

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.

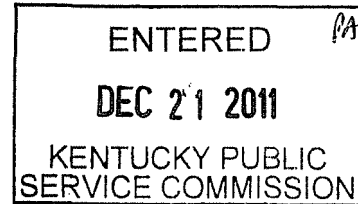
2. Red Barn shall pay the assessed penalty within 14 days of the date of this Order. Payment shall be made by certified check or money order made payable to "Kentucky State Treasurer" and shall be mailed or delivered to the Office of General Counsel, Kentucky Public Service Commission, 211 Sower Boulevard,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

Jeff Ruttenburg  
Red Barn Waste Management, LLC  
P. O. Box 1047  
Lexington, KY 40588