

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BURL RUSSELL – ALLEGED VIOLATION OF )  
UNDERGROUND FACILITY DAMAGE PREVENTION ) CASE NO. 2019-00155  
ACT )

NOTICE OF FILING

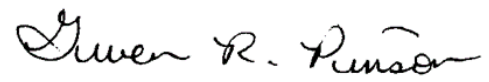
Notice is given to all parties that the following materials have been filed into the record of this proceeding:

- The digital video recording of the evidentiary hearing conducted on August 9, 2019 in this proceeding;
- Certification of the accuracy and correctness of the digital video recording;
- All exhibits introduced at the evidentiary hearing conducted on August 9, 2019 in this proceeding;
- A written log listing, *inter alia*, the date and time of where each witness' testimony begins and ends on the digital video recording of the evidentiary hearing conducted on August 9, 2019.

A copy of this Notice, the certification of the digital video record, hearing log, and exhibits have been served upon all persons listed at the end of this Notice. Parties desiring to view the digital video recording of the hearing may do so at <https://youtu.be/AU61HCfB9kc>.

Parties wishing an annotated digital video recording may submit a written request by electronic mail to [pscfilings@ky.gov](mailto:pscfilings@ky.gov). A minimal fee will be assessed for a copy of this recording.

Done at Frankfort, Kentucky, this 20<sup>th</sup> day of August 2019.

A handwritten signature in black ink that reads "Gwen R. Pinson". The signature is written in a cursive style with a large initial 'G' and a long horizontal stroke at the end.

---

Gwen R. Pinson  
Executive Director  
Public Service Commission of Kentucky

Burl Russell  
1045 N Tolliver Rd  
Morehead, KENTUCKY 40351

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BURL RUSSELL – ALLEGED VIOLATION OF	)	CASE NO.
UNDERGROUND FACILITY DAMAGE	)	2019-00155
PREVENTION ACT	)	
	)	


CERTIFICATION

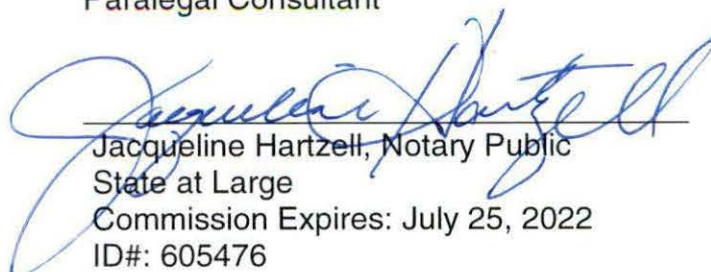
I, KaBrenda L. Warfield, hereby certify that:

1. The attached DVD contains a digital recording of the Formal Hearing conducted in the above-styled proceeding on August 9, 2019. Hearing Log, is included with the recording on August 9, 2019.
2. I am responsible for the preparation of the digital recording;
3. The digital recording accurately and correctly depicts the Formal Hearing of August 9, 2019.
4. The Formal Hearing Log attached to this Certificate accurately and correctly states the events that occurred at the Formal Hearing of August 9, 2019 and the time at which each occurred.

Signed this 19<sup>th</sup> day of August, 2019.



  
KaBrenda L. Warfield, CKP  
Paralegal Consultant

  
Jacqueline Hartzell, Notary Public  
State at Large  
Commission Expires: July 25, 2022  
ID#: 605476



Date:	Type:	Location:	Department:
8/9/2019	Show Cause Hearing	Hearing Room 1	Hearing Room 1 (HR 1)

Judge: Michael Schmitt  
 Clerk: KaBrenda Warfield

Event Time	Log Event	
8:45:00 AM	Session Started	
8:45:01 AM	Session Paused	
9:03:35 AM	Chairman Schmitt Note: Warfield, KaBrenda	Chairman Schmitt stating preliminary remarks and introduction of Vice Chairman Cicero and Commissioner Mathews.
9:03:35 AM	Session Resumed	
9:04:39 AM	Chairman Schmitt Note: Warfield, KaBrenda	This proceeding is being video recorded which will be the official record in the case.
9:05:24 AM	Chairman Schmitt Note: Warfield, KaBrenda	This proceeding is also being broadcast live over the internet this morning. I'm not sure we will continue to do that but we have been broadcasting all hearings and most other things that occur in this room live.
9:05:24 AM	Chairman Schmitt Note: Warfield, KaBrenda	This proceeding is also being
9:05:45 AM	Chairman Schmitt Note: Warfield, KaBrenda	For anyone that may be watching today's hearings involve the hearing of evidence potentially in fourteen cases were the Investigative Division of the Public Service Commission has issued civil penalty assessments against individuals and business entities alleging violations of the Kentucky Underground Facility Damage Prevention Act.
9:06:41 AM	Chairman Schmitt Note: Warfield, KaBrenda	So this morning we have I think potentially fourteen cases on the Docket, but doubt from looking out into the hearing room that there are fourteen people or entities here.
9:07:01 AM	Chairman Schmitt Note: Warfield, KaBrenda	So I will call the Docket and then ask Mr. Park who is representing the Division of Inspections about the status of these cases whether anything has been done with respect to continuing any of the cases and specifically whether service of process has been perfected.
9:07:43 AM	Chairman Schmitt Note: Warfield, KaBrenda	Once we get through that, if we have a formal hearing or anything to be held we can do that and get it out of the way.
9:07:54 AM	2019-00155 - BURL RUSSELL Note: Warfield, KaBrenda	Mr. Park do you know anything about Mr. Russell?
9:08:31 AM	Chairman Schmitt Note: Warfield, KaBrenda	Mr. Russell is not here. We will call his name one more time before we are finished.
9:08:41 AM	2019-00156 - KEITH GUTTERMAN Note: Warfield, KaBrenda	Has Mr. Gutterman been served to your knowledge?
9:09:07 AM	Chairman Schmitt - Staff Atty Park PSC Note: Warfield, KaBrenda	That will be sustained.

9:09:10 AM Chairman Schmitt  
Note: Warfield, KaBrenda For the benefit of anyone here or anyone watching we made a determination that these hearings will be held on the fourth Friday of every month.

9:09:30 AM 2019-00158 - SCOTT EXCAVATING, INC.  
Note: Warfield, KaBrenda Has Scott Excavating, Inc. been served with process?

9:09:52 AM 2019-00159 - BRUCE HUBBARD  
Note: Warfield, KaBrenda Is there proof of service on Mr. Hubbard?

9:10:16 AM Chairman Schmitt - Staff Atty Park PSC  
Note: Warfield, KaBrenda That will be sustained.

9:10:25 AM 2019-00160 - JONATHAN HYLTON  
Note: Warfield, KaBrenda Mr. Park has service been achieved on Mr. Hylton?

9:10:49 AM Chairman Schmitt - Staff Atty Park PSC  
Note: Warfield, KaBrenda That will be sustained.

9:10:51 AM 2019-00161 - LONNIE WILLIAMS AND SON EXCAVATING, LLC  
Note: Warfield, KaBrenda Has service been perfected on Lonnie Williams and Son Excavating, LLC?

9:11:16 AM Chairman Schmitt - Staff Atty Park PSC  
Note: Warfield, KaBrenda Sustained.

9:11:18 AM 2019-00162 - PREMIER UNDERGROUND, LLC  
Note: Warfield, KaBrenda Mr. Park what is the status of service of process for Premier Underground, LLC?

9:12:02 AM Chairman Schmitt - Staff Atty Park PSC  
Note: Warfield, KaBrenda Thank you.

9:12:05 AM 2019-00163 - GEORGE TAPP EXCAVATION  
Note: Warfield, KaBrenda Mr. Park what is the status of Mr. Tapp in terms of service?

9:13:02 AM Chairman Schmitt - Staff Atty Park PSC  
Note: Warfield, KaBrenda Thank you.

9:13:04 AM 2019-00164 - PRECISION FLOORING & CARPENTRY, LLC  
Note: Warfield, KaBrenda Mr. Park what is the status of Percision Flooring & Carpentry, LLC?

9:13:30 AM Chairman Schmitt - Staff Atty Park PSC  
Note: Warfield, KaBrenda Sustained.

9:13:31 AM 2019-00166 - LINEMAN FARMS, LLC  
Note: Warfield, KaBrenda Mr. Park what is the status of Lineman Farms, LLC?

9:14:00 AM Chairman Schmitt - Staff Atty Park PSC  
Note: Warfield, KaBrenda Sustained.

9:14:02 AM 2019-00167 - HAYDEN CONSTRUCTION CO., INC.  
Note: Warfield, KaBrenda Mr. Park?

9:14:18 AM Chairman Schmitt  
Note: Warfield, KaBrenda Okay.

9:14:20 AM 2019-00168 - PRODIGY CONSTRUCTION CORPORATION, INC.  
Note: Warfield, KaBrenda Yes sir, okay.

9:14:40 AM 2019-00235 - DEREK ENGINEERING, INC.  
Note: Warfield, KaBrenda Okay. Thank you.

9:14:54 AM 2019-00236 - MARCUS HENSLEY  
Note: Warfield, KaBrenda You're Mr. Hensley. Thank you.

9:15:04 AM Chairman Schmitt  
Note: Warfield, KaBrenda Alright. I guess Mr. Russell, Scott Excavation, Premier Underground, LLC, Mr. Tapp, and Hayden Construction are all before the Commission, but have not appeared at least today. So what we will do is pass those cases until the end. And if they appear we'll proceed and give them the opportunity to participate.

9:15:44 AM	Chairman Schmitt Note: Warfield, KaBrenda	And if not. Mr. Park I'll ask you to go ahead and put on the evidence on behalf of the investigation division.
9:16:08 AM	Chairman Schmitt - witness Hensley Note: Warfield, KaBrenda	Let me ask first. Mr. Hensley are you here by yourself? And you are not represented by counsel?
9:16:14 AM	Chairman Schmitt - witness Hensley Note: Warfield, KaBrenda	And you don't have any witnesses other than yourself? Correct?
9:16:19 AM	Chairman Schmitt - witness Mattingly Note: Warfield, KaBrenda	And Proodigy Construction will you identify yourself for the record please?
9:16:30 AM	Chairman Schmitt - witness Mattingly Note: Warfield, KaBrenda	Are you here by yourself?
9:16:33 AM	Chairman Schmitt - witness Mattingly Note: Warfield, KaBrenda	Are you an owner of Prodigy?
9:16:37 AM	Chairman Schmitt - witness Mattingly Note: Warfield, KaBrenda	That's another issue. Wheter or not you are required to have a attorney.
9:16:48 AM	Chairman Schmitt - Atty Blandford Note: Warfield, KaBrenda	Derek Engineering But then Derek Engineering, Inc. Mr. Blandford correct?
9:17:00 AM	Chairman Schmitt - Atty Blandford Note: Warfield, KaBrenda	Derek Engineering So you're here and you have a witness? Correct?
9:17:03 AM	Chairman Schmitt - Atty Blandford Note: Warfield, KaBrenda	Derek Engineering Because of that I will probably let you go first. Or let Mr. Park put on his case first and you'll have a chance to cross examine and then put on your witness. Unless there is something else you would like to bring to the attention of the Commission before we start?
9:17:58 AM	Chairman Schmitt - Atty Blandford Note: Warfield, KaBrenda	Derek Engineering Alright that's fine.
9:18:01 AM	Chairman Schmitt - Atty Blandford Note: Warfield, KaBrenda	Derek Engineering We have tried to avoid any communication between inspections and the Commission because of the way that we are divided.
9:18:22 AM	Chairman Schmitt - Atty Blandford Note: Warfield, KaBrenda	Derek Engineering Are you satisfied at this time that you have sufficient information?
9:18:56 AM	Chairman Schmitt Note: Warfield, KaBrenda	Alright. Thank you.
9:18:57 AM	Chairman Schmitt Note: Warfield, KaBrenda	That being the case why don't we take a five minute break and let Mr. Blandford come up front here and get situated with his client. And then we will begin and follow up with Mr. Hensley, and then Prodigy Construction.
9:19:17 AM	Chairman Schmitt Note: Warfield, KaBrenda	So we are going off the record here for five minutes. Until say twenty five minutes after nine am.
9:19:26 AM	Session Paused	
9:24:05 AM	Session Ended	

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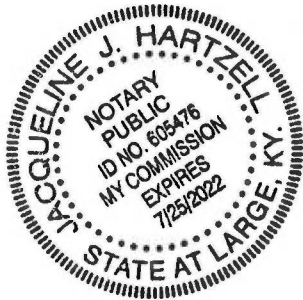
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UNDERGROUND FACILITY DAMAGE	)	2019-00155
PREVENTION ACT	)	

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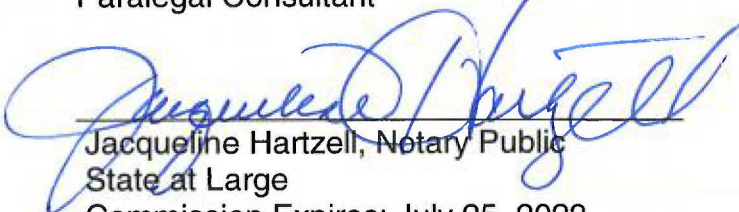
I, KaBrenda L. Warfield, hereby certify that:

1. The attached DVD contains a digital recording of the Formal Hearing conducted in the above-styled proceeding on August 09, 2019. Hearing Log, Exhibit List, and Witness List are included with the recording on August 09, 2019.
2. I am responsible for the preparation of the digital recording;
3. The digital recording accurately and correctly depicts the Formal Hearing of August 09, 2019.
4. The Formal Hearing Log attached to this Certificate accurately and correctly states the events that occurred at the Hearing of August 09, 2019 and the time at which each occurred.

Signed this 16<sup>th</sup> day of August, 2019.



  
KaBrenda L. Warfield, CKP  
Paralegal Consultant

  
Jacqueline Hartzell, Notary Public  
State at Large  
Commission Expires: July 25, 2022  
ID#: 605476





Date:	Type:	Location:	Department:
8/9/2019	Show Cause Hearing	Hearing Room 1	Hearing Room 1 (HR 1)

Witness: John Lyons  
 Judge: Michael Schmitt  
 Clerk: KaBrenda Warfield

Event Time	Log Event	
10:54:18 AM	Session Started	
10:54:19 AM	Chairman Schmitt Note: Warfield, KaBrenda	We are now back on the record, and the next case is Case No. 2019-00155 Burl Russell, alleged violation of Underground Facility Damage Pevention Act. Is Mr. Russell in the hearing room?
10:54:50 AM	Chairman Schmitt Note: Sacre, Candace	This is the second call for Mr. Russell. The hearing was scheduled at 9 a.m. It's now about 10:54 or 10:55 a.m., and no one is here. The allegations are that he violated KRS 367.4911(1)(a), "Each excavator, or person responsible for an excavation, planning excavation or demolition work shall, not less than two (2) full working days nor more than ten (10) full working days prior to commencing work, notify each affected operator of the excavator's intended work and work schedule. Contacting the applicable protection notification centers shall satisfy this requirement."
10:55:41 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Park, is that the only charge or allegation against Mr. Russell?
10:55:46 AM	Staff Attorney John Park PSC Note: Sacre, Candace	Yes, that is correct.
10:55:48 AM	Chairman Schmitt Note: Sacre, Candace	As I understand it, Mr. Russell has been served with process, correct?
10:55:52 AM	Staff Atty Park PSC Note: Sacre, Candace	That is correct, and proof of service has been filed in the record.
10:55:55 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Russell apparently has determined not to appear in the case. Do you have a witness or witnesses to take the stand and testify about the allegations?
10:56:10 AM	Staff Atty Park PSC Note: Sacre, Candace	Yes, Mr. Chairman, staff has one witness and would like to call Mr. John Lyons.
10:56:14 AM	Chairman Schmitt Note: Sacre, Candace	Mr. Lyons, please take the stand.
10:56:17 AM	Chairman Schmitt Note: Warfield, KaBrenda	Witness is sworn.
10:56:30 AM	Chairman Schmitt Note: Sacre, Candace	Please be seated. Mr. Park?
10:56:32 AM	Staff Attorney Park - witness Lyons Note: Warfield, KaBrenda	Direct Examination. Mr. Lyons, what is your position with the PSC?
10:56:43 AM	Staff Attorney Park - witness Lyons Note: Warfield, KaBrenda	And, in that capacity, what has been your role in developing and administering the Commission's program to enforce the Underground Facilities Damage Prevention Act?

10:57:13 AM	Staff Attorney Park - witness Lyons Note: Warfield, KaBrenda	Do you supervise employees whose job it is to investigate incidents of excavation damage?
10:57:22 AM	Staff Attorney Park - witness Lyons Note: Sacre, Candace	And do you review investigations of pipeline damage by employees under your supervision and the findings they make?
10:57:31 AM	Staff Attorney Park - witness Lyons Note: Warfield, KaBrenda	And are those inspections and reports prepared under your direction and supervision?
10:57:36 AM	Staff Attorney Park - witness Lyons Note: Warfield, KaBrenda	Are you familiar with an incident that occurred on July 26, 2018, at 200 Wells Lane in Morehead, Kentucky?
10:57:54 AM	Staff Atty Park PSC Note: Warfield, KaBrenda	May I approach, Your Honor?
10:57:56 AM	Chairman Schmitt Note: Sacre, Candace	Yes, you may.
10:58:25 AM	Staff Attorney Park - witness Lyons Note: Warfield, KaBrenda	Mr. Lyons, would you please identify this document for the record?
10:58:57 AM	Staff Attorney Park - witness Lyons Note: Warfield, KaBrenda	Is this a true and accurate copy of the investigative report prepared by employees under your direction?
10:59:05 AM	Staff Attorney Park Note: Warfield, KaBrenda	Your Honor, staff would like to admit this document as PSC Exhibit 1.
10:59:10 AM	Chairman Schmitt Note: Sacre, Candace	Sustained. Let it be so admitted.
10:59:11 AM	PSC EXHIBIT 01 Note: Warfield, KaBrenda Note: Sacre, Candace	STAFF ATTY PARK PSC - WITNESS LYONS. BURL RUSSELL PIPELINE INVESTIGATION REPORT.
10:59:13 AM	Staff Attorney Park - witness Lyons Note: Sacre, Candace	And, Mr. Lyons, who was the PSC investigator on this incident?
10:59:20 AM	Staff Attorney Park - witness Lyons Note: Sacre, Candace	Did Mr. Whisman prepare the Staff Investigation Report marked as Exhibit 1?
10:59:25 AM	Staff Attorney Park - witness Lyons Note: Warfield, KaBrenda	And was this prepared under your direction and supervision?
10:59:34 AM	Staff Attorney Park - witness Lyons Note: Warfield, KaBrenda	What were the findings reached in the Staff Investigation Report?
11:00:08 AM	Staff Attorney Park - witness Lyons Note: Warfield, KaBrenda	How do Commission investigators determine whether a locate request was made and, if so, when that request was made?
11:00:58 AM	Staff Attorney Park - witness Lyons Note: Sacre, Candace	Based upon the results of the investigation, was a demand letter issued to Mr. Russell?
11:01:47 AM	Staff Attorney Park - witness Lyons Note: Sacre, Candace	And did Mr. Russell either pay the proposed penalty or attend the training?
11:02:18 AM	Staff Attorney Park Note: Sacre, Candace	No further questions, Your Honor.
11:02:22 AM	Chairman Schmitt - witness Lyons Note: Warfield, KaBrenda	Examination. As I understand it, Mr. Lyons, Mr. Russell, according to the report, he admitted basically that he was responsible for violating the Act and breaking the line, is that correct?

11:02:59 AM	Chairman Schmitt - witness Lyons Note: Sacre, Candace	In order to take advantage of the reduced penalty assessment, Mr. Russell was required to do two things, is that correct? One, to attend training, and also pay the \$250?
11:03:21 AM	Chairman Schmitt - witness Lyons Note: Sacre, Candace	And he attended the training, but he didn't pay the \$250?
11:03:27 AM	Chairman Schmitt - witness Lyons Note: Sacre, Candace	And has, to this date, not done so, correct?
11:03:35 AM	Chairman Schmitt - witness Lyons Note: Sacre, Candace	I'm not sure when he attended the training. Are you?
11:03:55 AM	Chairman Schmitt - witness Lyons Note: Sacre, Candace	November 5, 2018, that's what is in the letter, so if he attended November 5th, it's been nine months, and he still hasn't made the payment. Do you know if any attempts were made after he attended the training to contact him about making the payment?
11:04:52 AM	Chairman Schmitt - witness Lyons Note: Sacre, Candace	Well, Mr. Russell violated the terms of his agreement, and under the terms of the agreement, whether he agreed or not agreed, he did agree, essentially, he wasn't admitting anything, so his attending the class is not necessarily evidence of his responsibility, but the fact he admitted it to the investigator is?
11:05:29 AM	Chairman Schmitt - witness Lyons Note: Sacre, Candace	Sometime before the, I guess, end of next week, if you would and Mr. Park would, file in the record a copy of the next two hearing dates, but my recommendation to Commissioner Cicero will be that the maximum fine of \$1,250 be assessed against Mr. Russell for his failure to pay his penalty, perhaps with the proviso that that would be abated if within 30 days of entry of the order he paid his initial \$250.
11:06:20 AM	Chairman Schmitt Note: Sacre, Candace	May this witness be excused?
11:06:24 AM	Chairman Schmitt Note: Sacre, Candace	You may step down. Is there anything further, Mr. Park?
11:06:26 AM	Staff Atty Park PSC Note: Sacre, Candace	Not on this case, Your Honor.
11:06:28 AM	Chairman Schmitt Note: Sacre, Candace	This matter is now hereby adjourned, and, immediately thereafter, we will begin the next case.
11:06:42 AM	Session Ended	



## Exhibit List Report

2019-00155 09Aug2019

Burl Russell

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Witness: John Lyons  
Judge: Michael Schmitt  
Clerk: KaBrenda Warfield

**Name:**

**Description:**

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PSC Exhibit 1

Pipeline Damage Investigation Report

# PIPELINE DAMAGE INVESTIGATION REPORT

## Investigation Information

<b>KY PSC Investigator(s)</b> Jason Whisman	<b>Incident ID</b> 20789
<b>Incident Date</b> 7/26/2018 1:20:00 PM	<b>Report Submitted</b> 8/9/2018 7:32:08 AM

## OPERATOR INFORMATION

<b>Operator</b> Morehead Utilities <b>Phone</b> 6067768315 <b>Incident Location</b> 200 Wells Ln Morehead, KY 40351  Rowan	<b>Reported By</b> Jeremy Cooley <b>Email</b> jcooley@mupb.com <b>Locate Ticket Number</b>
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## EXCAVATOR INFORMATION

<b>Name of Excavator</b> Burl, Russell <b>Phone</b> 606-356-6643 <b>Excavator Address</b> 1045 N Tolliver Rd Morehead, KY 40351	<b>Organization ID</b> <b>Email</b> <b>Locate Ticket Number</b>
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Gas line Damage Report:

Excavation Damage: No notification made to the One Call Center

Description of Incident One call was made three months prior to incident. Marks and flags were no longer there. Contractor hit service line with excavator. Contractor then crimped the line and contacted proper officials.

### Summary Information

8/9/2018

Full details such as the cause

Extent of the damage - Service line was cut into by excavator, which resulted in a full 3/4 open line

Cost of the damage - \$150.00

Steps taken to prevent re-occurrence - Discussed with contractor one call requirements. notified him that every 21 days the one call has to be made again.

Amount billed to excavator - \$0.00

**Investigation Summary:**

I talked with Burl Russell on 9/25/18 at 12:48pm. He stated that the landowner called in the 811 ticket and he did not have an updated ticket with the reasoning the lines were not going to be moved in the mean time. He stated that the gas line was only buried 3-4 inches deep in the soil and he should not be held responsible. PSC is going to reduce the fine from \$1250 to \$250 and offer remedial measures. Mr. Russell may not be inclined to pay the \$250 penalty or seek the remedial measure. He was reiterated the process that was available to contest the penalty.

**Violation:**

KRS 367.4911 (2) Locate requests are valid for twenty-one (21) calendar days from the day of the initial request.

Burl Russell  
1045 N Tolliver Rd  
Morehead, KENTUCKY 40351