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July 14, 2009

David A. Koenig, Esq.
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Re: Termination of Water Service

PSC STAFF OPINION 2009-006

Dear Mr. Koenig:

Commission Staff acknowledges receipt of your request for an opinion on a water district's authority to terminate water service for a customer's failure to pay an assessment owed to a sanitation district for the extension of sanitary sewer facilities.

Commission Staff understands the facts to be as follows:

Boone County Water District ("Boone District"), a water district organized pursuant to KRS Chapter 74, owns and operates facilities that distribute water to approximately 22,843 customers in Boone County, Kentucky.¹

Sanitation District No. 1 of Northern Kentucky ("SDNK1"), a sanitation district organized pursuant to KRS Chapter 220, owns and operates facilities that provide waste water and storm water services to Boone, Campbell and Kenton Counties.

KRS 220.380 authorizes SDNK1 to issue bonds and to assess property owners using the procedures set forth in KRS 107.010 to 107.220 to finance the construction of sanitary sewer extensions to unserved areas.

Under this statutory authority and internally developed procedures, a copy of which is attached to this opinion, SDNK1 determines the total cost of an extension project, including engineering, legal, and licensing fees; construction material and equipment costs; construction management costs; easement and land acquisition costs; and interest and

¹ *Annual Report of Boone County Water District to the Kentucky Public Service Commission for the Calendar Year Ended December 31, 2008* at 5, 27.

financing costs. It then apportions this cost to the owners of all properties that the construction serves or otherwise benefits. This apportionment process includes a public hearing, a vote of affected property owners, and reviews of the proposed project and assessment methodology by SDNK1's Board of Directors and the county judge/executive.

After a final determination of the assessment amount is made for each lot or parcel to be served, the property owner may make a lump sum payment within 90 days of receipt of notice of the assessment. Those property owners that do not make a lump sum payment are subject to annual assessments to finance assessment bonds or another form of debt financing for the project. If SDNK1 does not use third party financing for the balance of the construction costs, it may impose a surcharge pursuant to KRS 220.515 to collect unpaid assessments. Regardless of the method used, SDNK1 has a lien upon the assessed properties in an amount equal to the unpaid balance.

Boone District currently discontinues water service to any of its customers that fail to pay their bills for sewer service to SDNK1 when SDNK1 directs such action. Boone District has complied with such requests in accordance with KRS 220.510.

Boone District reports that SDNK1 previously issued monthly statements related to unpaid assessments separately from its monthly bills for sewer service. It has reason to believe that SDNK1 is transferring charges for unpaid monthly assessments to customers' monthly sewer bill. If a customer fails to pay the assessment charge, Boone District reports, SDNK1 is requesting the discontinuance of water service.

Your letter presents the following question: May a public water utility terminate water service for a customer's failure to pay a monthly assessment owed to a sanitation district for sanitary sewer extension?

Commission Regulations clearly limit a public utility's right to discontinue for a customer's nonpayment for non-utility service. 807 KAR 5:006, Section 14(1) provides:

A utility may refuse or terminate service to a customer only under the following conditions . . .

(f) For nonpayment of bills. A utility may terminate service at a point of delivery for nonpayment of charges incurred for utility service at that point of delivery; however, no utility shall terminate service to any customer for nonpayment of bills for any tariffed charge without first having mailed or otherwise delivered an advance termination notice which complies with the requirements of Section 13(5) of this regulation.

The regulation permits a utility to discontinue service only for nonpayment of charges for the services that it provides. The Commission has permitted deviations from this regulation only in very limited circumstances.²

Notwithstanding this regulation, public water utilities must under certain circumstances discontinue a customer's water service when a customer fails to pay his bill for sewer service and his sewer service supplier requests discontinuance of the customer's water service. KRS 96.934 provides that a water supplier "shall discontinue water service" to a premises for a customer's failure to pay sewer service charges when the governing body of municipal sewer facilities identifies the delinquent customer and notifies the water supplier to discontinue water service. Similar statutory provisions exist for sewer construction districts,³ metropolitan sewer districts,⁴ and joint sewer agencies.⁵ To the extent that these statutes conflict with 807 KAR 5:006, Section 14, they control.⁶

KRS 220.510(1) places a similar obligation upon public water utilities whose customers receive sewer service from a sanitation district. It provides:

The board of directors shall, by resolution, determine the rates and compensation or rentals to be charged for the use of the sanitary works. The board of directors may provide for a sewer service charge to be imposed and collected, beginning at the time the plan for the improvement has been approved by the Environmental and Public Protection Cabinet and work is begun on plans and specifications for the improvement. The rates shall at all times be reasonable, taking into account the cost of the works, the cost of operation and maintenance, and the amount necessary for the amortization of the bonds issued to finance the works. The same schedule of rates and charges shall apply to all users of the same class. The rates shall be binding upon all users of the system. The board may alter and revise the rates in its discretion. **In case of failure of any user to pay for services rendered, the board may** compel payment and may enjoin further use until the payment is made, or it may institute an action in any court having jurisdiction for the recovery of charges for services rendered, or the board may, by a notice in writing, signed by its chairman or any member of said board, **notify the municipality, or person, firm, or corporation, which furnishes water to the user's premises, to shut**

² *Boone County Water and Sewer District*, Case No. 91-428 (Ky. PSC Apr. 4, 1991) (holding that a water and sewer district may discontinue water service for a customer's failure to pay bills incurred for sewer service that the district also provided); *Collection and Billing Practices of Privately-Owned Sewer Utilities*, Administrative Case No. 347 (Ky. PSC Jan. 9, 1995).

³ KRS 76.368.

⁴ KRS 76.090; KRS 76.640.

⁵ KRS 76.090; KRS 76.231(3).

⁶ *Kentucky-American Water Company*, Case No. 95-238 (Ky. PSC Jun. 30, 1995); *Hendron Water District*, Case No. 2004-00376 (Ky. PSC Dec. 12, 2004).

off the water service to said user's premises, until such time as all delinquent charges, plus a reasonable charge for turning off and on the water service, against said user, are paid in full. Upon receipt of such notice in writing, the municipality, or the person, firm, or corporation, which furnishes water to the said user's premises shall immediately shut off and discontinue the water service to the said user's premises. Upon full payment of such account, plus a reasonable charge for turning off and on the water service, the chairman, or any member of said board, shall notify the said municipality, person, firm, or corporation, which furnishes water to said user, that the account is paid in full, including such reasonable charge for turning off and on the water service, and that the said water service can again be provided to said user's premises. The board of directors shall promptly pay to such municipality, person, firm, or corporation, such fee or charge collected for turning off and on such water service. The board may enter into contracts with public corporations or other large users of sewer services. The board may provide by resolution any provisions and stipulations it deems necessary for the administration of the revenue of the district, and for the security of the bondholders. [Emphasis added.]

Clearly this statute requires Boone District to terminate water service to any customer that fails to pay SDNK1 for sewer service charges.

Based upon its review, Commission Staff is of the opinion that KRS 220.510(1) does not require a public water utility to terminate water service for unpaid charges related to an assessment for the construction of an extension made pursuant to KRS 220.515. KRS 220.510(1) refers to "services rendered," which suggests sewage or sanitary sewer services.⁷ Assessments relate specifically to the cost of facilities, not the provision of sewer service. Both KRS 220.380 and KRS 220.515, which authorize SDNK1's assessment procedures, refer to the cost of "sanitary works" or "facilities" to be acquired or constructed. KRS 220.515, moreover, expressly distinguishes charges that a sanitation district assesses under that statutory provision from those assessed for service under KRS 220.510. Such charges are assessed "in addition to the charge authorized by KRS 220.510."⁸

The legislative history of KRS Chapter 220 and Chapter 76 supports this conclusion. KRS 220.510 was enacted in 1940.⁹ The provisions related to

⁷ See *City of Covington v. Sanitation District No. 1 of Campbell and Kenton Counties*, 301 S.W.2d 885, 890 (Ky. 1957) ("The sewer service contemplated to be given the sewer user in consideration of the charge imposed upon him is being rendered. The sewage is in fact being removed from the premises of the various users. The interceptors, trunks, lifts, and pumps are all in operation.")

⁸ KRS 220.515 also authorizes "a finance charge not to exceed 10 percent" for unpaid assessments. This provision would be unnecessary if these assessments were considered as charges for sewer service. SDNK1, for example, had been assessing a finance charge on 10 percent on any unpaid bills for sewer service since on or before February 10, 1986. See, e.g., *Sanitation District No. 1 of Campbell and Kenton Counties*, PSC No. 1, 3rd Revised Sheet No. 1.

⁹ 1940 Ky.Acts 563.

discontinuance of water service were added to KRS 220.510 in 1948.¹⁰ In 1966 the General Assembly enacted KRS 220.595¹¹ and specifically provided that delinquent assessment payments owed for sanitation construction district¹² could serve as the basis for discontinuance of water service:

The district is granted the same authority relative to the cutting off of the water supply of its delinquent users within a construction subdistrict as is contained in KRS 220.510 relative to other territory under the jurisdiction of the district. **Delinquents include persons or users who have failed to make timely payment of any assessment authorized by KRS 220.553 to 220.613, or any payment required by KRS 220.591** [emphasis added].

A separate authorization for termination of delinquent assessment payments would not have been necessary if the General Assembly interpreted the phrase "pay for services rendered" as used in KRS 220.510 as including the payment of assessments for improvements or extensions.¹³

In 1976 the General Assembly authorized metropolitan sewer districts to use the procedures set forth in KRS 107.010 to 107.220 to construct wastewater collection projects.¹⁴ Although KRS 76.090 already authorized the termination of water service to any metropolitan sewer district customer who failed to pay "sewer rates, rentals, or charges for services,"¹⁵ the General Assembly enacted KRS 76.640 to expressly authorize such district to enforce the payment of assessments for such projects by directing the termination of water service. When in 1994, the General Assembly conferred upon sanitation districts the authority to use the procedures set forth in KRS Chapter 107,¹⁶ it did not similarly provide that a customer's failure to make a timely

¹⁰ 1948 Ky.Acts 301.

¹¹ 1966 Ky.Acts 493.

¹² A construction subdistrict is a subunit of a sanitation district. It is created to pay for the construction of facilities that are intended to benefit and serve only the territory within the subdistrict. The construction cost of these facilities is borne only by the residents of the subdistrict and not by other residents of the sanitation district.

¹³ See *White v. Commonwealth*, 178 S.W.3d 470, 482 (Ky. 2005) ("We endeavor to read statutes so as to avoid redundancy. This approach to statutory construction is necessary because the "result [of allowing the redundancy] violates the 'universal rule ... that in construing statutes it must be presumed that the Legislature intended *something* by what it attempted to do.") (citations omitted). Further evidence that the Legislature did not intend "payment for services rendered" to include assessment payments is found in KRS Chapter 76, which deals with metropolitan sewer districts. KRS 76.090 requires a water supplier to discontinue water service to any customer who becomes delinquent in his payment of "sewer rates, rentals, or charges for services."

¹⁴ 1976 Ky.Acts (Ex. Session) 38-51.

¹⁵ KRS 76.090(4).

¹⁶ 1994 Ky.Acts Ch. 490, §4.

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payment of an assessment was grounds for discontinuance of the customer's water service. It also failed to make such provision in 1998 when it enacted KRS 220.515 which provided for a separate rate to recover the cost of constructed or acquired facilities.¹⁷ This failure also suggests a legislative intent to withhold from sanitation districts the remedy of discontinuance of water service for nonpayment of assessments.

As KRS 220.510 does not authorize the discontinuance of water service for a customer's failure to pay a sanitation district assessment, no statutory basis for discontinuance of water service exists and 807 KAR 5:006, Section 14, is controlling. Boone District, therefore, may not terminate a customer's water service for a delinquent assessment made pursuant to KRS 220.515.¹⁸

Under the present circumstances, Commission Staff recommends that before discontinuing water service to any customer based upon a termination notice from SDNK1 for delinquent payments, Boone District should receive written assurance from SDNK1 that the delinquent payments are not solely related to an assessment for an extension or improvement made pursuant to KRS 220.515. If Boone District wishes to discontinue water service to a customer based solely on the customer's failure to pay to SDNK1 such assessment, it should seek a deviation from 807 KAR 5:006, Section 14.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Gerald Wuetcher, Executive Advisor, at (502) 564-3940, Extension 259.

Sincerely,



Jeff Derouen
Executive Director

Enclosure

¹⁷ 1998 Ky.Acts Ch. 234 §1.

¹⁸ Boone District is required to terminate service for delinquent subdistrict assessment payments. See KRS 220.595.

**SANITATION DISTRICT NO. 1
GUIDELINES AND PROCEDURES FOR
EXTENSION OF SANITARY SEWER FACILITIES
INTO PREVIOUSLY UNSERVED AREAS THROUGH
THE ASSESSMENT OF COSTS TO PROPERTY OWNERS**

I. INTRODUCTION

Sanitation District No. 1 (hereinafter, the "District") is governed by the provisions of Kentucky Revised Statutes (KRS) Chapter 220 and other statutes incorporated therein, including KRS Chapter 107. The provisions of KRS Chapter 220 authorize the District to extend sanitary sewer facilities to previously unserved areas at the request of those to be directly served by such facilities. Pursuant to the provisions of KRS 220.380(2), the District is authorized to utilize the procedures delineated in KRS Chapter 107 for financing the construction of extensions to sanitary sewer facilities.

These guidelines are intended to implement the provisions of KRS 220.380(2) and KRS Chapter 107 and to serve as guidance for the Board of Directors of Sanitation District No. 1 (hereafter, the "Board"), Management of the District and the public at large when the Board elects to extend sanitary sewer facilities into previously unserved areas and to equitably assess the costs of such improvements to the owners of lots or parcels directly served thereby. This process will generally be used in existing communities and neighborhoods or developments lacking centralized sanitary sewer facilities or served by inadequate sanitary sewer facilities or onsite disposal systems.

II. PROJECT INITIATION PROCESS

In general, the District shall use these guidelines to assess the costs of sanitary sewer facilities to be installed under the following circumstances:

- Where the District is directed by the Kentucky Department for Environmental Protection, Division of Water, court order or similar mandate to serve the area in question because of real or potential health and/or environmental problems; or
- Where the District receives a petition requesting sanitary sewer services from the District, signed by two-thirds of the owners of lots or parcels to be directly served by the proposed extension(s) of District sanitary sewer facilities where such lot or parcel owners are subject to payment of assessment costs for such extension(s).
- Such other circumstances as the District believe will serve the public interest.

III. ASSESSMENT PROCESS

Where additional District sanitary sewer facilities are proposed by those lot or parcel owners to be directly served thereby, the owners of two-thirds of the lots or parcels¹ to be directly served or duly elected representatives of the County or City in which such parcels are located shall petition the District to extend District sanitary sewer facilities to the area proposed. Preliminary discussions between any community or neighborhood and representatives of the District are permitted without the necessity of a petition. The District will accept and consider all such written petitions and shall forward such petitions to the

¹ For purposes of this policy, a single lot or parcel shall consist of an area of land described in a separate and distinct deed of record in the County Court Clerk's office which is the subject of a separate and distinct tax bill.

designated District staff person(s) for preliminary evaluation and response including, but not limited to, (1) ascertaining the precise boundary of the area to be served by the proposed extension(s) and (2) where applicable, determining whether the petition contains the signatures of two-thirds of the owners of the lots or parcels to be directly served by the proposed extension(s) of District sanitary sewer facilities.

A. Sanitation District staff will coordinate and meet with petitioners, as necessary, to initially determine the feasibility of the proposed project.

B. The District staff will then prepare and deliver to the Board a written report summarizing the circumstances and feasibility of the petition and recommending that the petition be either rejected, withdrawn or accepted for further study. After Board review of said staff report concerning the feasibility of the proposed project, the Board may accept or reject the recommendations of the staff or request additional information. If five (5) of seven (7) Board members vote to accept the petition for further study, the Board will authorize Sanitation District staff to prepare a non-binding cost estimate of the cost of the proposed facilities to each lot or parcel owner proposed to be served thereby and a nonbinding estimate of the cost of the Preliminary Engineering Report and communicate the amount thereof to Petitioners. District staff will also inform those persons signing the initial petition that the District will require persons whose family income is above applicable Federal poverty guidelines to advance 50 percent of the cost of the Preliminary Engineering Report. The amount advanced by each lot or parcel owner toward the cost of the Preliminary Engineering Report shall be deducted from the

Guaranteed Maximum Assessment applicable to such lot or parcel owner in the event the project is undertaken and completed. If District staff determine that the Petitioners or any of them, are willing to advance 50 percent of the cost of the Preliminary Engineering Report, District staff will prepare or have prepared a Preliminary Engineering Report which will encompass the following objectives:

1. **Identify the Specific Area and Each of the Lots or Parcels to be Directly Served by the Proposed Extension of Sanitary Sewer Facilities.** For purposes of these guidelines, the phrase "lots or parcels to be directly served by the proposed extension of sanitary sewer facilities" includes those developed and undeveloped lots or parcels (as well as those publicly owned and/or normally tax exempt properties, to the extent permitted by law) which are to be served by those sewers. Only one (1) lateral connection shall be allowed for each lot or parcel to be directly served. Further, the costs of construction and connection of lateral sewers from District line wyes to building plumbing will be the responsibility of individual property owners and not the District.

2. **Determine the Total Estimated Cost of the Project.** The amount to be assessed against all lots or parcels directly to be served by proposed extension of sanitary sewer facilities will include the following project related costs:

- Fees for engineering services, including geotechnical engineering;
- Fees for all related legal services;
- Fees for permits, licenses, performance bonds, payment bonds or other

approvals and instruments usually associated with sewer facility construction, including applicable Capacity Connection Fees as authorized by Section 811 of the Rules and Regulations of Sanitation District No. 1;²

- Costs for facility construction, including all labor, materials and equipment necessary for the completion of construction, including materials or equipment purchased directly by the District for use in the project;
- Fees for construction, inspection and construction management;
- Costs for easements and land acquisition and surveys, special assessments as provided in KRS 107.130 and any related costs;
- Costs related to issuance of bonds, if any;
- Capitalized interest and interest on funds borrowed to finance the project, as specified in KRS Chapter 107; and
- Other project related costs as may be authorized by applicable statutes.

3. **Determine the Proposed Assessment Methodology.** The assessment costs shall be based upon the costs to serve the lots or parcels to be directly served by the proposed extension(s) of sanitary sewer facilities. The staff of the District may recommend that the Board adopt a First Resolution incorporating

² In the event the owner of an undeveloped lot or parcel to be directly served by the proposed extension of sanitary sewer facilities does not wish to have his/her Guaranteed Maximum Assessment include the applicable Capacity Connection Fee in effect at time the Guaranteed Maximum Assessment is calculated, such owner shall pay the applicable Capacity Connection Fee at the time he/she makes application for the building sewer connection permit applicable to such lot or parcel which is required by Section 811 of the Rules and Regulations of Sanitation District No.1

one (1) of the following assessment methodologies:

a. If the staff of the District determine that groups of, or all of, the lots or parcels to be directly served by the proposed extension(s) of sanitary sewer facilities will be affected or benefitted in substantially the same manner and to substantially the same degree, the Board may adopt such determination of the staff as a finding of fact and classify such lots or parcels into one (1) or more assessment zones based upon the similarity of the benefits of the proposed extension(s) to the lots or parcels to be directly served thereby. If the Board has determined that all lots or parcels within an assessment zone are substantially equally benefitted, the same assessment levy shall be made against each lot or parcel within each classified assessment zone; or

b. If the staff of the District determines that all lots or parcels situated within the area to be served, as identified in the Preliminary Engineering Report, will not receive substantially equal benefits from the proposed project, the Board may adopt such determination as a finding of fact and thereafter assess such lots or parcels based upon the relative assessed valuation of each lot or parcel (land only) as it relates proportionately to the aggregated assessed land valuation of all lots or parcels within the area to be served by the proposed extension(s) of District sanitary sewer facilities as shown by the records upon which city or county taxation may be based.

Where there is no such record, as in the case of public property or property owned by religious, charitable or educational institutions, such property (except that owned by the United States Government) shall be specially assessed, to the extent permitted by law, by the proper assessing officers and for such special assessment, reasonable compensation may be made. Any such special assessment shall be subject to all procedures for equalization and judicial review as may be provided by law in connection with ordinary assessments.

Prior to assessing any lots or parcels owned by any public entity, District staff shall employ the notification procedures embodied in KRS 107.140, where applicable. Whichever method of assessment is selected, it shall be used both initially, when lot or parcel owners pay improvement benefit assessments in a lump sum, and subsequently, during each annual period in which project bonds are outstanding if a lump sum payment is not paid.

4. **Determine the Guaranteed Maximum Assessment.** It shall be the purpose of this policy to treat all developed and undeveloped lots or parcels within the project area equitably and to assign the lowest equitable guaranteed maximum assessment cost to each and all such lots or parcels.

The amount determined by the District to be assessed against each lot or parcel to be directly served by the proposed extension(s) of District sanitary sewer facilities shall constitute a **Guaranteed Maximum Assessment**. The **Guaranteed**

Maximum Assessment shall be such that the total costs assessed equals the assessable project costs based upon the Preliminary Engineering Report.

The actual assessment amount for any lot or parcel to be directly served by the proposed extension(s) of District sanitary sewer facilities shall not exceed the **Guaranteed Maximum Assessment** for the assessment zone in which that property is located. All **Guaranteed Maximum Assessments** shall be approved by the Board based upon the preconstruction costs estimate described in the Preliminary Engineering Report and shall be furnished to the respective owners of the lots or parcels to be assessed. When actual construction costs as determined from public bids exceed preconstruction estimates, the District may, at its sole option, (1) reject said bids and rebid the project or (2) go forward with the project with the District paying the cost overrun(s) on the project.

If the actual construction costs as determined through public bids are less than the preconstruction estimate from which the **Guaranteed Maximum Assessment** was calculated, an assessment figure based upon the lower actual project costs will be calculated and owners of lots or parcels to be directly served by the proposed extension of District sanitary sewer facilities will be assessed the lesser sum.

5. **Describe the Proposed Method of Financing the Project to the Extent Necessary.**

IV. Board and Public Approval Process

A. The Preliminary Engineering Report, encompassing those determinations discussed in III.B.1-5 above, will be presented to the Board in the form of a First Resolution. Upon the approval of five (5) of the seven (7) Board members, the First Resolution will be approved and published.

In the First Resolution, the Board shall adopt an Assessment Methodology from among those described in III.B.3. above.

B. Public Hearing.

The First Resolution shall also provide for a public hearing at a time and place not less than a week after publication of the First Resolution in the manner provided in KRS Chapter 424, which publication shall give notice that, at the hearing, any owner of lots or parcels to be directly served by the proposed extension(s) of District sanitary sewer facilities may appear and be heard as to (1) whether the proposed project should be undertaken or abandoned; (2) whether the nature and scope of the proposed project should be altered; or (3) whether the chosen Assessment Methodology should be altered. The First Resolution may designate the person(s) to preside at and conduct such public hearing. Such presiding person(s) shall make or cause to be made reasonable notes and minutes of the public hearing and shall submit same at a subsequent, regularly scheduled meeting of the Board for review and consideration. Any owner of a lot or parcel to be

directly served by the proposed extension(s) of District sanitary sewer facilities may be heard at the public hearing in person, or by representative, and may submit any written statement in support of, or objecting to, any aspect of the proposed extension(s). All such written statements shall be attached to or included in, the written report of the hearing.

C. Property Owner Vote.

Notwithstanding the submission of any written statements at the public hearing, as soon as practicable after the conclusion of the public hearing, the District shall send, by certified mail, written ballots to the owners of all lots or parcels to be directly served by the proposed extension(s) of District sanitary sewer facilities. Such ballots shall request the owners of such lots or parcels to be directly served (a) to vote in favor of, or against, the proposed extension(s) of District sanitary sewer facilities described in the First Resolution and (b) to return such ballots within seven (7) days of their respective receipt from the District.

D. Board Approval and Second Resolution.

If more than fifty(50) percent of the property owners, both in numbers of lots or parcels and in aggregate assessed values (land only) of the properties to be benefitted by the proposed extension(s) of District sanitary sewer facilities, cast votes in opposition to the proposed project within seven (7) days of their receipt of ballots, the Board shall then have the right (a) to adopt a resolution abandoning the project or (b) to nevertheless go forward with the proposed project but only if five (5) or more of eight (8) Board members vote in favor of said project. In the case of proposed extensions of District sanitary sewer

facilities where it is alleged that such extension is necessary to help alleviate health concerns, the Board members may consider a letter from the Northern Kentucky District Health Department in determining whether or not to go forward with the proposed project where more than fifty (50) percent of the property owners, both in numbers of lots or parcels and in aggregate assessed values (land only) of the properties to be benefited by the proposed extension cast votes in opposition to the proposed project.

However, upon the receipt of sufficient, timely ballots confirming that fewer than fifty(50) percent of the property owners, both in numbers of lots or parcels and in aggregate assessed values (land only) of the properties to be benefitted by the proposed extension(s) of District sanitary sewer facilities object to the proposed project, the Board may, at its next regularly scheduled meeting or at a special Board meeting, consider a Second Resolution providing for the undertaking of the proposed project in the manner described in the First Resolution. At such Board meeting, owners of lots or parcels to be directly served by the proposed extension(s) of District sanitary sewer facilities may again be heard, in person or by a representative, after which the Board may adopt a Second Resolution. In the alternative, the Board may adopt another resolution providing for the abandonment of the project or altering the nature and scope of the proposed project. In the event the scope or nature of the proposed project is altered during the review and approval process, a new Preliminary Engineering Report shall be prepared and the Board and public approval process described above shall be repeated. **In all cases where property owner ballots are cast, the District shall count a property owners' failure to cast a timely ballot as**

a vote in favor of the project.

In the event that the Board adopts a Second Resolution approving the proposed extension(s) of District sanitary sewer facilities in the manner described in the First Resolution, the Board shall then request the approval of the Second Resolution by the County Judge/Executives pursuant to KRS 220.035.

E. Preparation of Bid Documents.

Simultaneously with the Board seeking the approval of the County Judge/Executive(s), the Board shall direct the staff to prepare final engineering design and bid documents.

F. Thirty (30) Day Remonstrance Period.

Any owner of a lot or parcel to be directly served by the proposed extension(s) of District sanitary sewer facilities may, within thirty (30) days after passage and publication of the Second Resolution, (1) file a legal action in the circuit court of the county in which the project is located seeking relief against such proposed project by declaratory judgment, injunction or otherwise in the manner contemplated by KRS 107.060 or (2) file a notice of intent to file such an action in the manner provided in KRS 107.060(1)(b), in which case the time for filing such an action shall be extended by fifteen (15) days. In the case of the filing of such an action or notice of intent to file such an action, all actions of the District with respect to such proposed extension of District sanitary sewer facilities shall be abated until final determination of the controversies presented thereby. In the absence of such legal actions or notices of intent being filed by any owner

of a lot or parcel to be directly served by the proposed extension(s) of District sanitary sewer facilities, the provisions of the Second Ordinance shall be final and binding after approval of the County Judge/Executive(s) and after the lapse of thirty (30) days from the date of passage of the Second Resolution, after which all legal actions by owners of lots or parcels to be directly served by the proposed extension(s) of District sanitary sewer facilities shall be forever barred.

G. Bid Letting and Approval Process.

After the expiration of the thirty (30) day period during which the owners of lots or parcels may file legal actions in circuit court objecting to the proposed project, a request for bids for the construction of the proposed project shall be publicly issued by the District seeking competitive, sealed bids after advertisement, by publication, pursuant to KRS Chapter 424. The request for bids shall specify that there will only be one (1) lateral connection allowed for each lot or parcel to be directly served by the proposed extension(s) of District sanitary sewer facilities and that the costs of (a) construction of the private lateral sewer(s) and (b) connecting the lateral sewer(s) to building plumbing on the respective lot(s) or parcel(s) to be directly served, will be at the sole expense of the individual lot or parcel owner(s). The District shall select a bid for the proposed improvements that conforms to the requirements of KRS 424.260. Upon acceptance by the District of a bid, the actual amount of each lot or parcel owner's assessment, not to exceed the **Guaranteed Maximum Assessment**, shall be computed. All contracts awarded following the acceptance of bids shall be supported by a performance bond for the full amount

thereof with good corporate surety to be approved by the Board.

V. PAYMENT OF ASSESSMENTS AND PROJECT FINANCING

After final determination of the actual assessment amount for each lot or parcel to be directly served by the proposed extension(s) of District sanitary sewer facilities, owners of such lots or parcels are to be notified of their assessments in writing by certified mail. Owners may then pay to the District the amount levied in full within ninety (90) days of receipt of said notice. Owners of benefited properties whose family income falls below applicable Federal poverty level guidelines, may elect to defer payment of the amount levied until such time as said property is conveyed by any means, at which point the District shall be entitled to receive the full amount levied, without interest, at the closing during which such conveyance takes place. In the event persons falling below applicable Federal poverty level income guidelines elect to undertake deferral of payment of the amount levied in this fashion, consistent with KRS 107.160, the District shall have and record a lien attaching to each lot or parcel of benefitted property upon which payment is deferred by owners whose income falls below applicable Federal poverty level income guidelines. Such lien shall attach to such benefited property as the same is described by the owner's deed of record in the County Clerk's office at the time of the publication of the first Resolution, as herein provided, and thereupon shall take precedence over all other liens, whether created prior to or subsequent to the publication of said Resolution, except State and County taxes, general municipal taxes, and prior improvement taxes and shall not be defeated or postponed by any private or judicial sale, by any mortgage, or by any

error or mistake in the description of the property or in the names of the property owners. No error in the proceedings of the District shall exempt any benefited property from the lien for the improvement assessment, or from the payment thereof, or from any other obligation as provided in KRS Chapter 107. If, during any years prior to closing, the Owner's family income shall have exceeded 125% , the Owner show the responsible for paying, at closing, interest accrued during any such years, such interest to be levied at the rate charged by the District during such years.

In determining the apportionment of individual costs for purposes of allowing the owners of benefitted lots or parcels the privilege of paying such assessment levied in full on a lump sum basis, the District shall exclude (1) amounts required for the creation of the debt service reserve fund, (2) capitalized interest cost, (3) any bond discount which the District may allow in connection with the sale of bonds to provide funds for the cost of construction not paid initially by the owners of benefitted lots or parcels on a lump sum basis, and (4) any costs advanced to extend private service lateral lines to properties owned by persons whose family income is below applicable Federal poverty level guidelines. Further, in calculating the assessment amounts to be paid by each respective lot or parcel owner on a lump sum basis, the District shall take into account the amount of interest the lump sum payment may earn and accrue in a trust account required to be maintained for such lump sum payments between the time of the owners' payment and the time when construction of the collector line portion of the project is completed and ready for use for the assessed property. The District shall then reduce the amount of lump sum

payment accordingly. The written assessment statement shall advise owners that, if the owners do not elect to pay the District sanitary sewer facility assessment in full within the period of ninety (90) days of receipt, the District may issue bonds, pursuant to the provisions of KRS Chapters 107, for the purpose of providing funds for the cost of construction of the project, including the debt service reserve fund if paid from bond proceeds, capitalized interest expense, and any bond discount, together with all other costs, as such terms are defined in KRS Chapter 107. The owners of the lots or parcels to be directly served by the proposed extension(s) of the District sanitary sewer facilities shall also be advised in writing that such bonds, if issued, and interest on said bonds shall be amortized over the annual installment payments of the assessment, as approved in the Second Resolution, to be levied against all lots or parcels to be directly served by such District sanitary sewer facilities for which lump sum payments have not been paid in full.

At the conclusion of the ninety (90) day period for the lump sum payment of assessments, the aggregate principal amount of assessments paid in full shall be deposited in an escrow account used solely and exclusively to pay the costs of construction of the project. The balance of the project costs to be financed shall then be calculated.

Thereafter, in the event the Board elects to finance the balance of the project costs through third party financing, the Board shall adopt and publish a Third Resolution authorizing the issuance of assessment bond(s) or other form of debt financing. This resolution shall in all respects conform to the provisions of KRS 107.080-220, including

providing for annual assessments on lots or parcels to be directly served which have not yet paid the lump sum amount in full. In the event that bonds are authorized pursuant to the Third Resolution adopted by the Board pursuant to KRS 107.090, the bond sale shall be advertised and the bonds sold pursuant to the provisions of KRS 107.090-220. All funds required to be maintained and segregated pursuant to such statutory provisions shall be maintained and segregated and mechanisms shall be established pursuant to said provisions to retire the debt obligated by such bonds through the appropriate management of annual assessment revenues.

In the event that the District elects not to undertake third party financing for the balance of construction costs, the District may advance sufficient funds to complete the project and collect any unpaid Guaranteed Maximum Assessments in the manner authorized by KRS 220.515, the amount of which shall constitute a lien, pursuant to KRS 107.160 with interest thereon in the amount determined by the District, as provided in KRS 220.515.

VI. REQUEST FOR WAIVER OF FORMALITIES

Pursuant to KRS 107.085, in the event the owner or owners of all lots or parcels which will be subject to assessment for an improvement proposed to be undertaken shall tender to the District their written request or requests that the improvement be undertaken and financed according to the provisions of these guidelines and KRS Chapter 107, and shall waive the formalities of the First Resolution, the holding of a public hearing, the Second Resolution, and the provisions of KRS 107.060 permitting litigation, the Board of

the District may, in its discretion, dispense with all of said proceedings and formalities and may proceed as provided in KRS 107.090 with reference to the Third Resolution; but in all such instances, the written requests of the owners of all lots or parcels which will be subject to the assessment shall be in recordable form and shall be recorded in the Office of the County Clerk of the county wherein the respective properties may be situated, and said Clerk is authorized to record such instruments as in the case of mortgages, and may charge and receive fees therefore as in the case of mortgages. Each Resolution by which an improvement is undertaken according to this waiver provision shall contain a recitation of the receiving of written requests and waivers from the owners of all lots or parcels which will be subject to assessment for each such improvement. In such instances, the lien for which provision is made in KRS 107.160 shall attach upon the publication of the Resolution (equivalent to the "Third Resolution") which authorizes the issuance of improvement assessment bonds.

VII. EXTENSION OF PRIVATE USER CONNECTIONS TO BENEFITTED PROPERTIES OWNED BY PERSONS FALLING BELOW APPLICABLE FEDERAL POVERTY LEVEL INCOME GUIDELINES.

Consistent with the provisions of KRS Chapter 220, the District shall not incur the cost of any private user connection to District facilities. However, in the case of benefitted property owned by persons whose family income falls below applicable Federal poverty level income guidelines, the District may advance the costs of private user connections and allow such benefitted property owners to repay such costs, without interest, through a surcharge upon such property owners' quarterly sewer charge statement issued by the

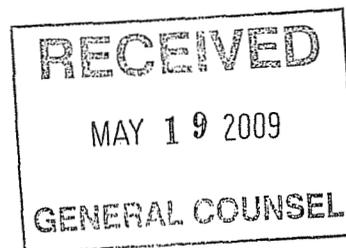
District. The District may allow such costs to be amortized and paid through quarterly statement surcharges over such period of time as the District in its discretion deems reasonable and fair for persons whose annual family income falls below applicable Federal poverty level income guidelines.

VIII. LAWS INCORPORATED BY REFERENCE

In all cases, matters not addressed by these guidelines shall be governed by the provisions of KRS Chapters 107 and 220, where applicable, as construed by the courts of the Commonwealth of Kentucky and the United States of America.

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DAVID A. KOENIG
ATTORNEY AT LAW

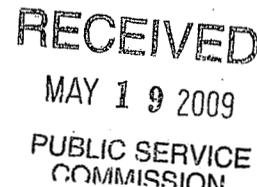


223 Main Street
P.O. Box 6205
Florence, KY 41022-6205

May 15, 2009

PHONE: (859) 525-6161
FAX: (859) 525-6194

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



Re: **Request for Opinion Regarding the Termination of Water Service Pursuant to KRS 220.510(1)**

Dear Mr. Derouen:

I am legal counsel for the Boone County Water District and am writing on behalf of the District to request an opinion from the Public Service Commission staff relative to the authority of the Boone County Water District to shut off and discontinue water service to a customer's premises pursuant to KRS 220.510(1) for non-payment of storm water fees or charges assessed by Sanitation District No. 1.

The Boone County Water District is a water district organized and existing pursuant to Chapter 74 of the Kentucky Revised Statutes. The Boone County Water District serves customers in Boone County. Sanitation District No. 1 is a sanitation district organized and existing under Chapter 220 of the Kentucky Revised Statutes and serves customers in Boone County, as well as Campbell and Kenton Counties. Sanitation District No. 1 is given the authority to develop and implement plans for the collection and disposal of storm drainage by KRS 220.030(6). Sanitation District No. 1 has responsibility for management of storm water within Boone County, as well as Campbell and Kenton Counties. Sanitation District No. 1 assesses a storm water charge for storm water management.

KRS 220.510(1) authorizes sanitation districts to notify and request that the entity providing water service to a customer's premises shut off water service to the customer's premises until such time as all delinquent sewer fees are paid in full. On receipt of such notice in writing, the entity providing water service to the premises is required to immediately shut off and discontinue water service. Sanitation District No. 1 has requested the Boone County Water District to disconnect water service to its customer(s) pursuant to the provision of KRS 220.510(1) to enforce collection of unpaid storm water fees or charges to Sanitation District No. 1. Due to some ambiguity in the language of KRS 220.510(1), and the fact that the language was in place prior to the expansion of KRS 220.030 to provide for storm water management, the Boone County Water District is not certain whether KRS 220.510(1) authorizes the termination of water service to its customers to enforce the collection of storm water fees or charges.

Jeff R. Derouen, Executive Director
May 15, 2009
Page -2-

The Boone County Water District intends to provide outstanding water service to its customers, and to comply fully with all legal and regulatory requirements. The opinion of the Public Service Commission relative to the applicability of KRS 220.510(1) to the collection of storm water fees or charges will assist the Boone County Water District in its purpose as well as cooperating with Sanitation District No. 1 when required. The Boone County Water District appreciates the assistance of the Public Service Commission and looks forward to hearing from you.

Thanking you for your consideration, and with kindest regards, I remain,

Very truly yours,



DAVID A. KOENIG

DAK:as

cc: Phil Trzop, Manager
Boone County Water District

DAVID A. KOENIG

ATTORNEY AT LAW

RECEIVED

JUN 05 2009

PUBLIC SERVICE
COMMISSION

223 Main Street
P.O. Box 6205
Florence, KY 41022-6205

June 2, 2009

PHONE: (859) 525-6161

FAX: (859) 525-6194

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

Re: **Request for Opinion Regarding the Termination of Water Service Pursuant to KRS 220.510(1)**

Dear Mr. Derouen:

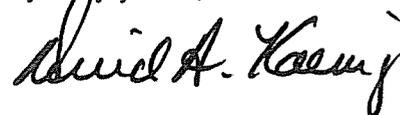
This letter supplements my earlier letter dated May 15, 2009, requesting an opinion relative to disconnection of service to Boone County Water District customers for non-payment of Sanitation District No. 1 (SD1) stormwater charges.

We now believe that SD1 is requesting that the Boone County Water District disconnect service to Boone County Water District customers for non-payment of SD1 assessment charges. According to information I have received, SD1 has assessment projects in the Boone County Water District's service area. SD1 has previously been charging assessments by separate monthly statements to property owners benefitted by the assessment projects. We now believe that these charges for unpaid monthly assessments have been transferred to the customer's monthly sewer bill. If the assessment charge is not paid, SD1 is requesting the Boone County Water District to disconnect the customer's water service.

The purpose of this supplemental letter is to add this additional fact situation to the fact situation set forth in our earlier letter of May 15, 2009.

Thanking you for your consideration, and with kindest regards, I remain,

Very truly yours,



DAVID A. KOENIG

DAK:as

cc: Phil Trzop, Manager
Boone County Water District
Charles Cain, Chairman
Boone County Water District