

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ALLEGED FAILURE OF RED BARN WASTE	)	CASE NO.
MANAGEMENT, LLC TO FILE REQUIRED	)	2017-00033
REPORTS	)	

ORDER

KRS 278.230(3) directs every utility, when required by the Commission, to file with it any report or other information that the Commission reasonably requires. 807 KAR 5:006, Section 4(2), requires every utility to file with the Commission, on or before March 31 of each year, a financial and statistical report of its utility operations for the preceding calendar year on forms furnished by the Commission. KRS 278.140 requires each utility to file, on or before March 31 of each year, a report of its gross earnings or receipts derived from intrastate business for the preceding calendar year. KRS 278.990 provides penalties for utilities that fail to file the required reports.

Red Barn Waste Management, LLC ("Red Barn") owns, controls, operates, and manages facilities in the Commonwealth of Kentucky which are used for and in connection with the collection, transmission, or treatment of sewage for the public for compensation. It is, therefore, a utility subject to Commission jurisdiction.<sup>1</sup>

KRS 278.990(1) states that any utility which willfully violates any provision of KRS Chapter 278 or any Commission regulation shall be subject to a civil penalty not less than \$25.00 and not more than \$2,500.00.

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<sup>1</sup> KRS 278.010(3)(f).

According to Commission records, Red Barn has yet to file its annual reports for the 2011, 2012, 2013, 2014, and 2015 calendar years and its gross operating reports for the 2011, 2012, 2014, and 2015 calendar years. The absence of these reports is *prima facie* evidence that Red Barn willfully failed to comply with KRS 278.230(3).

The Commission initiated a similar action against Red Barn on October 11, 2011, for failing to file its annual reports and gross operating reports for the 2008, 2009, and 2010 calendar years.<sup>2</sup> In Case No. 2011-00347, the Commission, after a hearing at which Red Barn did not appear, assessed Red Barn a penalty of \$2,500.00.<sup>3</sup> As of the date of this Order, Red Barn has not paid that penalty.<sup>4</sup>

IT IS THEREFORE ORDERED that:

1. Red Barn file with the Commission, no later than February 24, 2017, its gross operating reports for the 2011, 2012, 2014, and 2015 calendar years and its annual reports for the 2011, 2012, 2013, 2014, and 2015 calendar years.

2. Red Barn shall appear on March 28, 2017, at 10:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, for the purpose of showing cause why it should not be subjected to the penalties of KRS 278.990 for its failure to comply with KRS 278.140 and 278.230(3).

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<sup>2</sup> PSC Case No. 2011-00347, *Investigation of the Failure of Red Barn Waste Management, LLC to File Required Reports*, (Ky. PSC Oct. 11, 2011).

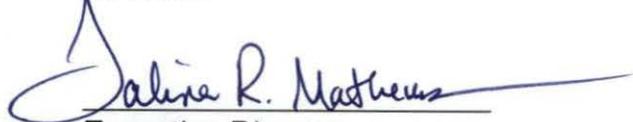
<sup>3</sup> *Id.*, Order entered Dec. 21, 2011.

<sup>4</sup> Attached as an Appendix to this Order.

By the Commission

ENTERED  
FEB 06 2017  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:



Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2017-00033 DATED **FEB 06 2017**

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION OF THE FAILURE OF RED )  
BARN WASTE MANAGEMENT, LLC TO FILE ) CASE NO. 2011-00347  
REQUIRED REPORTS )

ORDER

On October 11, 2011, the Commission ordered Red Barn Waste Management, LLC ("Red Barn") to show cause why it should not be penalized for failing to comply with KRS 278.140 and KRS 278.230(3). A hearing in this matter was held on October 27, 2011. No representative appeared on behalf of Red Barn.

Having reviewed the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. Red Barn is a Kentucky limited liability company that owns, controls, operates, and manages facilities which are used for and in connection with the collection, transmission, or treatment of sewage for the public for compensation. It is therefore a utility subject to Commission jurisdiction.<sup>1</sup>

2. KRS 278.230(3) directs every utility, when required by the Commission, to file with it any report or other information that the Commission reasonably requires.

3. 807 KAR 5:006, Section 3(1), requires every utility to file with the Commission, on or before March 31 of each year, a financial and statistical report of its utility operations for the preceding calendar year on forms furnished by the Commission.

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<sup>1</sup> KRS 278.010(3)(f).

4. KRS 278.140 requires each utility to file, on or before March 31 of each year, a report of its gross earnings of receipts derived from intrastate business for the preceding calendar year.

5. On or about December 15, 2008, the Commission mailed to Red Barn, at its address of record, the Commission's standard form for the annual financial and statistical report, two copies of the Commission's standard form for report of gross earnings derived from intrastate business, and a letter of instruction to complete the forms for the 2008 calendar year operations.

6. On or about December 15, 2009, the Commission mailed to Red Barn, at its address of record, the Commission's standard form for the annual financial and statistical report, two copies of the Commission's standard form for report of gross earnings derived from intrastate business, and a letter of instruction to complete the forms for the 2009 calendar year operations.

7. On or about December 15, 2010, the Commission mailed to Red Barn, at its address of record, the Commission's standard form for the annual financial and statistical report, two copies of the Commission's standard form for report of gross earnings derived from intrastate business, and a letter of instruction to complete the forms for the 2010 calendar year operations.

8. As of April 1, 2011, Red Barn has not filed the required reports for the 2008, 2009, or 2010 calendar year operations nor requested an extension of time in which to make such filing.

9. As of the date of this Order, Red Barn has not filed an annual financial and statistical report for its 2008, 2009, or 2010 calendar year operations.

10. As of the date of this Order, Red Barn has not filed a report of gross earnings derived from intrastate business for its 2008, 2009, or 2010 calendar year operations.

11. Where the act which a utility is required to do is merely clerical in nature, willfulness or deliberate intent can be inferred from the fact of noncompliance.<sup>2</sup>

12. Red Barn has willfully failed to comply with KRS 278.140.

13. Red Barn has willfully failed to comply with KRS 278.230(3).

14. KRS 278.990(1) provides that any utility that willfully violates any provision of KRS Chapter 278 or any regulation promulgated pursuant to KRS Chapter 278 or fails to perform any duty imposed upon it under those sections shall be subject to a civil penalty not less than \$25 and not more than \$2,500.

15. Red Barn should be assessed a penalty of \$2,500 for its willful failure to comply with KRS 278.140 and KRS 278.230(3).

IT IS THEREFORE ORDERED that:

1. Red Barn is assessed a penalty of \$2,500 for its willful failure to comply with KRS 278.140 and KRS 278.230.

2. Red Barn shall pay the assessed penalty within 14 days of the date of this Order. Payment shall be made by certified check or money order made payable to "Kentucky State Treasurer" and shall be mailed or delivered to the Office of General Counsel, Kentucky Public Service Commission, 211 Sower Boulevard, P. O. Box 615, Frankfort, Kentucky 40602-0615.

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<sup>2</sup> See *Re Dyke Water Company*, 55 PUR3d 342 (Cal. P.U.C. 1964).

3. Within 20 days of the date of this Order, Red Barn shall file with the Commission completed sewer annual financial and statistical reports for its 2008, 2009, and 2010 calendar year operations and completed reports of gross earnings derived from intrastate business for its 2008, 2009, and 2010 calendar year operations.

By the Commission



ATTEST:

Executive Director

Case No. 2011-00347

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