

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

O R D E R

On February 7, 2017, 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 278.230(3).¹ A hearing in this matter was held on March 28, 2017. No representative appeared on behalf of Red Barn.

On April 7, 2017, Red Barn applied to the Commission for approval pursuant to KRS 278.020(5) to transfer ownership and control of Red Barn to Mercer County Sanitation District ("Mercer Sanitation").² Red Barn proposes to transfer all of its assets to Mercer Sanitation for consideration of \$1.00. Upon approval of the proposed transfer, Mercer Sanitation will assume ownership and operation of Red Barn's assets, will provide service to Red Barn's former customers, and Red Barn will no longer operate or exist as a utility.

¹ We note that that the Commission had 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. The Commission, after a hearing at which Red Barn did not appear, assessed Red Barn a penalty of \$2,500.00. See, Case No. 2011-00347, *Alleged Failure of Red Barn Waste Management, LLC to File Required Reports*, (Ky. PSC Dec 21, 2011). As of the date of this Order, Red Barn has not paid the penalty.

² See Case No. 2017-00165, *Application of Red barn Waste Management, LLC to Transfer Ownership and Control to the Mercer County Sanitation District*, (Ky. PSC Apr. 25, 2017.)

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

1. Red Barn is a Kentucky corporation that 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.³
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 4(2), requires every utility to electronically 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.
4. 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.
5. On December 15, 2011, Commission Staff sent a letter to Red Barn that included copies of the forms for the report of gross earnings and the annual statistical and financial report, and informed Red Barn of its obligation to file these reports for the 2011 calendar year.
6. As of April 1, 2012, Red Barn had filed neither of these reports for the 2011 calendar year operations and had not requested an extension of time in which to make such filing.

³ KRS 278.010(3)(f).

7. On December 14, 2012, Commission Staff sent a letter to Red Barn that included copies of the forms for the report of gross earnings and the annual statistical and financial report, and informed Red Barn of its obligation to file these reports for the 2012 calendar year.

8. As of April 1, 2013, Red Barn had filed neither of these reports for the 2012 calendar year operations and had not requested an extension of time in which to make such filing.

9. On December 18, 2013, Commission Staff sent a letter to Red Barn that included copies of the forms for the report of gross earnings and the annual statistical and financial report, and informed Red Barn of its obligation to file these reports for the 2013 calendar year.

10. As of April 1, 2014, Red Barn had filed neither of these reports for the 2013 calendar year operations and had not requested an extension of time in which to make such filing.

11. On December 16, 2014, Commission Staff provided to Red Barn an electronic link to the standard forms for the annual financial and statistical report and the report of gross earnings.

12. As of April 1, 2015, Red Barn had filed neither of these reports for the 2014 calendar year operations and had not requested an extension of time in which to make such filing.

13. On January 14, 2016, Commission Staff provided to Red Barn an electronic link to the standard forms for the annual financial and statistical report and the report of gross earnings.

14. As of April 1, 2016, Red Barn had filed neither of these reports for the 2015 calendar year operations and had not requested an extension of time in which to make such filing.

15. 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.⁴

16. Red Barn has willfully failed to submit its reports by March 31 for the 2011–2016 calendar years as required by 807 KAR 5:006, Section 4(2), and KRS 278.140.

17. Red Barn has willfully failed to comply with KRS 278.230(3) by failing to file its annual and statistical report for the 2011 calendar year.

18. Red Barn has willfully failed to comply with KRS 278.230(3) by failing to file its annual and statistical report for the 2012 calendar year.

19. Red Barn has willfully failed to comply with KRS 278.230(3) by failing to file its annual and statistical report for the 2013 calendar year.

20. Red Barn has willfully failed to comply with KRS 278.230(3) by failing to file its annual and statistical report for the 2014 calendar year.

21. Red Barn has willfully failed to comply with KRS 278.230(3) by failing to file its annual and statistical report for the 2015 calendar year.

22. Red Barn has willfully failed to comply with KRS 278.140 by failing to file its report of its gross earnings or receipts derived from intrastate business for the 2011 calendar year.

⁴ See *Re Dyke Water Company*, 55 PUR3d 342 (Cal. P.U.C. 1964).

23. Red Barn has willfully failed to comply with KRS 278.140 by failing to file its report of its gross earnings or receipts derived from intrastate business for the 2012 calendar year.

24. Red Barn has willfully failed to comply with KRS 278.140 by failing to file its report of its gross earnings or receipts derived from intrastate business for the 2013 calendar year.

25. Red Barn has willfully failed to comply with KRS 278.140 by failing to file its report of its gross earnings or receipts derived from intrastate business for the 2014 calendar year.

26. Red Barn has willfully failed to comply with KRS 278.140 by failing to file its report of its gross earnings or receipts derived from intrastate business for the 2015 calendar year.

27. KRS 278.990(1) provides that any utility that willfully violates any Commission order, provision of KRS Chapter 278, 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 \$25.00 and not more than \$2,500.00.

28. Red Barn should be assessed a penalty of \$12,500.00 for its willful failure to comply with KRS 278.230(3).

29. Red Barn should be assessed a penalty of \$12,500.00 for its willful failure to comply with KRS 278.140.

30. The penalties assessed should be suspended indefinitely pending approval and successful completion of the transfer of Red Barn to Mercer Sanitation.

31. Upon completion of the transfer, the penalties will be waived.

32. If the transfer is not approved, or Red Barn withdraws its application for approval of the transfer, the penalties should no longer be suspended and will become due and payable within 14 days of denial or withdrawal of the application.

IT IS THEREFORE ORDERED that:

1. Red Barn is assessed a penalty of \$12,500.00 for its willful failure to comply with KRS 278.230 and 807 KAR 5:006, Section 4(2).

2. Red Barn is assessed a penalty of \$12,500.00 for its willful failure to comply with KRS 278.140.

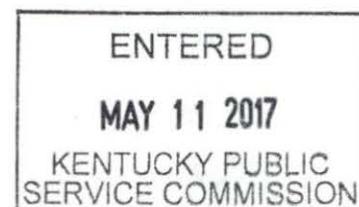
3. The penalties assessed against Red Barn in this Order are suspended.

4. If Red Barn receives approval for its transfer to Mercer Sanitation, the penalties will be waived upon successful completion of the transfer.

5. Should the Commission deny Red Barn's application for transfer, or Red Barn should withdraw its application, Red Barn shall pay the assessed penalty of \$25,000.00 within 14 days of the date of the denial or withdrawal of the application. Payment shall be by certified check or money order made payable to "Treasurer, Commonwealth of Kentucky" and shall be sent by certified mail or delivered to Office of General Counsel, Public Service Commission of Kentucky, 211 Sower Boulevard, P. O. Box 615, Frankfort, Kentucky 40602-0615.

6. The Executive Director shall serve a copy of this Order on Red Barn by certified mail.

By the Commission



ATTEST:



Executive Director

Case No. 2017-00033

*Red Barn Waste Management, LLC
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Lexington, KY 40515-2011

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