increasing NO3 levels in groundwater
 - Nationally nitrate NOVs have doubled in 8 years



Source Water Protection

- Emerging “contaminants of concern”
 - Typically not on KPDES permits
 - Can affect in-stream and downstream uses
 - Example in 2 Southeast states is discharged bromide that is causing a spike in THMs and HAAs in downstream public water systems
 - Highlights the need for SDWA and CWA programs to work together



"Green" Initiatives

- Good
 - Energy efficient pumps/motors
 - Electrical usage/demand
 - Gray water use outdoors
- Not so Good
 - Filter backwash recycling
 - WTPs running fewer hours
- Unusual
 - Building-by-building roof/rainwater capture systems for potable use




Drinking Water Systems

- Public Water Systems (as of 6/30/2012) 458
 - 144 Surface Water (31.4%)
 - 179 Surface Water Purchasers (39.1%) 44% purchase
56% produce
 - 112 Ground Water (24.5%)
 - 23 Ground Water Purchasers (5%)
- Population Breakdown
 - 24% with population over 10K
 - Of those 110 PWS, 11 have more than 1 plant but not more than 3
 - 76% with populations less than 10K
 - 59% with populations less than 5000



2011 CY SDWA Compliance

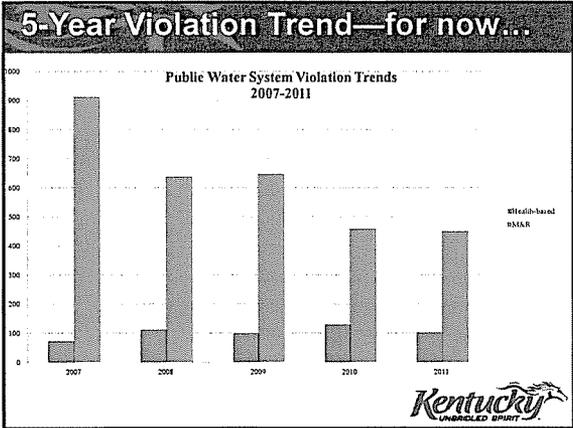
- 2012 is the second year of a 3-year period
- This 3-year period is the first in a 9-year cycle
 - Why is this important?
 - Asbestos and nitrite monitoring occur in the 1st 3-year period of the 9-year cycle



2011 CY SDWA Compliance

- 555 violations total (still decreasing each year)

– Reporting	98 (17.7%)	
– Monitoring	300 (54.1%)	
– Public Notification	55 (9.9%)	
– Treatment Technique	10 (1.8%)	60% of TT Stage I
– MCL	92 (16.6%)	76% of MCL Stage I
- Summary
 - 81.6% MON/RPT/PN
 - 18.4% MCL/TT

Waiver/Reduced Monitoring Program

- KY DOW reduced monitoring and waiver status
 - Approved
 - Dioxin
 - Asbestos
 - IOCs (metals) not including nitrate/nitrite
 - Pending
 - VOCs
 - SOCs



Monthly Operating Reports

- Other agencies are starting to come to DOW for data off of the MORs, particularly water treated/production data and water sold/purchased
 - Make sure the raw water treated is in the correct units which is Gallons per day
 - Make sure you correctly identify the PWSs to which you sell or from whom you purchase
 - And don't include your own PWS as a purchaser!



2011 AWOP

- Microbial/turbidity AWOP
 - 49 PWS are “Totally Optimized Plants” serving 1,513,897 (roughly 25% of the state population)
 - Roughly 32% of the surface water treatment plants are totally optimized for both settled and filtered water
 - Increase of almost 400,000 people receiving safer water
 - Settled water turbidity 99.2 %
 - Goal of <1 or 2 NTU more than 95% of the time
 - Filtered water turbidity 98.9%
 - Goal of <0.1 NTU more than 95% of the time
- Moving into DBP AWOP
 - Distribution system and chloramine studies



Capacity Development

- Focusing on managerial and financial tools and education for PWSs
 - Taking the message “up a level” to water system management and decision makers
- Launched a pilot Capacity Development Assistance Program (CDAP) with RCAP
 - Using DW SRF set-asides to help small systems with deficiencies identified through the Sanitary Surveys
 - 2nd round deadline for submittal is December 7, 2012
- “Plan or be planned for”



Capacity Development

- Water loss/Water Audits
 - DOW working with AWWA Water Loss Committee
 - Cross-divisional efforts to approach water loss/non-revenue water
 - Education on the process for approaching water audits
 - Cost to produce water



The Future of SDWIS

- The current SDWIS database is out-dated and too expensive for EPA to maintain
 - May do just 1 more upgrade before no longer supporting the program
- SDWIS “Next Gen” will move the database to a “cloud” environment
 - Main servers, etc. maintained off-site by EPA
 - Improves data transparency
 - Issue with state-developed data entry tools and state ownership of their own data



HOW TO CONDUCT BOARD MEETINGS

Presented by
DAMON R. TALLEY, General Counsel
Kentucky Rural Water Association, Inc.
At

2012 Water Personnel
Training Seminars

PSC

KRWA

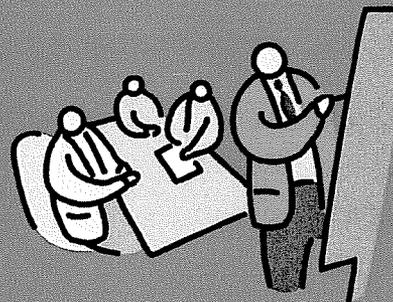


PART I
BOARD MEETINGS

PART II
ROLE OF WATER
DISTRICT COMMISSIONERS

PART I

Board Meetings



Board Meetings

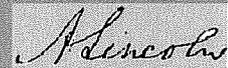
- Preparing for
- Conducting
- Documenting
(Minutes)

Regular Meetings

- Adopt a regular meeting schedule
 - Set time, date and location
- Inform the Media (radio, print, television)
- Inform the Public (bills, website, newsletter)

Preparing for Meetings

“Give me six hours to chop down a tree and I will spend the first four sharpening the axe.”



Preparing for Meetings

- Develop an Agenda
 - Chairman
 - Manager
- Prepare an Information Packet for Board Members
 - Delivered in advance (between two days and one week)

Board Packet

- Contents
 - Meeting Agenda
 - Minutes of prior meeting
 - Operational, Managerial & Financial Reports
 - Other information

Conduct of Meetings

- Follow the Agenda
- Use Parliamentary Procedure
- Voting by Chairman or President
- Abstaining from Voting
- Public Comments
- Closed (Executive) Session

ABSTAIN
or
RECUSE
?

Abstain or Recuse

ABSTAIN = Board Member

RECUSE = Judge

WHY Abstain?

- Avoid conflict of interest
- Avoid being removed from office for violating KRS 74.020(3)
(Participating in official action which results in direct financial benefit to Commissioner)
- Avoid appearance of impropriety

HOW to Abstain

1. Alert Chairman or Presiding Officer in advance
2. Announce intent to abstain and a brief reason as soon as Chairman announces the agenda item
[Disclose Conflict]
3. Leave the room before discussion starts

Con't

HOW to Abstain ...

4. Stay out of the room until **AFTER** vote has been taken and announced
5. Follow-up with Secretary to ensure that Minutes disclose your conflict and document your abstention

General Duties of a Board

1. Oversight
2. Oversight
3. Oversight

Oversight

- Method
 - Stay Informed
 - Adopt Policies
 - Require Reports

Reports

- Different Types
- Tailored to Fit
- Board Action Required?

Types of Reports

- Financial
- Operational
- Managerial
- Other

Financial Reports

- Check Register
- Monthly Income & Expense
 - Debt Service Transfer
 - Depreciation Transfer
- Comparisons & Trends
 - Prior Year
 - Budget
- Balance Sheet

Operational Reports

- Water Production (Purchases)
- Line Loss
- New Customers
- Turn-Offs
- Others

Managerial Reports

- Safety
- Human Resources
- Special Projects
- Policy Implementation
- Others (e.g. Overtime Hours)

Reports Tailored to Fit

- Line Loss
 - Actual Cost in \$
- Specific Needs
- Understandable
- You Are The Boss

Board Action Required?

- Usually Not
 - Manager Presented
 - Board Received
- Sometimes Yes
 - Audit
 - Committee Report

Special Meetings

- Who calls a special meeting?
- Notice of meeting
 - Board Members, Media, General Public
- Agenda – action limited to agenda items
- How much advance notice is required?

What Are MINUTES?

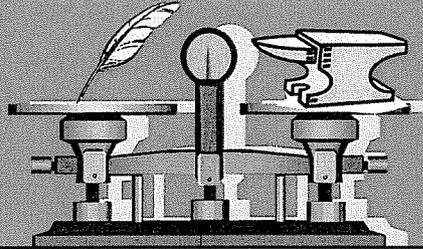
- Official Record
- Much, Much More



Excerpt From Minutes

"Motion was made by Commissioner X and seconded by Commissioner Y to hire Commissioner Z to perform water line inspections on the Knob Hill Project at an hourly rate of \$20."

AN OUNCE
OF
PREVENTION = A POUND
OF CURE



Board Minutes

- A Board "speaks only through its minutes."
- War Stories:
 - Construction contract not awarded
 - Ownership of water line and service of disputed territory
 - Careless Conversations

Preparation of Minutes

- Who prepares minutes?
 - Board Secretary or Staff
- Who edits minutes?
 - Staff or legal counsel
- Are meetings recorded on audio and/or video?
- Signing of Minutes
- Approval of Minutes

ADJOURNMENT

There being no further business to come before the meeting, motion was made by Commissioner Steven Douglas and seconded by Commissioner Henry Clay to adjourn the meeting. Motion carried unanimously.

Respectfully submitted,

BY: _____
Henry Clay, Secretary
ABRAHAM LINCOLN WATER
DISTRICT

DATE APPROVED: _____

BY: _____
Jefferson Davis, Chairman

Approval Of Minutes

I hereby certify that the foregoing Minutes were duly approved by the Board of Commissioners of the Abraham Lincoln Water District at a meeting held on the date shown below:

ABRAHAM LINCOLN WATER DISTRICT
BY: _____
JEFFERSON DAVIS, CHAIRMAN

DATE APPROVED: _____

Board Minutes

A complete set of APPROVED Minutes SHALL be maintained at the utility office for inspection by the general public, regulators and the media.

Board Minutes

When are the Minutes considered in “final form” and available for public inspection?

Minutes

What **MUST** Be Included?

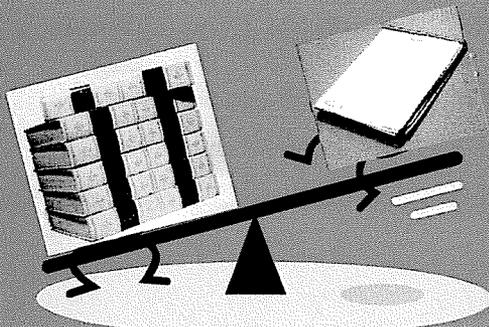
- Board Member Attendance
- Official Actions

Minutes

What **SHOULD** Be Included?

- Board Member Attendance
- Acknowledge Guests (Visitors)
- Official Actions
- Acknowledge Receipt of Reports
 - PSC Inspection Report
- Summarize **Some** Discussions

How much information **SHOULD** be included in the MINUTES?



Minutes

How **MUCH** is too **MUCH**?

- No definitive answer
- Art not a science

Con't.

Minutes ...

How MUCH is too MUCH?

- Guidelines
 - Minutes are **NOT** a transcript
 - Minutes are **NOT** the Congressional Record
 - Include rationale for action taken if it might avoid lawsuit

“Conversations are
NOT official actions
of the Board.”

Virginia W. Gregg
PSC Staff Attorney

Conversations

WHY include summary of conversations in Minutes?

- Document Board's due diligence
(e.g. Use of safety equipment; Training of Staff re confined space entry)
- Document Board's Oversight Role
(e.g. Implementation of ID Theft Prevention Program)
- Avoid or Win Litigation

**TALLEY'S
TIPS**

Talley's Tips

Prepare Minutes for a Reader

...

1. Who did not attend the meeting.
2. Who will not read the Minutes until at least one year later.

PART II

**ROLE OF WATER
DISTRICT
COMMISSIONERS**

To Govern...

not

...Manage.

**General Duties of a
Board**

1. Oversight
2. Oversight
3. Oversight

**Specific Duties of a
Board**

- Hire, evaluate and compensate a Manager
- Adopt Policies
- Adopt and Amend Budgets
- Adopt Long-range Plans
- Adopt Rates, Rules & Regulations (Tariffs)

**Individual Board
Members...**

**... act in the best
interest of the utility.**

**Specific Duties of
Board Members**

- Stay informed
- Attend meetings regularly
- Perform tasks assigned by Board
- Support decisions of the Board
- Keep Board matters confidential
- Avoid Conflict of Interest

Identity Theft



Identity Theft Prevention Program

1. Develop Written Program
 - Detect
 - Prevent
 - Mitigate
2. Approved by Board
3. Oversight by Board or Senior Management

What Should You Do?

Board Members:

- Direct Management to prepare written summary of existing safeguards
- Evaluate existing safeguards
- Work with Management to improve safeguards
- Adopt policy
- Oversee implementation of policy

What Should You Do?

Management:

- Prepare written summary of existing safeguards
- Evaluate existing safeguards
- Work with Board to improve safeguards
- Recommend policy for adoption by Board
- Implement policy
- Train Staff

Board Officers

Offices of a Water District

KRS 74.020(5)

- Chairman
- Vice Chairman
- Secretary
- Treasurer
- Others

Board Officers

Offices of a Water Association

KRS 273.227 & Bylaws

- President or Chairman
- Vice President or Vice Chairman
- Secretary
- Treasurer
- Others

Board Officers

Offices of a Utility Commission KRS Chapter 96 & Ordinance

- Chairman
- Vice Chairman
- Secretary
- Treasurer

Duties of Officers

Chairman or President

- Preside over meetings
- Prepare meeting agendas
- Call special meetings
- Execute documents approved by Board
- Perform other duties assigned by Board
- Approve Disbursements (KRS 74.050)
- Perform other duties specified in

Duties of Officers

Vice Chairman or Vice President

- No statutory duties (Water District or Utility Commission)
- Preside over meetings in absence of Chairman or President
- Perform other duties assigned by Board
- Approve Disbursements (KRS 74.050)
- Perform other duties specified in

Duties of Officers

Secretary

- Cause the Minutes of all meetings to be prepared
- Act as custodian of official records
- Authenticate official records
- Perform other duties assigned by Board
- Approve Disbursements (KRS 74.050)
- Perform other duties specified in

Duties of Officers

Treasurer

- Cause all funds to be disbursed according to law and procedures adopted by Board (KRS 74.050)
- Perform other duties assigned by Board
- Perform other duties specified in Bylaws or Ordinance

Action By Individual Board Members Outside of Meetings

- Officers
- Other Board Members

Legal Standard of Care

The "PIG" Rule

If it seems "piggish" to you, it probably is!
...so keep your snout in your own trough!



Legal Standard of Care

Water Districts & Utility Commissions

No statutory standard of care but the case law standard requires...

- Good faith
- Reasonable care and diligence
- Acting within the scope of authority

The statutory standard of care for water association directors is instructive for water districts and utility commissions.

Legal Standard of Care

Water Associations (KRS 273.215)

A Director shall discharge his duties:

- In good faith
- On an "informed basis"
- In the best interests of the Association

Legal Standard of Care

"Informed Basis" KRS 273.215(2)

A director shall be considered to discharge his duties on an informed basis if he makes, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, inquiry into the business and affairs of the corporation or into a particular action to be taken or decision to be made.

Legal Standard of Care

Reliance on Information KRS 273.215(3)

A director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

- Officers or employees of the corporation whom the director honestly believes to be reliable and competent;

Cont.

Legal Standard of Care

Reliance on Information KRS 273.215(3)

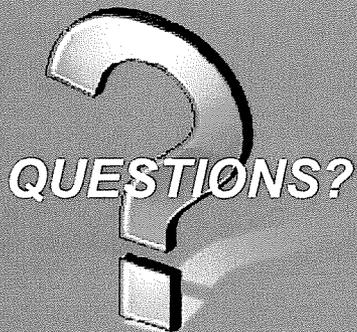
- Legal counsel, public accountants or other experts as to matters the director honestly believes to be within that expert's area of expertise; or
- A committee of the board of directors of which he is not a member if the director honestly believes the committee merits confidence.

Legal Standard of Care

Exceptions may be made in instances where a director possesses special knowledge that indicates alternative action is prudent and necessary.

Parting Thought

Every utility's Board should develop and adopt a "Board Governance & Policy Manual."



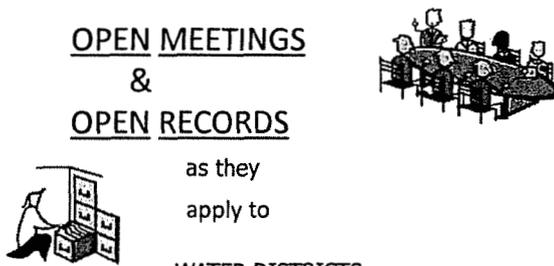
drtalley@windstream.net

270-358-3187

STURGILL
TURNER
BARKER &
MOLONEY, PLLC ATTORNEYS AT LAW, L.L.C. NO. 0957

TODD OSTERLOH
ATTORNEY
TOSTERLOH@STURGILLTURNER.COM
(859) 255-8581
DECEMBER 14, 2011

OPEN MEETINGS
&
OPEN RECORDS



as they
apply to

- WATER DISTRICTS
- WATER ASSOCIATIONS
- MUNICIPAL UTILITIES

Why?

"I am from the government.
And I am here to help."

**the OPEN MEETINGS ACT
& the
OPEN RECORDS ACT**

Free and open observation of public meetings
& the open examination of public records
is in the public interest.

The formation of public
policy is public business
and shall not be conducted in secret.



**Open Meetings Act
Why do I care?**

If a court finds a willful violation of the Open Meetings Act, the court may issue a fine of **\$100 per violation** and may award costs, including attorney's fees.

There can be criminal fines of **\$100** for each time a member of a public agency attends a meeting knowing that it is in violation of the Open Meetings Act.

**MANDATES OF THE OPEN
MEETINGS ACT**

A MEETING of a QUORUM of a PUBLIC AGENCY

at which

PUBLIC BUSINESS is DISCUSSED

OR

ACTION IS TAKEN

IS A PUBLIC MEETING.



OMA Public Agency

Water Districts
Municipalities
Municipal Utilities

Not Water Associations
Not Water Companies

Quorum

More than half.
At least 2 for a 3 member board.
At least 3 for a 5 member board.
At least 4 for a 6 member board.
At least 4 for a 7 member board.

PUBLIC MEETINGS

ALL GATHERINGS OF EVERY KIND,
WHERE PUBLIC BUSINESS
IS DISCUSSED

REGARDLESS OF...



- WHERE it is held,
 - WHAT KIND (regular, special, informational or a casual gathering),
 - IF HELD in anticipation of or in conjunction with a regular or special meeting.
- KRS 61.805(1)

PUBLIC MEETINGS

Serial Meeting

Cereal Meeting



10

SERIAL MEETINGS

(KRS 61.810(2))

A SERIES of MEETINGS with LESS than a QUORUM
of MEMBERS ATTENDING EACH



THAT COLLECTIVELY
MAKE UP A QUORUM

PUBLIC BUSINESS

the DISCUSSION OF
ALTERNATIVES TO AN ISSUE that
AN AGENCY HAS THE OPTION
TO TAKE ACTION ON...



REGULAR MEETING REQUIREMENTS

- ANNOUNCE Time and Place
- ADOPT Regular Schedule
- KEEP Minutes of Meetings
- ALLOW Public Attendance

SPECIAL MEETING REQUIREMENTS

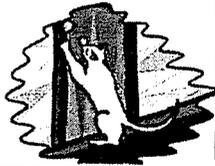
- Who May Call –
Presiding Officer or
Majority of Members
- Notice Requirements –
-Content
-Delivery and Posting
- What Can Be Discussed – Agenda Items only
- Emergency Situations – Exception to Notice Requirements



CLOSED SESSION PROCEDURES

- Specific MOTION-
in open session
- Don't take "OFFICIAL" MINUTES-
(private notes ok)
- Don't take FINAL ACTION –return to open
session first

(KRS 61.810 (1))



LIMITED TOPICS ARE ALLOWED TO BE DISCUSSED IN CLOSED SESSION

- APPOINTMENT, DISCIPLINE, DISMISSAL OF EMPLOYEE (KRS 61.810(1)f))
- LITIGATION (KRS 61.810(1)(c))
- REAL PROPERTY (KRS 61.810(1)(b))
- HOMELAND SECURITY (KRS 61.810(1)(m))

COMMON VIOLATIONS OF THE OPEN MEETINGS ACT

1. Private Meeting of a quorum where public business is discussed or action is taken (KRS 61.810(1))
2. Serial Meeting (KRS 61.810(2))
3. Failure to Adopt a Schedule of regular meetings (KRS 61.820)

COMMON VIOLATIONS ...

4. Inadequate Notice of Special Meetings (KRS 61.823(3))
5. Deviate from Agenda for special meetings (KRS 61.823(3))
6. Failure to observe Formalities for closed session (KRS 61.815(1))

COMMON VIOLATIONS ...

- 7. Discuss Improper Topic in closed session.
(KRS 61.810(1) and KRS 61.815(1)(d))
- 8. Take Final Action in closed session
(KRS 61.815(1)(c))
- 9. Conduct Meeting at Inconvenient Time or Place (KRS 61.820)

COMMON VIOLATIONS...

- 10. Fail To Properly Record Minutes or To Make Minutes Available (KRS 61.835)
- 11. Condition Attendance At Meeting
 - mandate identification
 - prohibit recording meeting
 - meeting room inadequate (KRS 61.840)
- 12. Fail To Respond to an Open Meetings Complaint (KRS 61.846(1))

IF OPEN MEETINGS VIOLATION

(KRS 61.846)

Complaint Must Be

- In writing
- Directed to Agency's presiding officer
- Stating the circumstances constituting a violation
- Propose remedial action



**HOW AGENCY MUST
RESPOND
TO COMPLAINT**

- In Writing To Complainant-
Written by the presiding officer or designee
- Within three (3) business days
- If admitting violation & accepting proposed remedy, state so
- If Denying a violation or rejecting a proposed remedy,
state why (be specific)

(KRS 61.846)

**IF COMPLAINT IS
NOT RESOLVED...**

An Appeal can be made to the Attorney General
- within sixty (60) days of a written denial
or if no response from agency;

The Attorney General – will issue a written
decision within 10 days. This
Opinion will be final unless
either party appeals.

(KRS 61.846)

**APPEAL OF THE ATTORNEY
GENERAL OPINION**

- Appeal is Made to Circuit Court:
-where the Agency has its principal place
of business or where the violation
occurred.
- &
- Within Thirty(30) Days of the
Attorney General's Opinion.



QUESTIONS????

THE OPEN RECORDS ACT

(KRS 61.870 – KRS 61.884)



GOVERNMENT IS THE SERVANT OF THE
PEOPLE

&

ACCESS TO GOVERNMENT IS A
FUNDAMENTAL AND NECESSARY
RIGHT OF EVERY CITIZEN

THE OPEN RECORDS ACT

(KRS 61.870 – KRS 61.884)



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Open Records Act Why Do I Care?

If a court finds a willful violation of the ORA, the court may issue a fine of **\$25 per day** that the documents were not disclosed and may award costs, including attorney's fees.

There is also possible **jail time** for willfully concealing or destroying documents with an intent to violate the Open Records Act.

KRS 61.991(1)

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ORA Public Agency

Water Districts

Municipalities

Municipal Utilities

25% of expenditures derived from state or local funds

Maybe Water Associations?

Maybe Water Companies?

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AGENCY MUST ADOPT RULES & REGULATIONS

1. Each Public Agency **Shall Adopt** Rules and Regulations...
 - to Provide Full Access to Public Records,
 - to Protect Public Records from Damage and Disorganization,
 - to Prevent Excessive Disruption of its Essential Functions,
 - to Provide Assistance and Information Upon Request; and,
 - to Insure Efficient & Timely Action in Response to Application for Inspection. (KRS 61.876(1))
2. Each Public Agency shall display a copy of its rules and regulations pertaining to public records in a Prominent Location Accessible to the Public. (KRS 61.876(2))

WHAT ARE PUBLIC RECORDS?



- All books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation;
- regardless of the physical form;
- prepared, owned, used, in the possession of or retained by a public agency.

(KRS 61.870(2))

“ALL MEANS ALL”

RECORDS v INFORMATION



Open Records Requirements Pertain To Existing, TANGIBLE Records Regardless of Form.

Information Requests Are Not Covered By Open Records Requirements

Public Agencies Are Not Required, Under The Open Records Act, To Create Records That Do Not Exist, Or to Respond To Request For Information.



INSPECTIONS OF PUBLIC RECORDS

- All Public Records shall be open for inspection (unless there is an exception),
- Anyone can request a public record,
- The reason why someone wants to review or copy a public record is...
 - legally irrelevant, and the
 - agency has the same legal obligation to all. (KRS 61.872)



AGENCY MUST PROVIDE:

- Suitable Facilities for Inspection (KRS 61.872(1))
- Time for Inspection during regular business hours (KRS 61.872(3)(a))
- An Official Custodian in charge of the records, (KRS 61.872(2))
- A person requesting records can generally be required to review them before an agency makes copies and mails them. (KRS 61.872(3)(b))



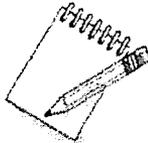
APPROPRIATE WAY TO REQUEST DOCUMENTS

In Writing,

Directed to the Official Custodian,

Signed by the Requestor and with Name Printed Legibly, and

Records Requested Must Be Described.
(KRS 61.872(2))



AGENCY RESPONSE

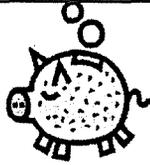
MUST BE

- In Writing;
- Within Three (3) Business Days;
- If a Delay- Explain Why & When Documents will be Available;
- If Request is Denied, Cite What is Not Produced & the Specific Exception;
- Issued By the Official Custodian, Or Under His\Her Authority.

(KRS 61.872(5))



COPYING CHARGES



- \$.10 a page, if agency charges more, be ready to prove actual expense - (not easy).
- Staff Time & Cost - Cannot be included in charges- regardless of how much time is required to produce the documents.
- Agency may charge more if the request is for a commercial purpose.

AGENCY MAY REFUSE INSPECTION IF

(KRS 61.878)

1. Unreasonable Burden,
2. Repeated Requests,
3. Personal Nature,
4. Preliminary Documents,
5. Homeland Security.



BE CAREFUL - WITHHOLDING RECORDS IS CLOSELY SCRUTINIZED

1. UNREASONABLE BURDEN

(KRS 61.872(6))

- What is "unreasonable"?
- Who decides?
- Can the agency refuse if meeting the request will be time consuming?

Refusal under this section must be supported by clear and convincing evidence. (hard to accomplish)



2. REPEATED REQUESTS

The Custodian of Records Must Have Reason to Believe That The Repeated Requests Are Intended To Disrupt Other Essential Functions Of The Public Agency.



Proof that the request is made to disrupt the agency must be by clear and convincing evidence.
(KRS 61.872(6))

3. PERSONAL NATURE



Would public disclosure constitute a clearly unwarranted invasion of personal privacy?
(KRS 61.878(1)(a))

The courts in Kentucky have established a balancing test ...

Privacy Interest vs. the Public's Right to Know What their Government is Doing.

BALANCING TEST

Does an individual have a cognizable privacy interest that should be protected?



Will an open records related public purpose be advanced by the disclosure?

What is the magnitude of the privacy interest?

Home address

- | | |
|--------------------------------|---|
| 1. Meter Reader | A. Privacy Interest? |
| | B. Is there a public purpose that will be advanced? |
| 2. Water District Commissioner | C. How great is the privacy interest? |

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Failed Applicants' Resumes

- | | |
|-------------------------|---|
| 1. Meter Reader | A. Privacy Interest? |
| | B. Is there a public purpose that will be advanced? |
| 2. Appointed Mayor | C. How great is the privacy interest? |
| 3. University President | |

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4. PRELIMINARY DOCUMENTS

KRS 61.878(1)(i) and (j)

Drafts, notes, and correspondence with private individuals that is not correspondence which is intended to give notice of final action.

Recommendations and preliminary memoranda, in which opinions are expressed or policies formulated or recommended.



Once final action is taken, the preliminary material that is adopted by the agency is no longer exempt.

4. PRELIMINARY DOCUMENTS

Non-exempt:

- **factual updates** (however brief)
- **gratuitous commentary**
- **questions** (not answers thereto which contain recommendations)
- **the exchange of information**, as opposed to being subjective in the nature of recommendations or opinions regarding the underlying request or complaint and the agency's response thereto

See 11-ORD-052

5. HOMELAND SECURITY

(KRS 61.878(m))

PUBLIC RECORDS...

the DISCLOSURE of which...

would have a reasonable likelihood of THREATENING the PUBLIC SAFETY

- by exposing a vulnerability,
- in preventing, protecting against, mitigating, or responding to a terrorist act.

If denying a request for this reason, you must notify the AG's Office for Security Coordination.



WHAT IS A TERRORIST ACT?

A criminal act intended to:

- Intimidate or coerce a public agency ...
- Disrupt a system including but not limited to electrical, fire suppression, WATER, WASTEWATER, SEWAGE, and gas systems;
- Cause massive destruction to a building or facility owned, occupied, leased, or maintained by a public agency;

(KRS 61.878(1)(m)(2))



WHAT RECORDS QUALIFY UNDER HOMELAND SECURITY?

*INFRASTRUCTURE RECORDS that expose location, configuration, or security of critical systems, including public utility critical systems.

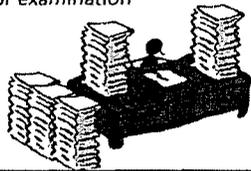
*Detailed drawings, schematics, maps or specifications of STRUCTURAL ELEMENTS...floor plans of

*Any building or facility owned, occupied, leased, or maintained by a public agency.

DUTY TO REDACT

If PART OF A RECORD IS TO BE WITHHELD UNDER ANY EXCEPTION... and the public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the non-excepted material available for examination

(KRS 61.878(4))



Open Records Appeal Process

- Appeal is made to the Attorney General who then Notifies Public Agency of the Appeal;
- Attorney General May Request Additional Documentation/Disputed Documents;
- Burden of Proof is on the Public Agency;
- Attorney General Determines Whether the Public Agency Violated Open Records Act.

Appeal of Attorney General's Decision is Made to the Circuit Court within Thirty Days (KRS 61.880)

THE END



SAMPLE OPEN RECORDS RULES AND REGULATIONS

ADMINISTRATIVE REGULATIONS GOVERNING INSPECTION OF THE PUBLIC RECORDS OF THE

(Name of Water District)

Pursuant to KRS 61.870 to 61.884, the public is notified that, as provided herein, the public records of the above named Agency of the Commonwealth of Kentucky are open for inspection by any person on written application to _____ (name of District's custodian of records), _____ (his/her title), official custodian of the public records of the Water District) whose address is _____, from ____ a.m. to ____ p.m., Monday through Friday, each week, except holidays. Application forms for the inspection of the public records of this agency will be furnished on request to any person by an employee in this office. Assistance in completing the application form will be provided by an employee on request.

Applicants for the inspection of public records shall be advised of the availability of the records requested for inspection, and shall be notified in writing not later than three (3) working days after receipt of an application for inspection of any reason the records requested are not available for public inspection.

Copies of written material in the public records of this agency shall be furnished to any person requesting them on payment of a fee of ten (10) cents a page; copies of nonwritten records (photographs, maps, material stored in computer files or libraries, etc.) shall be furnished on request, on payment of a charge equal to the actual cost of producing copies of such records by the most economic process not likely to damage or alter the record.

This the _____ day of _____, 20____.

(Board Chairman or Designated Representative)

DETERMINING A UTILITY'S STATUS UNDER THE OPEN RECORDS ACT

By Todd Osterloh
tosterloh@sturgillturner.com

So much emphasis is often placed on the questionably sensitive nature of certain documents that many entities debate how to comply with the Open Records Act ("the Act") without first determining whether they are subject to the requirements of the Act. Sound reasoning, however, mandates that an entity first determine whether the Act even applies to it. This determination is not as easy for some as it is for others, particularly when you consider that an entities' status may change from year-to-year.

The Act requires "public agencies" to disclose all their records to the public, unless the records fall within one of fourteen exemptions. The question that must be initially asked is whether each specific small utility (or related individuals and entities) falls under the Act's definition of a public agency.

The Act defines public agency to include every county or city governing body, council, school district board, special district board, and municipal corporations.¹ Accordingly, water districts and municipal utilities fit squarely under the Act.² A public agency also includes entities of which the majority of its governing body is appointed by a public agency.³ Because most commissioners on water commissions are appointed by water districts, municipalities, and other public agencies, most water commissions would be considered a public agency and subject to the Act.

Only one statutory provision could potentially draw privately-owned utilities into required compliance with the Open Records Act. KRS 61.870(1)(h) states that a public entity is defined to include "[a]ny body which derives at least twenty-five percent (25%) of its funds expended by it in the Commonwealth of Kentucky from state and local authority funds."⁴ Because non-profit water associations often qualify for state and local authority funds, they would be more likely to be a public agency under the Act as compared to for-profit water, sewer, and gas companies.

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A determination of whether a body has passed the 25% threshold is contingent on two vital elements: (1) the amount of money expended in Kentucky by the body within a specific fiscal year and (2) the percentage of these total expenditures that was derived from state or local funding. Because small utilities in Kentucky are not likely to have expenses outside of the Commonwealth, the most important factor to consider from these elements relates to the period of time in which the expenditures must be considered.

In reviewing whether a body is a public agency based on the 25% expenditure threshold, the Attorney General ("AG") has opined that a body may be considered to be a public agency under the Act in one year but not the next. In fact, the AG determined that the Murray-Calloway County Economic Development Corporation would not be considered a public agency in 2009 because only 20% of its funds expended in the first seven months of the fiscal year were from state and local funds and there was no evidence that the percentage would change during the remainder of the fiscal year.⁵ The AG made this finding despite acknowledging that the body met the threshold and was considered a public agency in each of the preceding four fiscal years.⁶

When calculating the percentage of expenditures that were derived from state and local funding, small utilities should consider not only grants, but also funds received through loans from these authorities.⁷ In addition, utilities should include funds that originated from the federal government but were filtered through the state treasury and appropriated by the General Assembly.⁸ Utilities need not include funds that are received directly from a federal agency, nor should utilities consider funds received from a state agency that are payments for services rendered, such as the provision of utility services.⁹

Continued >>

OPEN RECORDS ACT - Continued

Even if a body is determined to exceed the 25% limit, that public agency is not required to disclose all of its otherwise non-exempt records. Instead, those bodies need only to disclose records that are related to functions, activities, programs, or operations funded by state and local authorities. For example, North Shelby Water Company, a water association, received a \$1.5 million grant from the state to construct a transmission line connecting its system with the Louisville Water Company. Even if the expenses related to that transmission line vaulted the utility over the 25% threshold, an individual would not be entitled under open records law to inspect documents involving an unrelated pipeline between the Louisville Water Company and systems to its east because no state and local funds had been spent by North Shelby Water Company for the proposed pipeline project.¹⁰

Privately-owned utilities that do not exceed the 25% limit will not be required to comply with the Act.¹¹ If an individual requests to inspect records retained by such a company, the body may decline the in-

spection. Should that individual appeal the body's decision to the AG, the entity should defend its position that it is not a public agency within the meaning of the Act. There have been two recent cases in which a water association was presumed by the AG to be a public agency because the utility did not challenge or provide any support to challenge that determination.¹² In both cases, the AG found that the water association had violated the Act, and both cases may have been dismissed if the water association had merely challenged the applicability of the Act and supported its position.

In summary, before a utility considers whether requested documents are exempt from disclosure by the Act, it should consider whether it is a public agency under the Act. This determination will be quite simple for water districts and municipalities, but for other utilities, it may require some analysis of the utility's funding sources and expenses. If a utility determines that it is a public agency, it can then move to the question of whether it must disclose the requested records.

¹ KRS 61.870(1)(d).

² See also Ky. OAG 88-72 (Dec. 1988); Ky. OAG 77-291 (July 1977).

³ KRS 61.870(1)(k).

⁴ The Open Meetings Act does not have a similar provision. Thus, a utility may be required to comply with the Open Records Act but not the Open Meetings Act.

⁵ 09-ORD-192 at 6 (Ky. OAG Nov. 5, 2009).

⁶ The AG notes conflicting authority from the Jefferson Circuit Court, which held that KRS 61.870(1)(h) is unconstitutionally vague because it does not specify the period that must be used in calculating the expenditure-to-public fund percentage. See *Chilton v. M.A. Mortenson Co.*, 09-CI-02749 (Jefferson Cir. Ct. Nov. 24, 2009). Because the AG is the initial arbiter of the Act, entities outside Jefferson County will be best suited by following his guidance on the period on which to make the calculation, unless the Supreme Court or Court of Appeals concurs with the Jefferson Circuit Court.

⁷ *Id.* at 7.

⁸ See 10-ORD-092, at 10 (Ky. OAG May 6, 2010).

⁹ See 00-ORD-91 (Ky. OAG Apr. 4, 2000); 93-ORD-90 (Ky. OAG Aug. 5, 1993).

¹⁰ 08-ORD-139 (Ky. OAG July 14, 2008)

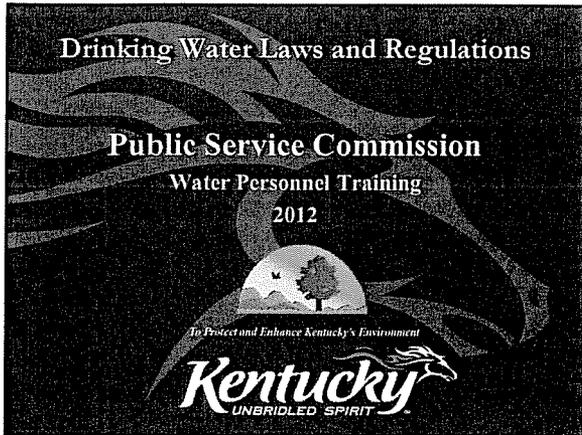
¹¹ Nevertheless, a privately-owned utility must still disclose certain records to its members under KRS 271B.16-020.

¹² 10-ORD-224 (Ky. OAG Dec. 10, 2010); 10-ORD-179 (Ky. OAG Sept. 9, 2010).

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Drinking Water Regulations

- Federal level
- State level
- Related laws and regulations

2 

Federal Safe Drinking Water Act

- United States Environmental Protection Agency is the federal agency responsible for protecting the United States' drinking water
 - Since 1990, EPA has passed 19 drinking water regulations
 - Currently regulates 90 contaminants
 - Requires compliance with contaminant levels, monitoring, reporting and notification

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Federal Safe Drinking Water Act--Goal

- Primary goal of the Safe Drinking Water Act is to protect human health by regulating the treatment and distribution of drinking water
 - Compliance with maximum limits for contaminants
 - Monitoring and reporting requirements
 - Public notification and awareness requirements
 - Technical/managerial/financial aspects
 - Operator certification

4 

Federal Safe Drinking Water Act

- Every 6 years the EPA reviews the existing regulations to see if changes are needed
 - Example: Revised Total Coliform Rule will replace the original 1989 Rule
- EPA maintains the "Contaminant Candidate List" (CCL) of potential drinking water contaminants
- EPA also directly administers "Unregulated Contaminant Monitoring Rules" to determine the extent of selected contaminants
 - Water systems have monitored for UCMR 1 and 2
 - UCMR 3 is pending

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Kentucky Drinking Water Regulations

- Kentucky's Division of Water administers and enforces the Safe Drinking Water Act
 - EPA develops a new drinking water regulation
 - KY then adopts the federal regulation
 - The KY regulation must be presented at a public meeting and must be approved by 2 legislative committees
 - EPA approves KY's regulation and program (this is known as "primacy")

6 

Kentucky Drinking Water Regulations

- KY has Statutes (laws) that give the state the authority to regulate drinking water systems
 - KRS 151, 223 and 224
- Regulations are then developed to implement these laws
 - 401 KAR Chapter 8: Public Water Supply
 - 401 KAR Chapter 11: Operator Certification

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Drinking Water Compliance Terms

- Turbidity: Clarity of the water
- MOR: Monthly Operating Report that includes turbidity and disinfection information
- “Bacts” Coliform samples
- Chlorine residual: Amount of chlorine detected in the plant or distribution system to control disease-causing organisms
- “Chems” Chemical contaminants

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Drinking Water Compliance Terms

- DBPs: Disinfection by-products (primarily THMs and HAAs) formed when chlorine reacts with organic matter
- THMs: Trihalomethanes
- HAAs: Haloacetic acids
- PN: Public notification
- NOV: Notice of violation
- LOW: Letter of warning
- M&R: Monitoring and Reporting

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Drinking Water Compliance Terms

- CCR: Consumer Confidence Report
- BWA: Boil Water Advisory (issued for potential or confirmed microbiological contamination)
- Sanitary Survey: Comprehensive inspection of the entire water system covering 8 areas
- Capacity:
 1. Approved rated flow
 2. Technical, managerial and financial ability to meet the SDWA
- AWOP: Area-Wide Optimization Program

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Drinking Water Compliance Terms

- Infrastructure: The tangible “concrete and steel” parts of the system
- Sustainable Infrastructure: Maintaining/improving drinking water “concrete and steel”

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Defining a Water System

- Public Water System
 - Over 15 connections or over 25 people served
- Community Water System
 - Over 15 connections or over 25 people served for at least 6 months a year
- Non-community Water System
 - Non-transient: same people for 6 months
 - Transient: variable population
- Semi-public Water System
 - Less than 15 connections or less than 25 people served
- Bottled Water System

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Water System "Capacity"

- A public water system should demonstrate "capacity" to meet the SDWA requirements
 - Technical
 - Managerial
 - Financial
- TMF capacity is inter-related
 - Without finances a plant cannot operate
 - Without sound management, finances cannot be obtained and system operation cannot be maintained
 - Without technical ability, safe water cannot be provided to expand the system to provide additional customers and income

13 

Water System "Capacity"

- Capacity Development Assessment
 - Key components needed to successfully obtain and maintain TMF capacity
 - This assessment is incorporated into the Sanitary Survey process
- Managerial and financial areas are difficult to measure but critical to water system operation
 - Planning (asset management, contingency)
 - Decision making
 - Organizational structure
 - Budgets (operational, capital, short/long term)
 - Rates
 - Water loss

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Source Water Quality and Quantity

- Raw source water must meet "Drinking Water Standards" set by KY regulations
 - These are set at the finished drinking water limits established by the Safe Drinking Water Act
 - Raw water quality also regulated by the Clean Water Act through "designated uses"
 - In KY the classification is "Domestic Water Supply"
- 263 Water Treatment Plants (55.4% of the public water systems)
 - 163 surface water treatment plants
 - 106 groundwater treatment plants

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Source Water Quality and Quantity

- 401 KAR 4:010 "Water Withdrawal"
 - Any withdrawal from rivers, impoundments or wells above 10,000 gallons per day must have a withdrawal permit
- Source water and Wellhead Protection Plans
 - Identify contaminants in the area around the source and solutions to controlling those contaminants.
- Water Shortage Plans
 - Tend to focus on droughts
 - Should be expanded to all types of water shortages (power outages, tank failures, plant upsets, pandemics, etc)

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Drinking Water Regulations

- Over 19 different drinking water "rules" in 401 KAR Chapter 8:
 - Coliforms (bacteriological)
 - Inorganics
 - Lead and copper
 - Volatile organics
 - Synthetic organics
 - Radionuclides
 - Turbidity (surface water treatment)
 - Disinfection by-products
 - Disinfection residuals
 - Cryptosporidium, Giardia & viruses
 - Reports and notifications

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Drinking Water Regulations

- There are 90 regulated contaminants
 - 6 microbiological
 - 1 turbidity
 - 3 disinfectants
 - 4 disinfectant by-products
 - 1 disinfection by-product precursor
 - 16 inorganics (metals and nutrients)
 - 53 volatile and synthetic organics
 - 4 radiological
 - 2 lead and copper

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KY Drinking Water Reports and Data

- All drinking water data must be analyzed in labs certified by KY or EPA
 - The KY Division of Water audits and certifies all in-state drinking water labs
 - In KY there are
 - 41 certified microbiological laboratories and
 - 16 certified chemistry laboratories
 - There are 44 certified chemistry and radiological labs located in other states
 - 4 full-time staff are involved with lab certification
 - Microbiological, chemical, Crypto and radiological

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Drinking Water Compliance

- Compliance is based on
 - Maximum contaminant levels (MCL)
 - Most contaminants
 - Treatment techniques (TT)
 - Difficult-to-measure contaminants that are easily controlled by treatment (turbidity, Crypto, Giardia, viruses)
 - Action levels (AL)
 - For lead and copper

20



Finished Drinking Water Quality

- Monitoring and Reporting
 - Monitoring can occur as frequently as every 4 hours or as long as every 3 years
 - Acute contaminants are monitored more frequently such as microbiological and turbidity
 - Chronic contaminants or those not often detected are monitored less frequently such as organic contaminants and radiologicals
 - Monitoring occurs in the water treatment plant and in the distribution system
 - Compliance data reports are submitted at least on a monthly basis

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KY Drinking Water Reports and Data

- Data is reported in different ways
 - Milligrams per liter (mg/L) is the same as parts per million (ppm)
 - 1 in a million (1,000,000)
 - Sometimes it is reported in micrograms per liter (ug/L)
 - 1 in a billion (1,000,000,000)
 - Other units such as
 - NTU = Nephelometric Turbidity Units
 - SU = Standard Units (pH)
 - pCi/L = Picocuries per liter (radionuclide)
- State developed report forms for all contaminants

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KY Drinking Water Reports and Data

- KY has 467 public water systems
 - Over 6000 microbiological results are submitted to the Division of Water each month
 - Approximately 20,000 turbidity results are submitted each month
 - 467 Monthly Operating Reports that vary from 4 to 20 pages in length are received each month
 - On an annual basis, over 1 million analytical results are submitted for compliance
- 7 staff are involved with compliance data

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Drinking Water Technical Assistance

- Compliance with the SDWA regulations is challenging—period
 - DOW has 6 staff state-wide that provide technical assistance to help systems stay in compliance
 - One-on-one assistance to systems
 - Small group training
 - Presentations to large audiences
 - Coordinate the nationally-recognized Area-Wide Optimization Program (AWOP) that encourages systems to improve treatment to produce even safer water

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Drinking Water Evaluations

- SDWA now requires all water systems to undergo a “sanitary survey” every 3 years that covers 8 areas from source water to management to recordkeeping to treatment to distribution
 - Jointly conducted by DOW Capacity Development section and the Compliance/Technical Assistance Branch (primarily the Regional Office staff)
 - Approximately 120-130 per year
- Also the DOW Regional Offices conduct inspections annually for all water systems not scheduled for a sanitary survey
 - Not as comprehensive as a sanitary survey

25



KY Drinking Water Reports and Data

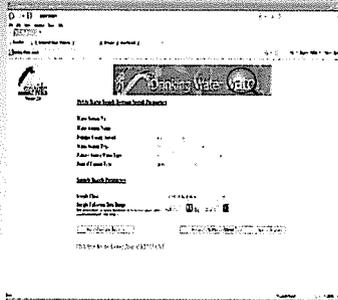
- SDWIS = Safe Drinking Water Information System
 - State database for tracking and running compliance
 - Now at version 3.0
 - Compatible with Federal database
 - KY developed data entry files to help with entering the data into SDWIS
- SDWIS will no longer be supported by EPA in several years
 - Moving through EPA Region-type support then to a “cloud” environment

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Drinking Water Watch

- Public access to SDWIS
 - <http://dep.gateway.ky.gov/DWW>



DW Enforcement Response Policy (ERP)

- New EPA initiative to track chronic non-compliance
- Replaces the old Significant Non-compliance (SNC) list
- Combination of points assigned to acute and chronic violations as well as monitoring and reporting violations
 - Certain score requires “formal” enforcement
 - In KY this means an Agreed Order

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Consumer Notification

- The public must be notified of
 - Safe Drinking Water Act violations
 - Potential health issues such as lead
- Through the Consumer Confidence Report (CCR), water system customers receive an annual report that provides information on the water system, including violations, detected contaminants and health effects
- Other notices include Boil Water Advisories

29



Operator Staffing and Certification

- Water treatment plants and distribution systems must be staffed by properly certified personnel in direct responsible charge (401 KAR 8:030)
 - Plant classification and staffing based on source water and rated design capacity
 - Surface waters require the most attention due to its variability and each shift must be staffed
 - Distribution is based on population served
- Alternate staffing plans

30



Operator Staffing and Certification

- Division of Compliance Assistance
 - 401 KAR Chapter 11
- Combination of education and experience
- Operator-in-training concept
- Certified operators must obtain Continuing Education Units (CEUs) to maintain a license
 - Every 2 years
 - Amount of CEUs required based on classification level
- Ethics language in regulation

31



Engineering Plans Review

- States must have a process for assuring water treatment plants and distribution systems are designed per current engineering standards
 - 401 KAR 8:100
 - Kentucky Design Criteria
 - 10 States Standards
- Overlap with Department for Public Health and Division of Plumbing on determining “potable” water needs
 - Food establishments
 - Restrooms with sinks

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Related Drinking Water Regulations

- Any discharges back to receiving streams or lakes (Clean Water Act permit)
 - Water treatment plant discharges (KPDES KYG64)
- Construction in a floodplain, dredging a stream or impacting water quality standards
 - 401 and 404 permits (Corps of Engineers and DOW)
- Disposal of any solid material removed during treatment (such as filtration)
 - Special Waste disposal permit (Division of Waste Management)

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Related Drinking Water Regulations

- Air quality (Clean Air Act)
 - Potential chlorine gas releases
- Occupational health and safety of workers (OSHA)
 - Includes chlorine gas safety, confined space entry, lockout/tag out, Process Safety Management, respiratory protection
- Emergency preparedness

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Questions?? Comments??

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Case related filings: Original & 10 copies
Tariffs/Special Contracts: Original & 4 Copies

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