

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CRESTBROOK PROPERTIES, LLC	)	
	)	
COMPLAINANT	)	
	)	
v.	)	CASE NO.
	)	2001-202
NORTHERN KENTUCKY WATER DISTRICT	)	
	)	
DEFENDANT	)	

ORDER TO SATISFY OR ANSWER

Northern Kentucky Water District ("NKWD") is hereby notified that it has been named as defendant in a formal complaint filed on June 22, 2001, a copy of which is attached hereto.

Pursuant to 807 KAR 5:001, Section 12, NKWD is HEREBY ORDERED to satisfy the matters complained of or file a written answer to the complaint within 10 days from the date of service of this Order.

Should documents of any kind be filed with the Commission in the course of this proceeding, the documents shall also be served on all parties of record.

Done at Frankfort, Kentucky, this 30<sup>th</sup> day of July, 2001.

By the Commission

ATTEST:

  
Executive Director

# Cors & Bassett, LLC

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June 19, 2001

**REGULAR MAIL**

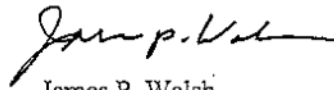
Commonwealth of Kentucky  
Public Service Commission  
Consumer Services Division  
211 Soward Boulevard  
Frankfort, Kentucky 40602

**RE: Formal Complaint of Crestbrook Properties, LLC against the  
Northern Kentucky Water Service District**

Dear Sir or Madam:

Enclosed is a Formal Complaint to be filed with the Public Service Commission pursuant to 807 KAR 5:001, Section 12. I am including 11 copies of the Formal Complaint, 10 as required under 807 KAR 5:001, Section 12(3), and an extra copy to be file-stamped and returned to my attention at Cors & Bassett's Fort Wright office. I would appreciate your prompt assistance in this matter. If you have any questions, please give me a call at (859) 578-5420.

Sincerely,



James P. Walsh

JPW  
Enclosures

cc: Mr. Bernie Wessels  
Carlo R. Wessels, Esq.  
John Jay Fossett, Esq.  
H. Lawson Walker, Esq.  
Rachel Hamilton, Esq.  
169376.1

2001-202

RECEIVED  
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COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

CRESTBROOK PROPERTIES, LLC, )  
 )  
 Complainant, ) No. \_\_\_\_\_  
 )  
 vs. )  
 )  
 NORTHERN KENTUCKY WATER )  
 SERVICE DISTRICT, )  
 )  
 )  
 Defendant. ) COMPLAINT  
 )  
 )  
 )  
 )

The Complaint of Crestbrook Properties, LLC, respectfully shows that:

1. Complainant, Crestbrook Properties, LLC ("Crestbrook"), is a Kentucky limited liability company with its principal office located at 1885 Dixie Highway, Suite 110, Fort Wright Kentucky 41011. Crestbrook owns a multi-family housing complex ("the Premises") located at 2351 Crestbrook Drive, Crescent Springs, Kentucky 41017.
2. Defendant, Northern Kentucky Water District ("the Water District"), located at 3049 Dixie Highway, Edgewood, Kentucky 41017 is a public water system organized pursuant to KRS Chapter 74 and existing under the laws of the Commonwealth of Kentucky. The Water District maintains the public potable water system that serves the Premises.
3. Jurisdiction is proper before the Public Service Commission ("the Commission") pursuant to KRS 278.015, 278.040, and 807 KAR 5:001.

4. On or about July 1, 1997, the Water District filed a "Cross Connection Control Policy," ("the Policy") with the Commission pursuant to 807 KAR 5:011, Section 9 (1). A copy of the Policy is attached hereto and incorporated herein by reference.

5. Under the Policy, the Water District asserts that the Kentucky Division of Water Regulations prohibit all "cross-connections." 401 KAR 8:020, Section 2 (2). The Regulations define a cross-connection as "a physical connection or arrangement between two (2) otherwise separate systems, one (1) of which contains potable water and the other being either water of unknown or questionable safety, or steam, gas or chemicals, whereby there may be flow from one (1) system to another, the direction of flow depending on the pressure differential between the (2) systems." 401 KAR 8:010, Section 1 (29). Simply put, a cross connection is a link through which it is possible for contamination to enter a public drinking water supply.

6. Under the Policy, the Water District asserts that it must comply with the Kentucky Division of Water Regulations and prevent possible contamination from cross-connections. Therefore, the Policy states, "no person shall cause a cross-connection." *See* Policy at Sheet No. 29. The District, however, is only enforcing the Policy against certain customers.

7. Under the Policy, "all existing, commercial, industrial, multi-family and governmental accounts" shall be inspected by the Water District's agents, and shall install and maintain "an approved protective device on the service line serving the premises to assure that any contamination that may originate in the customer's premises is contained therein." Policy at Sheets No. 28 -29. The individual customer is required to bear the cost of purchasing, installing and maintaining said protective devices ("the Devices"). *Id.* at Sheet No. 30.

8. The Water District has attempted to enforce the Policy against Crestbrook, by requiring the Premises to be inspected, and Devices to be installed thereon. The Water District is

pursuing a legal claim in Kenton County Circuit Court, captioned as *Northern Kentucky Water Service District v. Crestbrook Properties, LLC*, Case No. 00-CI-02149, seeking civil penalties and injunctive relief against Crestbrook for its alleged failure to comply with the Policy.

9. A potential source of contamination to a public potable water system, caused by cross-connection or back flow, can originate from an industrial, commercial or residential customer's premises. The hazard of cross-connection contamination is a system-wide problem that affects all customers of the Water District.

10. Residential customers, whether multi-family or single-family, currently receive the same service from the Water District, namely, water for human consumption.

11. Receipt of that water service for multi-family residential customers, however, is conditioned upon compliance with the Policy. *See* Policy at Sheet No. 31.

12. By requiring one type of residential customer, i.e., multi-family customers, such as Crestbrook, to purchase, install, and maintain Devices as a condition of water service, yet not imposing a similar condition on other residential customers, i.e., single-family customers, causes an unreasonable prejudice or disadvantage to multi-family customers, such as Crestbrook, in violation of KRS 278.170.

13. The Water District further violates KRS 278.170 because the Policy establishes an unreasonable difference or classification among residential customers receiving the same service. The classification bears no rational relationship to the prevention of contamination to the potable public water system caused by cross connections, which is a system-wide problem potentially originating from any Water District customer, regardless of whether the customer is single-family or multi-family residential.

14. The Water District further violates KRS 278.170 because it defines a multi-family account as a commercial customer subject to the Policy based on definitions taken from Kentucky sales tax statutes and regulations. *See e.g.*, KRS 139.470(8). The classification of multi-family accounts based on a definition relating to sales taxes bears no rational relationship to the prevention of contamination to the potable public water system caused by cross connections, which is a system-wide problem potentially originating from any Water District customer, regardless of whether the customer is residential, commercial or industrial.

15. Requiring Crestbrook to purchase and install Devices is a “special charge” that has not been applied uniformly throughout the area served by the Water District, in violation of 807 KAR 5:006, Section 8 (1) & (2).

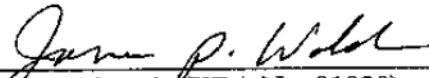
WHEREFORE, Complainant, Crestbrook Properties, LLC, requests the following relief:

- (a) That the Commission declare the Policy invalid and unenforceable; or
- (b) That the Commission require the Water District to modify the Policy to include single-family residential customers within its purview; and
- (c) That the Commission may grant Complainant any other relief that the Commission is authorized to grant upon further investigation of the allegations stated herein.

Dated at Fort Wright, Kentucky, this 19<sup>th</sup> day of June, 2001.

Respectfully submitted,

Crestbrook Properties, LLC



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Carlo R. Wessels (KBA No. 81830)  
John Jay Fossett (KBA No. 82397)  
James P. Walsh (KBA No. 87731)  
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Attorneys for Complainant, Crestbrook  
Properties, LLC

For NKWSD Area Served  
 P.S.C. No. 1  
 Original Sheet No. 28  
 Adopting P.S.C.No. 1  
 Original Sheet No. 28

**RATES, RULES AND REGULATIONS**

**SECTION XXIII - CROSS CONNECTION CONTROL POLICY**

**GENERAL:**

In accordance to Kentucky Division of Water Regulations, 401 KAR 8:020, Section 2, Para. 2, "Cross connections prohibited. All cross connections are prohibited. The use of automatic devices such as reduced pressure zone backflow preventers and vacuum breakers, may be approved by the cabinet in lieu of proper air gap separation. A combination of air gap separation and automatic devices shall be required where determined by the cabinet to be necessary due to the degree of hazard to public health. Every public water system shall determine if or where cross-connections exist and shall immediately eliminate them."

The Kentucky Division of Water 401 KAR 8:010, Section 1, Item 28, has defined cross-connections as a physical connection or arrangement between two (2) otherwise separate systems, one (1) of which contains potable water and the other being either water of unknown or questionable safety, or steam, gas or chemicals, whereby there may be flow from one (1) system to another, the direction of flow depending on the pressure differential between the (2) systems.

Northern Kentucky Water Service District is required to comply with 401 KAR 8:020, Section 2, Para. 2, as well as other Rules and Regulation for public water systems, which pertain to cross-connections, auxiliary intakes, bypasses, and inter-connections, and establish an effective, on-going program to control these undesirable water uses.

Therefore, the Northern Kentucky Water Service District's Board of Commissioners hereby establishes a Cross-Connection Control Policy for the service area of the Northern Kentucky Water Service District for the following customers:

1. All new commercial, industrial, multi-family, and governmental accounts will be required to meet the Water District Standards for cross-connection control upon notification from the Water District. Water service for new commercial and industrial accounts will not be turned on until the Water District requirements are met.
2. All existing commercial, industrial, multi-family, and governmental accounts will be required to meet the Water District Standards for cross-connection control upon notification from the Water District. Existing accounts will be prioritized by the largest meter size and consumption for that meter size, inspection will start with the largest meters and consumption. Existing accounts will have six (6) months upon notification from the Water District to meet Water District Standards unless an additional time extension is approved by the Water District.

PUBLIC SERVICE COMMISSION  
 OF KENTUCKY  
 EFFECTIVE

JUL 01 1997

PLS LIANT TO 807 KAR 5:011.  
 SECTION 9 (1)

Date of Issue: July 1 1997

Date Effective: July 1, 1997

*Phillip Lammie*

DIRECTOR, RATES & RESEARCH DIV

Issued By: *Dennis L. Willaman* 3049 Dixie Highway, Edgewood, KY 41017  
 Officer & Title: Dennis L. Willaman, P. E. Address  
 General Manager



NORTHERN KENTUCKY WATER SERVICE DISTRICT

For NKWSD Area Served  
Original P.S.C. No. 1  
Sheet No. 29  
Adopting P.S.C. No. 1  
Original Sheet No. 29

RATES, RULES AND REGULATIONS

SECTION XXIII - CROSS CONNECTION CONTROL POLICY Cont'd

- 3. Severe high hazard accounts will be required to meet the Water District Standards for cross-connection control upon notification from the Water District. A severe high hazard customer creates a real or potential threat of contamination or pollution of a physical or toxic nature to the health and well-being of the public water supply. These customers continuously have hazardous cross-connections or the potential hazards are so great that these premises need to be prioritized by the District's Cross Connection Control Program. Existing accounts will be prioritized by the largest meter size and consumption for that meter size, inspection will start with the largest meters and consumption. Existing accounts will have six (6) months upon notification from the Water District, to meet Water District Standards unless an additional time extension is granted by the Water District.

No person shall cause a cross-connection, auxiliary intake, bypass, or inter-connection to be made, or allow one to exist for any purpose whatsoever, unless the construction and operation of same meets the Water District Standards for cross connection control.

INSPECTION:

The Water District shall inspect all commercial and industrial properties served by the public water system where cross-connections with the public water system are deemed possible. Authorized representatives from the Water District shall have the right to enter, at a reasonable time, any property served by a connection to the public water system for the purpose of inspecting the piping system or systems thereof for cross-connections, auxiliary intakes, bypasses or inter-connections. On request, the owner, lessee, or occupant of any property so served shall furnish to the inspection agency any pertinent information regarding the piping system or systems on such property. The refusal of such information or refusal of access, when requested, shall cause the District to classify the account as a severe high hazard account and the owner shall meet all District requirements for that classification.

REQUIREMENTS:

The Water District shall require the use of an approved protective device on the service line serving the premises to assure that any contamination that may originate in the customer's premises is contained therein. The type of protective devices to be installed shall correspond to the degree of hazard as determined by the Water District. All protective devices shall be listed and approved by the PUBLIC SERVICE COMMISSION OF KENTUCKY Cross-Connection Control Research, University of Southern California and the Water District.

PUBLIC SERVICE COMMISSION OF KENTUCKY EFFECTIVE

JUL 01 1997

PURSUANT TO 807 KAR 5.011, SECTION 9(1)

Date of Issue: July 1 1997

Date Effective: July 1, 1997 BY: [Signature] DIRECTOR, RATES & RESEARCH DIV

Issued By: [Signature] 3049 Dixie Highway, Edgewood, KY 41017  
Officer & Title: DENNIS L. WILLAMAN, P. E. Address  
General Manager

NORTHERN KENTUCKY WATER SERVICE DISTRICT

For NKWSD Area Served  
P.S.C. No. 1  
Original Sheet No. 30  
Adopting P.S.C.No. 1  
Original Sheet No. 30

RATES, RULES AND REGULATIONS

SECTION XXIII - CROSS CONNECTION CONTROL POLICY Cont'd

The methods of installation of backflow protective devices shall be approved by the Water District prior to installation and shall comply with the criteria set forth by the Water District's Standard Specifications & Drawings for the Installation of Backflow Prevention Devices. Any and all cost incurred with the installation and maintenance of cross-connection control devices and appurtenances shall be borne by the customer.

Any person who now has cross-connections, auxiliary intakes, bypasses, or inter-connections in violation of this policy shall be allowed a reasonable time to comply with the provisions of this policy. They will have six (6) months upon notification from the Water District, to meet Water District Standards unless an additional time extension is granted by the Water District.

The failure to correct conditions threatening the safety of the public water system as prohibited by this policy within the District approved time frame shall be grounds for termination of the water service. The Water District shall give the customer legal notification that water service will be discontinued, if proper protection has not been provided after approved time frame.

Where cross-connection, inter-connections, auxiliary intakes, or bypasses are found that constitute an extreme hazard of immediate concern of contaminating the public water system, the Water District shall require that immediate corrective action be taken to eliminate the threat to the public water system. Immediate steps shall be taken to disconnect the public water supply from the on-site piping system unless the hazard(s) is corrected immediately.

All approved backflow prevention devices shall be tested and certified that they work properly by a Water District approved certified backflow tester directly after system activation and every year thereafter according to the manufacturer's recommendations.

Test notices will be sent out by the Water District prior to the due date, giving the customer 30 calendar days to get the device tested and proper paperwork returned to the Water District. If, after the first 30 days, no action is taken, a second notice will be sent to the customer giving them an additional 30 days to comply. If, after this time, no action is taken, a third notice will be sent, giving them 10 working days to comply or water service will be discontinued at the end of 10 days.

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

JUL 01 1997

PURSUANT TO 807 KAR 5.011,  
SECTION 9 (1)

BY: Phillip Lammie  
DIRECTOR, RATES & RESEARCH DIV.

Date of Issue: July 1 1997

Date Effective: July 1, 1997

Issued By:  
Officer & Title:

Dennis L. Willaman  
Dennis L. Willaman, P. E.  
General Manager

3049 Dixie Highway, Edgewood, KY 41017  
Address

For NKWSD Area Served  
 P.S.C. No. 1  
 Original Sheet No. 31  
 Adopting P.S.C.No. 1  
 Original Sheet No. 31

**RATES, RULES AND REGULATIONS**

**SECTION XXIII - CROSS CONNECTION CONTROL POLICY Cont'd**

The failure to maintain backflow prevention devices in proper working order shall be grounds for discontinuing water service to a premises. Likewise, the removal, bypassing or altering of a protective device or the installation thereof, so as to render the device ineffective, shall constitute grounds for discontinuance of water service. Water service to such premises shall not be restored until the customer has corrected or eliminated such conditions or defects to the satisfaction of the Water District.

The requirements contained herein shall apply to all premises served by the Northern Kentucky Water Service District regardless of political subdivision boundaries, and are hereby made a part of the conditions required to be met to provide water service to any premises. Such action, being essential for the protection of the water distribution system against the entrance of contamination which may render the water non-potable.

**ENFORCEMENT:**

Whenever any person neglects or refuses to comply with any of the provisions of this policy, the Water District shall discontinue water service until such cross-connection, auxiliary intake, bypass or inter-connection has been corrected.

PUBLIC SERVICE COMMISSION  
 OF KENTUCKY  
 EFFECTIVE

**JUL 01 1997**

PURSUANT TO 807 KAR 5:011,  
 SECTION 9(1)

BY: *Phyllis Linn*  
 DIRECTOR, RATES & RESEARCH DIV.

Date of Issue: July 1 1997

Date Effective: July 1, 1997

Issued By:

*Dennis L. Willaman*

Officer & Title: Dennis L. Willaman, P. E.  
 General Manager

3049 Dixie Highway, Edgewood, KY 41017  
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