

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF)	
KENTUCKY RURAL WATER ASSOCIATION)	
AND STOLL KEENON OGDEN PLLC FOR)	CASE NO. 2019-00350
ACCREDITATION AND APPROVAL OF A)	
WATER DISTRICT MANAGEMENT)	
TRAINING PROGRAM)	

NOTICE OF FILING

Kentucky Rural Water Association and Stoll Keenon Ogden PLLC give notice of the filing of the following documents in compliance with the Commission’s Order of October 14, 2019:

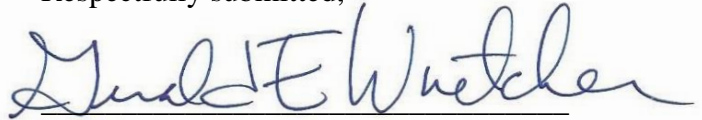
1. A sworn statement attesting that the proposed course of instruction entitled “Fifth Annual Water Law Series” was performed on October 29, 2019 and that the materials regarding each session were distributed to all program attendees (**Exhibit 1**);
2. A description of any changes in the presenters or the proposed curriculum that occurred after the submission of the application for accreditation (**Exhibit 2**);
3. The name of each attending water district commissioner, his or her water district, and the number of hours that he or she attended (**Exhibit 3**);
4. A list of materials included on a flash drive provided to each program attendee and a copy of all written materials given to program attendees not included in the Application (**Exhibit 4**);
5. Approval of the program for continuing legal education accreditation by the Kentucky Bar Association (**Exhibit 5**);

6. Approval of the program for accreditation by the Department of Local Government for Elected County Officials Training Incentive Program (**Exhibit 6**); and

7. Approval of the program for accreditation by the Division of Compliance Assistance for Continuing Education for Drinking Water and Waste Water System Operators (**Exhibit 7**).

Dated: November 5, 2019

Respectfully submitted,



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CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that the Joint Applicants' November 5, 2019 electronic filing of this Notice of Filing is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on November 5, 2019; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original paper medium of this Application will be delivered to the Commission on or before November 7, 2019.



Gerald E. Wuetcher

EXHIBIT 1

Subscribed and sworn to before me by Gerald Wuetcher, on this November 5, 2019.
My Commission expires: July 2, 2020.

Linda De Muth

Notary Public
No. 560071

EXHIBIT 2

EXHIBIT 2

CHANGES TO PROPOSED AGENDA AND PRESENTATIONS

The agenda found at Exhibit 1 of the Application was not revised. Each presenter made revisions to his or her presentation. Mr. Wuetcher revised the name of this presentation from “Legal and Regulatory Aspects of ‘Unaccounted-For’ Water” to “Legal and Regulatory Aspects of Water Loss.” A copy of each revised presentation is found at Exhibit 4 of this Notice.

EXHIBIT 3

EXHIBIT 3
WATER DISTRICT COMMISSIONERS ATTENDING PROGRAM

Name	Water District	Number of Hours Attending
Moore, David	Laurel County Water District No. 2	6
Murphy, Charles	Lyon County Water District	6
Curry, Glenna Jo	Oldham County Water District	6
Durbin, Bob	Oldham County Water District	6
Johnston, Harvey	Warren County Water District	6

EXHIBIT 4

DIGITAL LIBRARY CONTENTS

Presentations

Agenda

Biographical Information about Presenters

All You Want to Know About Depreciation . . . and Then Some (PDF Format)
(PowerPoint Format)

Grading Kentucky's Drinking Water Infrastructure (PDF Format) (PowerPoint Format)

Hot Topics In Employment Law: 2019 Update (PDF Format) (PowerPoint Format)

Legal and Regulatory Aspects of Water Loss

Recent Developments in Utility Regulation (PDF Format) (PowerPoint Format)

Water Loss Evaluation: Percentage vs. Cost (PDF Format) (PowerPoint Format)

Prior Presentations

2016 Flint Water Crisis (PDF Format) (PowerPoint Format)

911Funding (PDF Format)

Accounting and Auditing Issues for Water Utilities (PDF Format)

Accounting and Auditing Issues for Water Utilities – Appendix (PDF Format)

All Things Meter (PDF Format) (PowerPoint Format)

Basics of Kentucky Water System Financings (PDF Format)

EEO No! An Employment Law Update (PDF Format)

Commissioner Board Meetings (PDF Format)

Drinking Water Law Basics (PDF Format)

Drinking Water System Basics (PDF Format)

EEO No! A Discrimination Law Primer (PDF Format)

Everything You Wanted to Know About Certificates of Public Convenience and
Necessity But Were Afraid to Ask (PDF Format) (PowerPoint Format)

Extending Meter Service Life (PDF Format) (PowerPoint Format)

Kentucky Lead Working Group: Findings, Best Practices, and Recommendations (PDF
Format) (PowerPoint Format)

Kentucky PSC and Water Utility Inspections (PDF Format) (PowerPoint Format)

Municipal Utility Rate Workshop (PDF Format) (PowerPoint Format)

PSC Review of Municipal Utility Rates (PDF Format) (PowerPoint Format)

Public Service Commission Treatment of Employee Compensation (PDF Format)
(PowerPoint Format)

So You Got Caught! PSC Enforcement Proceedings (PDF Format) (PowerPoint Format)

Water Utilities and Fire Departments (PowerPoint Format)

When Bad Things Happen: PSC Investigations (PDF Format) (PowerPoint Format)

Why Did They Do That? Lessons Learned From Municipal Rate Cases (PDF Format)

E-911 Funding Alternatives (PDF Format)

General Reference

A Day in the Life of the Kentucky Public Service Commission, Public Utilities Fortnightly
(March 2019)

American Water Works Association - Glossary of Terms

Compilation of Kentucky Public Utility Laws as of August 7, 2018
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Used in Water Regulation
IPU – Primer on Water Pricing
Kentucky Division of Water, Organization Chart (As of October 16, 2019)
Kentucky Division of Water, Phone Listing
Kentucky Division of Water, Water Referral Directory (As of October 1, 2019)
Kentucky Infrastructure Authority, Organizational Chart (As of October 1, 2019)
Kentucky League of Cities, Insurance Vocabulary 101
Office of Financial Management and Administration, Department of Local Government,
Special Districts Manual (2012)
Public Service Commission Organization Chart
Public Service Commission Staff Directory (As of October 21, 2019)
Public Service Commission, Letter Guidance on the Implementation of House Bill 201
(Aug. 19, 2010)
Public Service Commission, Procedures For Approval of Meter Testing Facilities, Basic
Measurement Standards and Meter Testing (May 31, 2017)
Public Service Commission, Procedures For Approval of Meter Testing Facilities, Basic
Measurement Standards and Meter Testing - Notice of Extension (December 27,
2017)
Rural Community Assistance Partnership (RCAP) A Drop of Knowledge: Non-
Operator’s Guide to Drinking Water Systems
RCAP – A Drop of Knowledge: Non-Operator’s Guide to Wastewater Systems
RCAP – USDA Rural Utilities Service Borrower’s Guide
Timeline for A Rate Adjustment Proceeding – Historical Test Period
U.S. Fire Administration, Water Supply Systems and Evaluation Methods - Volume 1:
Water Supply System Concepts (Oct. 2008)
U.S. Fire Administration, Water Supply Systems and Evaluation Methods - Volume 2:
Water Supply Evaluation Methods (Oct. 2008)

911 Fees

City of Lancaster v. Garrard County, Kentucky, No. 2013-CA-000716-MR (Ky. Ct. App.
July 3, 2014)
City of Lancaster v. Garrard County, Kentucky, No. 2013-CA-000716-MR (Ky. Ct. App.
Aug. 11, 2017)
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30, 2019)
Garrard County Water Association v. Garrard County, No. 2017-SC-000469 (Ky.
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Greater Cincinnati/Northern Kentucky Apartment Association, Inc., 2014-SC-000383-TG
(Ky. Oct. 29, 2015)
E-911 Funding Alternatives (Presentation to KACo County Officials Leadership Institute
(Oct. 12, 2017)
PSC Staff Opinion 2019-002 (Feb. 15, 2019)
Whitley County Fiscal Court Ordinance No. 2016-02 (Apr. 19, 2016)

Abandonment of Utility

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Bullitt Utilities Inc., Case No. 2016-00401 (Ky. PSC Oct. 12, 2017)
Cedar Hills Sanitation Disposal Corporation, Inc., Case No. 2015-00100 (Ky. PSC Apr. 11, 2016)
Friendly Park Development, Inc., Case No. 2015-00101 (Ky. PSC Apr. 11, 2016)
PSC Staff Opinion 2015-011 (Aug. 21, 2015)

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Environmental Finance Center - Asset Management: A Guide for Water and Wastewater Systems (2006)
General Accounting Office, Water Infrastructure: Comprehensive Asset Management Has Potential to Help Utilities Better Identify Needs and Plan Future Investments (GAO-04-461) (Mar. 2004)
National Rural Water Association – An Introduction to Water System Operation and Maintenance (2007)
Office of Water, Environmental Protection Agency, EPA 816-B-14-001, A Reference Guide for Asset Management Tools (May 2014)
Southwest Environmental Finance Center, Reference Guide for Asset Management Inventory and Risk Analysis (Drinking Water)

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Recommendations to Strengthen Technology Security (Aug. 2009)
Recommendations for Public and Nonprofit Boards (Mar. 2010)
Examination of Certain Bullitt County Internal Controls and Procedures Governing the Process of Automated Payroll Transactions (Sept. 2009)
Examination of Certain Financial Transactions, Policies, and Procedures of the Kentucky Association of Counties, Inc. (Oct. 29, 2009)
Examination of Certain Financial Transactions, Policies, and Procedures of the Kentucky League of Cities, Inc. (Dec. 2009)
Examination of Certain Policies, Procedures, Controls, and Financial Activity of Mountain Water District (Jan. 2011)
Examination of Certain Policies, Procedures, Controls, and Financial Activity of Sanitation District No. 1 (Aug. 2011)
Examination of Certain Policies, Procedures, Controls, and Financial Activity of Metropolitan Sewer District (Dec. 2011)
Ghost Government: Report on Special Districts (Nov. 2012)

Auditing Issues

General Accounting Office, *Public Accounting Firms: Required Study on the Potential Effects of Mandatory Audit Firm Rotation* (GAO-04-216) (Mar. 2004)

GuideStar, *The Sarbanes-Oxley Act and Implications for Nonprofit Organizations* (Mar. 2003)

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PSC Staff Opinion 2019-004 (June 3, 2019)

Tariff Filing of Webster County Water District to Implement the Servline Leak Protection Program, Case No. 2019-00048 (Ky. PSC July 25, 2019)

Board Member Guidance

Gerald Wuetcher, *Borrowers Beware!*

Gerald Wuetcher, *Legal Issues in the Operation and Management of Water Districts* (Dec. 6, 2016)

Gerald Wuetcher, *Staying Out of Hot Water* (Dec. 13, 2018)

Rural Community Assistance Partnership (RCAP), *The Big Guide for Small Systems: A Resource for Board Members* (2011)

Rural Development Letter of Conditions Re: Code of Conduct for Board Members

Boiled Water Advisories

Deviation From Requirements of Administrative Regulation 807 KAR 5:066, Section 3(4)(B) Regarding Notice To Commission, Case No. 2017-00355 (Ky. PSC Oct. 12, 2017)

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Certificates of Public Convenience and Necessity

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Beech Grove Water System, Case No. 2016-00255 (Ky. PSC Aug. 3, 2016)

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Mastercard, The MasterCard® Convenience Fee Program for Government and Education
Tamara E. Holmes, *Convenience fees: When is it OK to charge extra to use a credit card?*, CreditCards.com (Dec. 20, 2012)

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National Association of Regulatory Utility Commissioners, Depreciation Practices for Small Water Utilities (1979)

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How to Prepare Your Documents for Tariff Filing System (Part 2): Training Video

How to Upload Your Filing Into Tariff Filing System: Training Video

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Amy Miles, Kentucky Clarifies Accommodations for Pregnant Women (Apr. 16, 2019)

Stacy Miller, EEO No! A Discrimination Law Primer (May 4, 2016)

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Energy Efficiency

- Chris Barren and Jeremy Boyer, "Water Utility Infrastructure Management - Reducing Energy Costs in Water Utilities," Water Utility Infrastructure Management (July 1, 2010)
- David Denig-Chakroff, National Regulatory Research Institute, Reducing Electricity Used for Water Production: Questions State Commissions Should Ask Regulated Utilities (June 13, 2008)
- EPA, Ensuring a Sustainable Future: An Energy Management Guidebook for Wastewater and Water Utilities (Jan. 2008)
- Grant Van Hemert, P.E., "Reducing Energy Usage in Water and Wastewater Facilities", Water Online: The Magazine
- John E. Regnier and Richard Winters, Small System Electric Power Use: Opportunities for Savings (May 8, 2008)
- New York State Energy Research & Development Authority, Water & Wastewater Energy Management: Best Practices Handbook (Sept. 2010)
- World Bank, A Primer on Energy Efficiency for Municipal Water and Wastewater Utilities (Feb. 2012)

Ethics for Utility Board Members

- Andrea Shindlebower Main, "Decoding Your Local Code of Ethics," Kentucky City, Vol. 3, No. 4 (Dec. 2013)
- Department of Local Government, Local Government Ethic Codes
- OAG, Incompatible Offices and Conflicts of Interest (1995)
- Ethics Policy for the Louisville and Jefferson County Metropolitan Sewer District
- Ethics Policy for the Louisville and Jefferson County Metropolitan Sewer District – Disclosure Statement
- Ethics Policy for the Louisville and Jefferson County Metropolitan Sewer District – Hearing Procedures
- House Bill 276 (2014 Ky. General Session)
- House Bill 348 (2015 Ky. General Session)

Filing Requirements Checklists

- Application for Initial Approval of Water District Commissioner's Training Program
- Application for Authority to Adjust Rates – Sewer Utility
- Application for a Certificate of Public Convenience and Necessity (Sewer Facilities)
- Application for a Certificate of Public Convenience and Necessity – General
- Application for a Certificate of Public Convenience and Necessity (Federally Funded Projects)
- Application for a Certificate of Public Convenience and Necessity (Initial Operations with Tariff)
- Application for a Certificate of Public Convenience and Necessity (Initial Operations without Tariff)
- Application for Authorization to Borrow Funds

Application for General Rate Adjustments (Fully Forecasted Test Period)
Application for General Rate Adjustments (Historical Test Period)
Application for Non-recurring Charges
Application for Purchased Water Adjustment (Privately Owned Utilities)
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Application for Sewage Treatment Adjustment
Application to Transfer Control/Ownership of Facilities

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(Video)
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(Video)

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807 KAR 5:095, Fire Protection Service For Water Utilities
An Investigation into Fees for Fire Protection Services, Administrative Case No. 385
(Ky. PSC Dec. 7, 2001)
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Version) (Excel Version)
Kentucky-American Water Company, Case No. 2007-00450 (Ky. PSC Feb. 28, 2008)
Letter from Thomas M. Dorman, Executive Director, PSC, to Dr. William H. Tudor (Jan
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County Water District No. 1 (Feb. 13, 2003)
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Michael Lippert, "How Can We Coordinate Fire Hydrant Maintenance Better?" *Opflow*
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William Lauer, "How Do I Ensure Proper Fire Hydrant Use When So Many People Have
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Declaration of Rights and Order Granting Plaintiff's Motion for Summary Judgement, *Ledbetter Water District v. Crittenden-Livingston Water District* (Livingston Cir. Ct. Jan. 25, 2017)

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PSC Procedures for Approval of Meter Testing Facilities, Basic Measurement Standards and Meter Testing (Dec. 27, 2017)
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PSC Guidance Letter to Municipal Utilities (Dec. 18, 1998)
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Carl Brown, "Sued: A Quick Lesson in Water Litigation", *Utility Infrastructure Management*
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Simpson County Water District v. City of Franklin, 872 S.W.2d 460 (Ky. 1994)
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Senate Bill 183

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Required Affidavit for Bidders, Offerors and Contractors Claiming Qualified Bidder Status

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List of Substances, 40 CFR 68.130

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Kentucky Public Service Commission, 2017 Guidance on Security Deposit Interest Rates

Kentucky Public Service Commission, 2018 Guidance on Security Deposit Interest Rates

Kentucky Public Service Commission, 2019 Guidance on Security Deposit Interest Rates

KRS 278.460

PSC Staff Opinion 2013-001

Tariff Materials

Adoption Notice Form (MS Word Format)

Cover Page Form (MS Word Format)

Blank Tariff Page Form (MS Word Format)

Non-Recurring Charge Cost Justification Form (MS-Word Format)

Request to PSC Revise Non-Recurring Charge (MS-Word Format)

Tap-On Fee Cost Justification Form (MS-Word Format)

Sample Tariff Pages

Uniform System of Accounts

Uniform System of Accounts for Class A/B Water Associations and Districts (2002)

Uniform System of Accounts for Class A/B Water Companies (2002)

Uniform System of Accounts for Class C Water Associations and Districts (2002)

Uniform System of Accounts for Class C Water Companies (2002)

Uniform System of Accounts for Sewer Utilities (2002)

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House Bill 240 (2019 General Session)

Letter to All County Judges Regarding Water District Commissioner Appointments
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Estill County Water District No. 1, Case No. 2017-00467 (Ky. PSC Feb. 20, 2018)
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Mountain Water District, Case No. 2015-00353 (Ky. PSC Feb. 15, 2016)
North Mercer Water District, Case No. 2016-00310 (Ky. PSC Oct. 12, 2016)
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Western Fleming County Water District, Case No. 2014-00400 (Ky. PSC Dec. 16, 2014)
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5th ANNUAL WATER LAW SERIES
October 29, 2019



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HOT LEGAL TOPICS

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October 29, 2019



DISCUSSION TOPICS

1. Notice to PSC
2. Franchises & Contracts
3. Sovereign Immunity
4. Filed - Rate Doctrine 101
5. Open Meetings Act

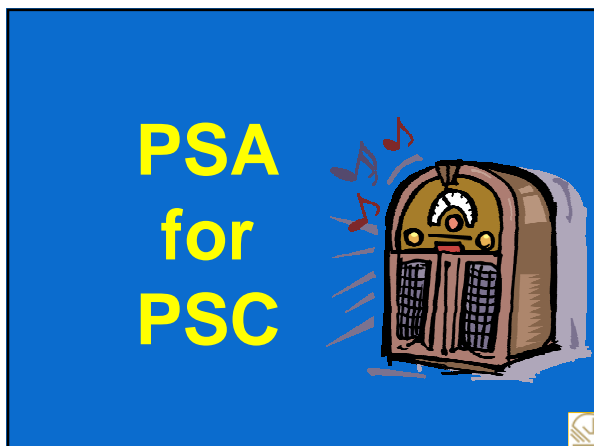
Continued . . .



DISCUSSION TOPICS

6. Borrowing Money
7. 2019 General Assembly
8. Recent PSC Orders
9. Cases to Watch





Reporting Requirements

- Must Notify PSC if . . .
 - Vacancy Exists
 - Appointment Made
- When? Within 30 Days



Vacancy

- Inform CJE 60 Days Before Term Ends (KRS 65.008)
- CJE / Fiscal Court – 90 Days
- Then, PSC Takes Over
 - CJE Loses Right To Appoint





E-Mail Address Regs.

- All PSC Orders Served by E-mail
- Duty to Keep Correct E-mail Address on file with PSC
 - Default Regulatory E-mail Address
- Duty to List E-mail Address in Application & All Other Papers
 - Utility Official
 - Its Attorney



E-Mail Address

- Who is Covered?
 - Water Districts
 - Water Associations
 - Investor Owned Utilities
 - **Municipal Utilities**



Why Municipals?


- Contract Filing
- Tariff Change (Wholesale Rate)
- Protest Supplier's Rate Increase
- Acquiring Assets of Another Utility
- Avoid Delays





Default Regulatory E-mail Address

- Send E-mail to PSC
 - psc.reports@ky.gov
- Send Letter to PSC
 - Gwen R. Pinson,
Executive Director




**Franchises
and
Contracts**



LEGAL ISSUE
40-year
Water Supply Contract
Between 2 Water Districts
Valid or Invalid

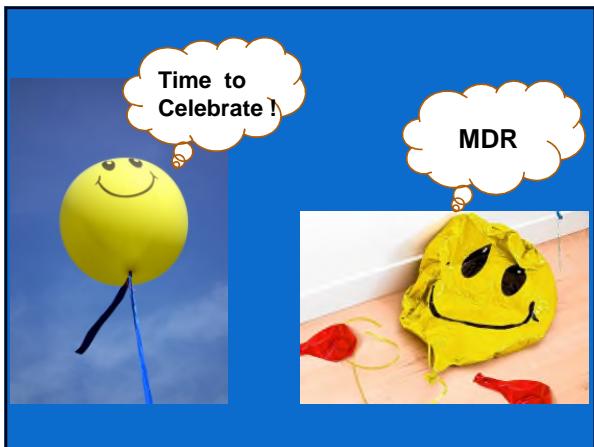
- Why? Contract = Franchise
- Over 20 Years
- Basis: Kentucky Constitution Section 164



Court of Appeals
Crittenden-Livingston WD
vs.
Ledbetter WD

Case No. 2017-CA-000578
Oral Argument: 4-24-18
Decided: 8-17-18
Holding: No Franchise





Ky. Supreme Court

Ledbetter W.D.

vs.

Crittenden-Livingston WD

Case No. 2018-SC-000494-DG

Motion DR: 09-12-18

DR Granted: 02-07-19

Brief Filed: 04-02-19

Amicus Tendered: 04-16-19



Ky. Supreme Court

Ledbetter W.D.

vs.

Crittenden-Livingston WD

Amicus Brief Filed: 05-03-19

C-L's Brief Filed: 05-31-19

Reply Brief Filed: 06-10-19

Oral Arguments: ??-??-??

Decided: ??-??-??



Why?

- 340 Water Utilities
- 169 WTPs
- 50% Buy Water
- Need Water Supply Contract
- Long Term

...



How Long Is Long Term?

- Lender
 - RD: 40 years
 - KIA: 20 or 30 years
 - Bonds: Length of Bonds



Significance

- If Franchise . . . 20 Year Limit
 - Can't Borrow \$ from RD
 - Other Sources – Only if < 20 years
 - KIA
 - Bonds
 - KRWFC



Court of Appeals @ Page 4

A **franchise** is generally defined as a **right or privilege granted by** a sovereign power, government or a governmental entity **to a party to do some act which such party could not do without a grant from the government.** A franchise is a grant of a right to use public property or at least the property over which the granting authority has control.



C/A Holding

- Contract Not Franchise
- Section 164 N/A
 - Longer Than 20 Years
 - No Advertising

What's Next?

- Decision Not Final
- Ky. Supreme Court
 - Oral Arguments ? ? ?
 - Decision ? ? ?

KRWA's Role

- Filed Amicus Brief in C/A & S/C
 - "Friend" of Court
- Protect Validity of Contracts
- Protect Ability to Obtain \$

Sovereign Immunity

The
King
Can Do
No
Wrong



Campbell County Case

Kate Carucci

vs.

Northern Ky. WD

Circuit Court

Case No. 2016 - CI - 00476

Decided: 04-12-17

Ruling: Case Dismissed

Why? S/I Defense

Court of Appeals

Kate Carucci

vs.

Northern Ky. WD

Case No. 2017-CA-000941-MR

Decided: 01-18-19

Holding: Abolished S/I
For Water Districts





Ky. Supreme Court

Northern Ky. WD

vs.

Kate Carucci

Case No. 2019-SC-000105-DG

Motion DR: 02-19-19

Response: 03-21-19

DR Granted: 08-29-19

Affirmed: 08-29-19



Court of Appeals

South Woodford WD

vs.

Byrd

352 S.W.3d 340 (Ky. App. 2011)

Holding: WD Immune from
Negligence Suit
Because of S/I



Supreme Court

Coppage Construction Co., Inc.

vs.

Sanitation District No. 1

459 S.W.3d 855 (Ky. 2015)

Holding: SD Not Entitled to
S/I Because It Was
Not a County-Created Entity



Ky. Supreme Court

Northern Ky. WD

vs.

Kate Carucci

DR Granted: 08-29-19

Decided: 08-29-19

Holding: No S/I for
W.D.



Ky. Supreme Court

Northern Ky. WD

vs.

Kate Carucci

KRWA Affidavit: 09-16-19

Pet. Rehearing: 09-18-19

Oral Arguments: ??-??-??

Decided: ??-??-??



C/A Holding

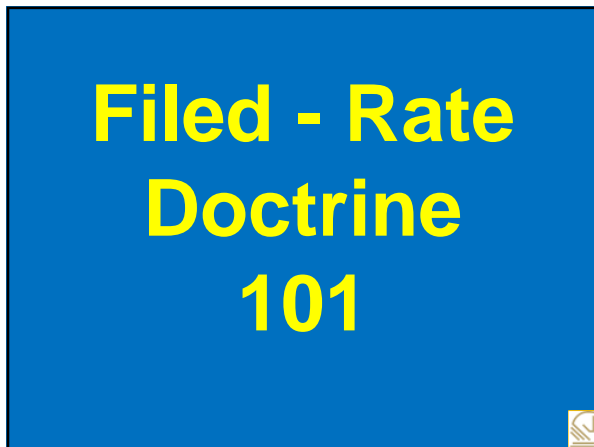
- O/R South Woodford Case
- No S/I for W.D.
- Adopted by Sup. Court
- Providing Drinking Water
Is NOT Integral State Function











Filed – Rate Doctrine

- **Definition:** No utility shall charge a greater or less rate for any service than the rate contained in its filed schedules (Tariff).

KRS 278.160



Filed – Rate Doctrine

- Application - 2 Aspects
 1. If it is in your Tariff, you **must** charge it.
 2. If it is **not** in your Tariff, you can **not** charge it.



Filed – Rate Doctrine

Requires Filing of:

- Rates
- Rules & Conditions of Service
- **Contracts**





- Filed – Rate Doctrine***
- File Wholesale Contracts with PSC
 - War Stories (2)
 - Length of Contract
 - Buy All Water
 - ✓ Check PSC Website When You Return

Open Meetings Act

Attending Board Meeting Via Skype

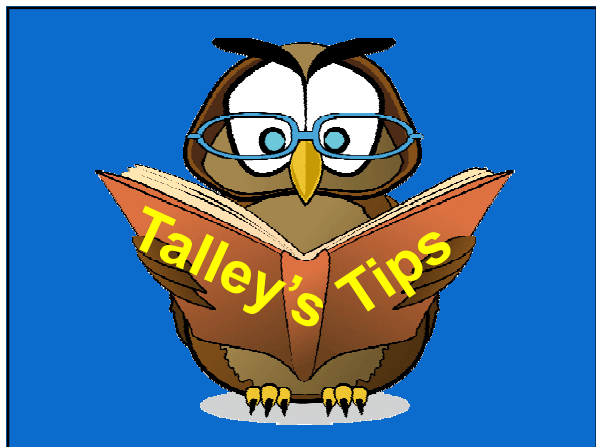
- KRS 61.826 Amended: 2018
- Now Easier to Conduct Meeting via Video Teleconference (VTC)
 - All Meetings
 - Board Member Attend Remotely
 - Count in Quorum Call
 - Fully Participate
 - More Than One



Special Rules - VTC

- Identify Primary Location
- Everyone Must Be Able to **See** and **Hear** Everyone Else
- Notice Requirements
 - Meeting Will Be VTC
 - Primary Location





Notice of VTC Meetings

1. Regular Meetings
 - Adopt Schedule (61.820)
 - Some or All of the Regular Meetings Will Be VTC
 - Primary Location at _____
 - Public May Attend at Primary Location



Notice of VTC Meetings

2. Special Meeting
 - Normal Rules (61.823) Plus
 - May Be VTC Meeting
 - Primary Location at _____
 - Public May Attend at Primary Location
3. Minutes
 - Comm. _____ Attended via VTC



Borrowing



KRS 278.300(1)

No utility shall issue any securities or evidences of indebtedness . . . until it has been authorized to do so by order of the Commission.



Practical Effect

- Must Obtain PSC Approval Before Incurring Long-term Debt (Over 2 Years)
- Exception:
 - 2 Years or Less
 - Renewals
 - (3 X 2 = 6 Years)
 - (6 X 1 = 6 Years)





Violation

Show Cause Cases

Show Cause Case # 3
Case No. 2017 - 469
Opened: 01- 11 - 2018
Hearing: 02 - 27- 2018
Issue: KRS 278.300
Decision: 09 - 17 - 2018

Show Cause Case # 3

This is the **third** case in the last year and a half involving a show cause order against a water district utility and/or its commissioners for violating KRS 278.300 by obtaining a loan, the term of which is in excess of two years, without prior approval of the Commission. To date the Commission has **assessed, but not sought, to collect** civil penalties against individual water district commissioners for essentially two reasons.

(Continued)

Show Cause Case # 3

First, the Commission's goal has been to obtain **compliance** with the requirements of the statute and not to exact a penalty and, **second**, the Commission was determined to **send a message** to these utilities and their local commissioners that they were out of compliance and **future violations** could result in **individual penalties** as well as a **separate penalty against the utility**.

(Continued)

Show Cause Case # 3

The Commission also intended to place **all other water districts on notice** that obtaining loans in violation of KRS 278.300 could subject both the utility and its commissioners to civil penalties, and **to provide fair notice that strict enforcement could be expected in future cases**.

Show Cause Case # 3

Water districts and their commissioners are hereby put on **final notice** that unauthorized debt incurred after the date of this order may well result in **substantial** civil penalties being **assessed and collected against both** in future show cause cases.

Pages 7 and 8 of Order

Show Cause Case # 3

- District Fined \$2,500
 - Pay \$500
 - \$2,000 Suspended
 - Good Behavior
 - One Year
- Commissioner Matthews Dissented



Show Cause Case # 3

- Commissioners Fined \$2,000
 - Pay Zero
 - Entire \$2,000 Suspended
 - Good Behavior
 - One Year
- 12 Hours Training



Show Cause Case # 3

- Develop Written Policy
 - Borrow \$
 - Hire Lawyer
- Adopt Policy
- File Policy with PSC



2019 Show Cause Cases

- WD # 1
 - All Commissioners Resigned
 - General Manager Resigned
 - PSC Dismissed Case

2019 Show Cause Cases

- WD # 2
 - Commissioners Settled with PSC
 - \$500 Fine (suspended)
 - 12 Hours Training Per Year
 - WD Not Fined
 - See Timeline

Timeline

09-27-17	Staff Report
01-11-18	Show Cause Order
02-27-18	Hearing (Rescheduled)
04-08-19	Offer of Settlement
06-19-19	Order Accepting Offer of Settlement

2019 General Assembly

- ### Notable Bills (6-27-19)
- SB 129 – Ky. 811 - Defeated
 - SB 256 – CPCN Exemption
KRS 278.020
(1)(a)(2)&(3)
 - HB 26 – Procurement
\$30,000

Recent PSC Orders

PSC Case No. 2019 - 044

Filed: 3-27-2019
Utility: Meade County WD
Type: ARF
Issue: ARF vs. PWA
Rate Increase
Decided: 4-09-2019



PSC Case No. 2018 - 166

Filed: 5-29-2018
Utility: Hardin Co. WD No. 1
Type: Deviation
Issue: Daily Inspection of
Sewer Lift Stations
Decided: 3-08-2019





PSC Case No. 2019 - 115

Filed: 4-11-2019
Utility: Grayson Co. WD
Type: Deviation
Issue: 15 Year Meters
Sample Testing
Decided: Pending



PSC Case No. 2019 - 080

Filed: 02-21-2019
Seller: Pikeville
Buyer: Mountain WD
Type: Municipal Wholesale
Rate increase
Hearing: 09-11-2019
Decided: Pending



PSC Case No. 2019 - 080
(continued)

Issues:

- COSS: M1 vs. M54 Manual
- Discovery
- Rate Case Expense



PSC Case No. 2018 - 394

Filed: 12-18-2018
Utility: All Water Utilities
Type: Investigation
Issue: Water Loss, Measuring,
& Reporting



PSC Case No. 2019 - 041

Filed: 03-12-2019
Utility: 12 Water Utilities
Type: Investigation
Issue: Excessive Water Loss
Hearings: 11 Separate Hearings

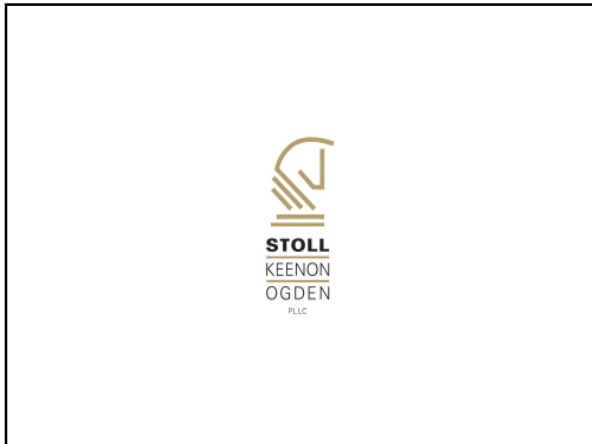




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**Hot Topics in Employment Law:
2019 Update**

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Overview

- General Employment Law Principles
- Avoiding Pitfalls in Pre-Employment
- Drug Testing
- A #MeToo World
- Sexual Orientation: a protected class?
- Employee Leave Proposals
- Legal Developments on the State & Federal Levels



Employment Law Principles

- General Rule: Employment At-Will
 - Employees without a written employment contract generally can be discharged for good cause, no cause or a cause that some may view as morally indefensible
- Exceptions:
 - Implied Contracts
 - Public Policy
 - Employment protection laws



Federal and State Statutory Protections for Employees



- Anti-Discrimination Laws
- Wage & Benefit Protections
- Labor-Relations Protections
- State programs (e.g., workers' comp., unemployment benefits)




Harassment

Harassment can occur on the basis of which protected status?


- A. Age
- B. Race
- C. Religion
- D. National Origin
- E. Color
- F. Disability
- G. Sex
- H. Pregnancy
- I. Military/Veteran
- J. All of the Above






Harassment

- ❖ Can occur on the basis of any protected trait
- ❖ Interferes with work
- ❖ Creates an intimidating, hostile or offensive working environment
- ❖ Can be verbal, physical or visual



Harassment

- ❖ Isolating, degrading or showing hostility or aversion toward an individual based on that person's protected trait through:
 - Comments, jokes, suggestions, stereotypes
 - Pictures, cards, calendars, toys, emails
 - Unwanted touching
- ❖ Work-related rewards in exchange for sexual favors



Kentucky Case


- ❖ **Barber v. United Postal Service, Inc.**
(Fayette 2016)
 - Racial harassment claim
 - Effigy of black driver hung by time clock
 - \$5.3 million verdict
 - Motion to overturn verdict denied
 - “The evidence was [the managers] didn't do anything.”
 - Judge Scorsone
 - Affirmed on appeal (August 2018)



Retaliation

- ❖ Taking adverse action against an employee for exercising a protected activity
 - Example: Discharge for reporting harassment or any other violation of the law





Which of the following could be retaliation if an employer acts because of the employee's EEO activity?

- A. Reprimand the employee or give a performance evaluation that is lower than it should be
- B. Treat a family member negatively (ex. cancelling a contract with the employee's spouse)
- C. Threaten to make, or actually make reports to authorities (ex. reporting immigration status or contacting the police")
- D. Spread false rumors
- E. All of the above




Retaliation: a law unto itself

Kentucky Case:


- ❖ Meads v. LFUCG (E.D. Ky. 2017)
 - Sanitation worker in Lexington alleged that he was treated differently from younger, white co-workers
 - Complained to Human Resources and Lexington-Fayette Urban County Human Rights Commission
 - Jury finding: No age or race discrimination


\$200,000 jury verdict for retaliation



The Pre-Employment Stage


- EEOC's Strategic Enforcement Plan: Priority of "eliminating barriers in recruitment and hiring"
 - Focus on "pre-employment" hiring practices
 - Goal: eliminate barriers in recruitment and hiring
 - Discriminatory policies vs. Disparate impact policies






Avoiding Pitfalls in Interviews


- Questions should be job- and business- related
- Disability-related questions or medical examinations
 - Pre-offer stage?
 - **None** – even if job-related.
 - But, can ask about ability to perform essential functions
 - Can ask about reasonable accommodations **only if** the applicant has a visible disability or voluntarily discloses





Avoiding Pitfalls in Interviews


- Disability-related questions or medical examinations (cont'd)
 - After a conditional offer of employment?
 - Employer can make certain disability-related inquiries or medical examinations – as long as it does so for all employees in the same job category
 - If an applicant tells you his/her disability will not affect job performance, **hiring managers may not pursue the matter.**

 **Avoiding Pitfalls in Interviews**

“What impairments do you have?”

- A. Appropriate
- B. Inappropriate


Instead → “This job involves lifting 50 pounds on a regular basis, and standing for long periods. Can you perform these essential functions of this job with or without an accommodation?”

 **Avoiding Pitfalls in Interviews**


“Please list all arrests and/or criminal convictions.”

- A. Appropriate
- B. Inappropriate


Instead → Limit criminal history inquiries (if any) to convictions that relate to job requirements.

 **Background Checks**

I'm sorry, we can't hire you, but your background check was hilarious.




your eCards
someecards.com




Background Checks
Criminal History Checks

- EEOC is concerned about discriminatory *impact*
 - i.e., unintentional discrimination
- EEOC Guidance: Federal law permits asking about criminal history, **with limitations:**
 - Narrowly tailored and relevant to the job
 - Conviction vs. arrest



Background Checks
Criminal History Checks


- Some best practices, per EEOC Guidelines:
 - Eliminate policies that wholly exclude persons from employment based on criminal record
 - Don't ask for arrest-related information







Shifts in Hiring Practices


- Ban the Box Legislation
 - Primarily impacts government employers
- “Past Salary” question in interviews
 - Perpetuation of gender and racial disparities in compensation

 **Background Checks**
Social Media in the Hiring Process




- **Risk Balancing:**
 - **Benefits:**
 - Screen out bad actors
 - Safeguard your reputation
 - Observe candidates who have a lack of discretion or confidentiality
 - **Drawbacks and Risks:**
 - Can reveal protected statuses
 - Unreliable information?

 **Drug Testing**





- **Stages:**
 - Pre-Employment
 - Reasonable suspicion
 - Random
 - Post-Accident
- Uniformly applied
- Consent, Acknowledgment
- Limits on Alcohol Testing

 **EEOC v. Dura Automotive Systems**
(M.D. Tenn. 2012)

- Tested employees for legally prescribed drugs
- For positive results – required disclosure of the medical condition and required employee to stop taking the medication
- Fired employees who were unable to perform job without the prescription medication


\$750,000 settlement

 **Drug Testing**
Post-Accident Testing 


- 2016 OSHA regulations prohibited “blanket” post-accident drug testing
- New Guidance: okay if:
 - Could result in lower workers’ comp rate
 - Reasonably related to determining cause
- Also okay if Federal or state law requires testing

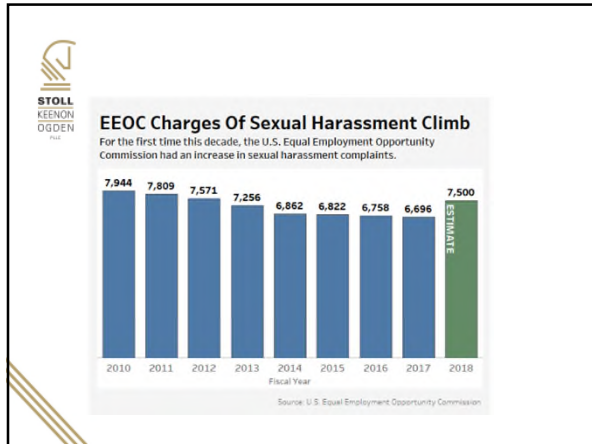
 **#MeToo,**
Two Years Later

- The original #MeToo → 2017 momentum
- Cultural shift, but has legislation followed?

 In the two years following the #MeToo movement, how many pieces of legislation has Congress passed related to sexual harassment in the workplace?

A. 1
B. 2
C. 3
D. 0



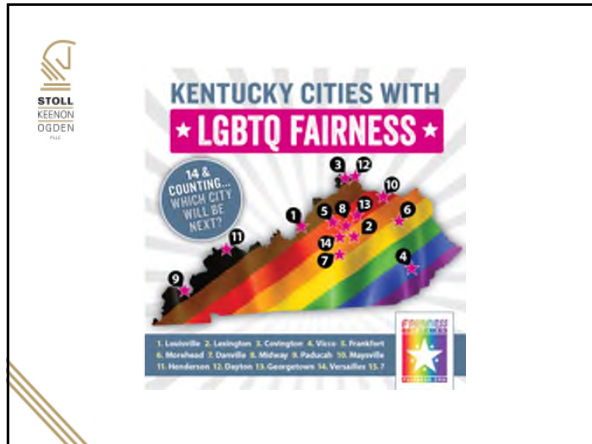


**#MeToo,
Two Years Later**

- What's an Employer to do?
 - "Time Line" for response has shortened
 - Train—early and often!
 - Walk the Walk of an open door policy

How many states have enacted legislation prohibiting employment discrimination on the basis of sexual orientation and gender identity?

- A. 12
- B. 20
- C. 31
- D. 50




**Sexual Orientation:
A Protected Class Under Title VII?**

- 2015: EEOC broadens definition of discrimination based on "sex"
- Circuit Split
- Supreme Court to decide this term

**Kentucky Legal Developments
Kentucky Pregnant Workers Act (2019)**


- Who is covered?
 - Employers with 15 or more employees
- What is required?
 - "Reasonable Accommodations"
- Exceptions?
 - "Undue Hardship"
- New Notice Requirements

Effective: June 27, 2019



Wage & Hour Compliance
Fair Labor Standards Act (FLSA)


- Passed by Congress in 1938
- Entitles employees to minimum wage and overtime wages



Wage & Hour Compliance
FLSA White Collar Exemptions


Three Requirements for Exempt Status:


- 1) **Salary Basis:** Regularly paid a predetermined amount
- 2) **Salary Threshold:** Earns at least \$455/week or \$23,660/year (under current rules)
- 3) **Duties:** Performs work activities that primarily involve executive, administrative, or professional duties, as defined in regulations



Administrative Updates under Trump

- **FLSA Final Overtime Rule**
 - Increased salary requirements
 - \$684 per week
 - \$35,568 per year
- Effective: January 1, 2020






Wage & Hour Compliance
Tips for a Wage & Hour Audit

- All of my salaried employees are exempt, right?
- My employees like the prestige of exempt status.



Kentucky Legal Developments

- Mandatory Arbitration Agreements
- State Wage & Hour Class Actions



Questions? Comments?



**GRADING
KENTUCKY'S
DRINKING WATER
INFRASTRUCTURE**

Greg Heitzman and Russ Rose

5th Annual Water Law Seminar
Sponsored by KY Rural Water and
Stoll Keenon Ogden
Bowling Green, Kentucky
October 29, 2019

2019 INFRASTRUCTURE REPORT CARD

What the Grades Mean

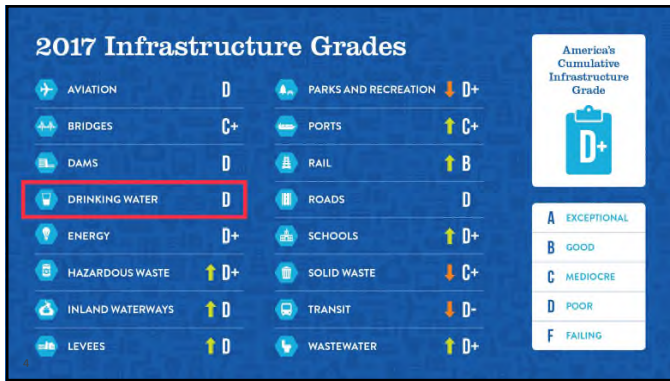
A EXCEPTIONAL Fit for the future	C MEDIocre Requires attention
B GOOD Adequate for now	D POOR At risk
F FAILING/CRITICAL Unfit for purpose	

2

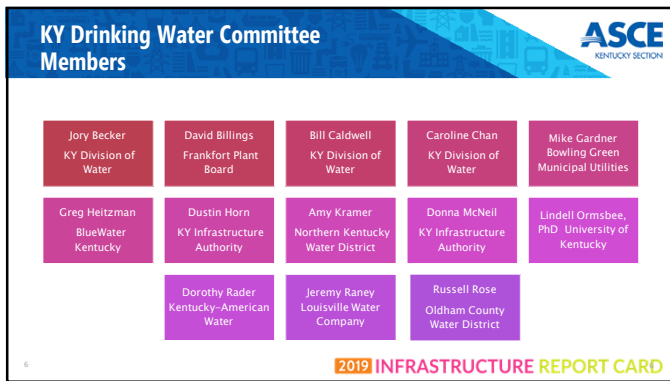
Report Card Methodology


CAPACITY	OPERATION AND MAINTENANCE
CONDITION	PUBLIC SAFETY
FUNDING	RESILIENCE
FUTURE NEED	INNOVATION

3








KY Drinking Water Committee Activities 

- ✓ 13-member committee, representing: small, medium, large water utilities; consultants; regulators; funding agencies; and academia.
- ✓ Met in person and by conference call from July to September 2018
- ✓ 10 draft versions prepared and reviewed by Drinking Water Committee and KY ASCE Steering Committee
- ✓ Reviewed 2010 KY Report Card and 2017 National Report Card
- ✓ Extensive Data provided by KY Division of Water and KY Infrastructure Authority
- ✓ Conducted a weighted evaluation using the national ASCE Criteria
- ✓ Estimated over 250 man-hours in collecting and revising data


7 **2019 INFRASTRUCTURE REPORT CARD**

KY Assigned 2019 Drinking Water Grade of C+ 

- ✓ 2017 National Drinking Water Grade of D
- ✓ Kentucky Drinking Water Grade was a B in 2010 and C in 2003
- ✓ Kentucky has improved in some areas but slipped in other areas
- ✓ New ASCE grading system includes operating, safety and resiliency elements not in prior assessments

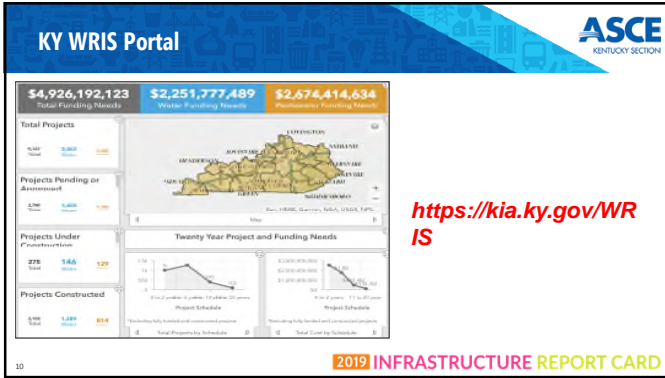
KY 2003	US 2009	KY 2010	US 2013	US 2017	KY 2019
C	D-	B	D	D	C+

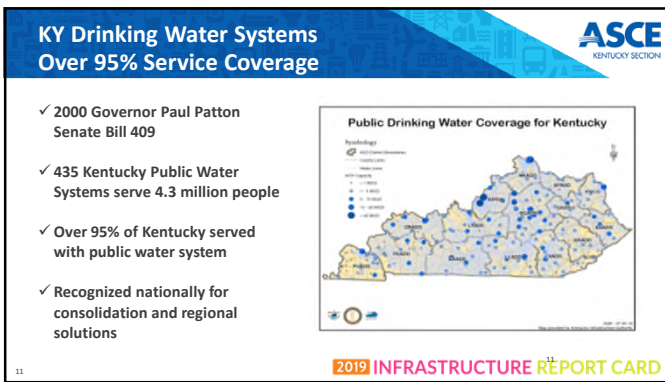
8 **2019 INFRASTRUCTURE REPORT CARD**

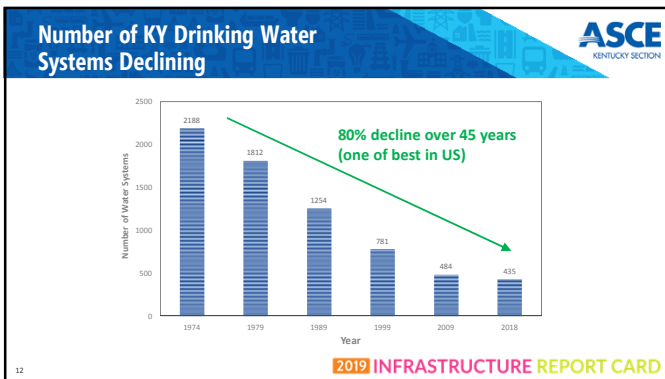
KY Drinking Water System Planning Manager by KIA 

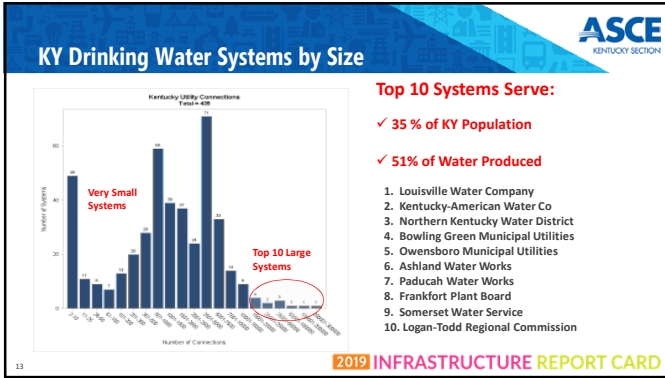
- ✓ GOVERNOR PAUL PAYTON'S 2020 WATER PLAN
- ✓ 1990 - SENATE BILL 409 CHARGES NEW COURSE FOR WATER MANAGEMENT AND PLANNING IN KENTUCKY
- ✓ GOAL TO PROVIDE WATER SERVICE TO ALL OF KENTUCKY BY 2020
- ✓ PLANNING/MANAGEMENT THROUGH KY INFRASTRUCTURE AUTHORITY – INCLUDES WATER INDUSTRY REPRESENTATION
- ✓ REGIONAL WATER MANAGEMENT COUNCILS TO COORDINATE WATER/WW PROJECTS
- ✓ CLEARING HOUSE FOR ALL WATER/WW PROJECTS
- ✓ CREATE STATEWIDE GIS – WATER RESOURCE INFO SYSTEM (WRIS)
- ✓ ROBUST ASSET MANAGEMENT PORTAL (BEST IN CLASS PLANNING MODEL)

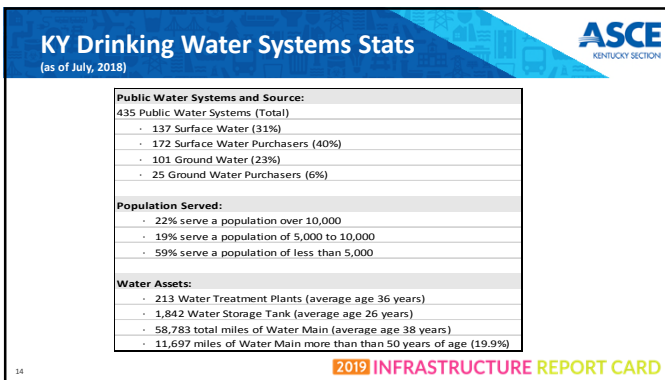
9 **2019 INFRASTRUCTURE REPORT CARD**

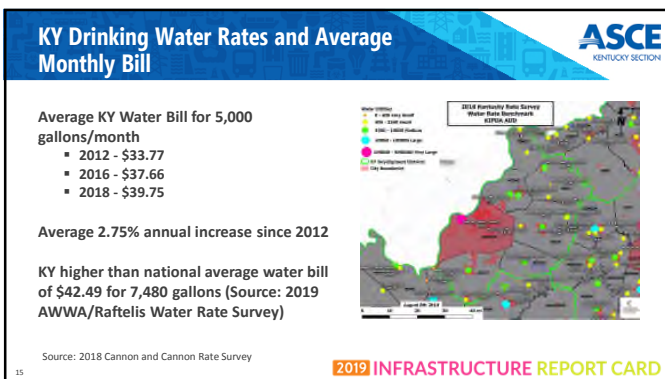









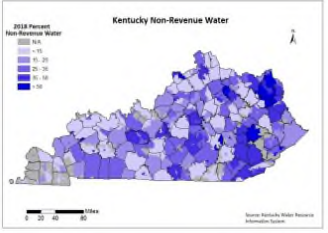




KY Water Loss and Leakage




- ✓ Kentucky Water Loss averages 29 percent
- ✓ National Best Practice and KY PSC at 15%
- ✓ No standard method for measuring water loss in Kentucky
- ✓ Needs Improvement

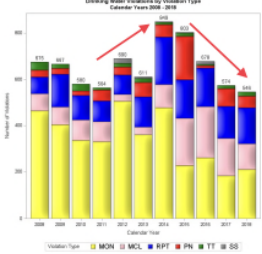


2019 INFRASTRUCTURE REPORT CARD

Kentucky Drinking Water Compliance




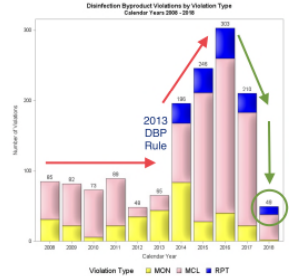
- ✓ Past 10-year trend less than peak of 1,400+ Violations in FY 2006-07
- ✓ Increase in 2014 for Disinfection By-Product Violations
- ✓ Decline in Violations last 4 years since 2014 to 546 in 2018
- ✓ Expect improvement again in 2019



2019 INFRASTRUCTURE REPORT CARD


KY DBP Rule Compliance






- 2013 New EPA Disinfection By Product Rule (DBP)
- DBP Violations increases from 2014 to 2016
- ✓ Decline in DBP Violations in 2017 & 2018 with technical assistance from KDOW and KY Rural Water
- ✓ Expect DBP improvement again in 2019

2019 INFRASTRUCTURE REPORT CARD


Capital Planning Needed in Kentucky 

Best Practices in Water include:

1. Condition Assessment - the evaluation of the condition and performance of assets
2. Asset Management – a comprehensive approach to managing the assets of the Water/WW utility
3. Capital Planning – the projection of future Water/WW capital needs over 5,10,20 years
 - > Source water
 - > Treatment
 - > Storage/pumping
 - > Transmission/Distribution
 - > Equipment
 - > Computer Systems (SCADA, Billing, Metering)




2019 INFRASTRUCTURE REPORT CARD

Summary of Best Practices in Drinking Water for Kentucky 

1. Consolidation of systems by over 80 % decline since 1974 (national best practice)
2. Over 95% public water service available through 57,000 miles of pipe (top 5 is US)
3. KY Drinking Water Advisory Council – stakeholder group for collaboration (national best practice)
4. KY WRIS Portal for Water/Wastewater (Interactive GIS database)
5. Compliance with lead and copper rule
6. KY drought risk significantly mitigated since 2010
7. Water quality – DBPs declining from high in 2014
8. Access to federal and state funding for water projects

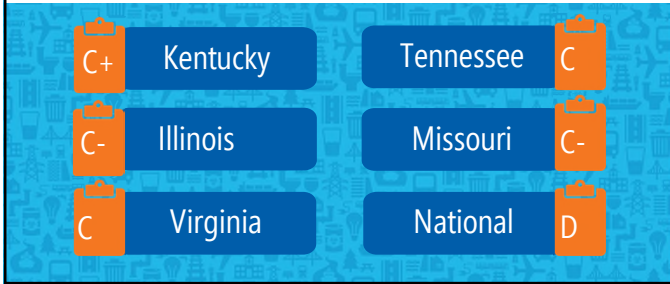
2019 INFRASTRUCTURE REPORT CARD

Recommendations and Areas to Improve for Kentucky 

1. Improve water loss and leak detection
2. Replace aging infrastructure
3. Adopt Capital Improvement Planning Process
4. Adopt "Cost of Service" rate methodology and full cost pricing of water
5. Recruit and develop managerial and technical capacity and expertise in water
6. Improve access to funding
7. Promote the value of water in our communities

2019 INFRASTRUCTURE REPORT CARD

Drinking Water Grade Comparison



Conclusion



The Committee Recommended and the National ASCE approved a C+ rating for Kentucky's Drinking Water Infrastructure

Full Report Available:

www.infrastructurereportcard.org/state-item/kentucky/

Add a footer

2019 INFRASTRUCTURE REPORT CARD

Recommendations




1. Continue regional water planning and coordination of drinking water infrastructure
2. Maintain and enhance the Kentucky Water Resource Information System (WRIS)
3. Continue updates of the 20-year drinking water infrastructure needs assessment every three to five years
4. Promote the use of cost-of-service water rate methods and full-cost pricing of water as defined in AWWA M-1 Manual on Water Rates, Fees, and Charges. Full-cost pricing will allow for water systems to build, operate, maintain, and reinvest in their water systems and provide safe, reliable drinking water supply to their community.

Add a footer

2019 INFRASTRUCTURE REPORT CARD


Recommendations



5. Conduct a statewide assessment of water loss and promote the use of the AWWA M-36 Water Audit and Loss Control methodology to reduce water loss
6. Pursue water system mergers and regional solutions where economically beneficial
7. Continue grant and low-interest loan programs offered by federal and state funding agencies (ARC, AML, CDBG, KIA, RD, SRF)
8. Pursue new sources of state and local funding for water infrastructure to bridge the funding needs gap and leverage federal and private investment in water infrastructure

Add a footer **2019 INFRASTRUCTURE REPORT CARD**


Recommendations



9. Monitor the development of regulations for emerging contaminants (pharmaceuticals, personal care products, herbicides, and pesticides) in drinking water and identify the infrastructure improvements needed to comply with future regulations
10. Promote the use of best practices in water treatment and optimization of disinfection methods to reduce byproducts of disinfection
11. Conduct a state-wide inventory of public lead service lines and promote best practices for corrosion control, lead service line replacement, and public education on lead in drinking water

Add a footer **2019 INFRASTRUCTURE REPORT CARD**

Recommendations



12. Develop a state-wide program for voluntary testing of lead in public schools through a partnership with the Kentucky Environmental Protection Cabinet, Department of Public Health, Department of Education, and drinking water providers
13. Develop proactive programs for recruiting and retaining plant and distribution operators

Add a footer **2019 INFRASTRUCTURE REPORT CARD**

Questions and Discussion





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Russ Rose
Oldham County Water District
rrose@oldhamcountywater.com

2019 INFRASTRUCTURE REPORT CARD

**WATER LOSS EVALUATION
PERCENTAGE vs COST**
Warren County Water District
Simpson County Water District
Butler County Water System, Inc.

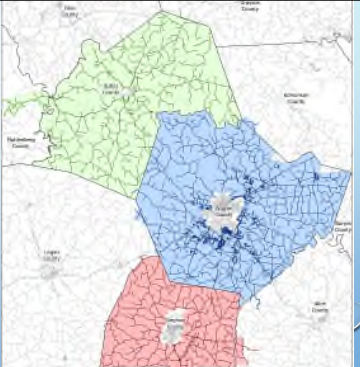



MILES OF DISTRIBUTION MAIN:

Warren 1,156

Simpson 397

Butler 518



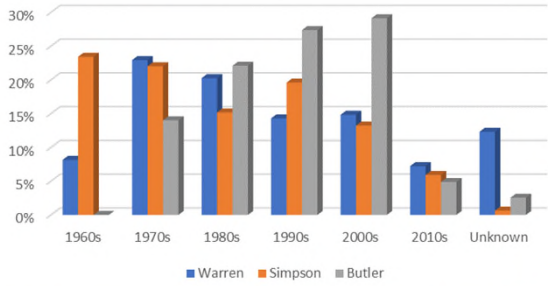
DISTRIBUTION MAIN BY SIZE

Pipe Size (in)	Miles		
	WARREN	SIMPSON	BUTLER
4" or Less	575	276	322
6"	351	61	159
8"	133	42	33
10"	34	10	1
12"	30	6	4
14"	5	0	0
16"	9	2	0
20" or Larger	19	0	0
Total	1,156	397	518

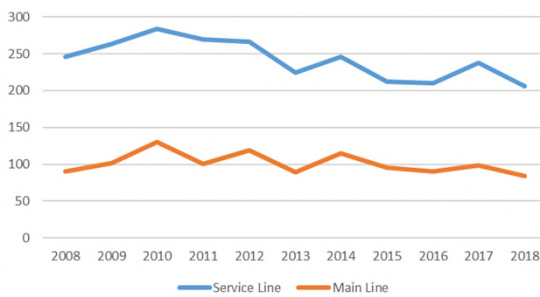
PIPE MATERIAL

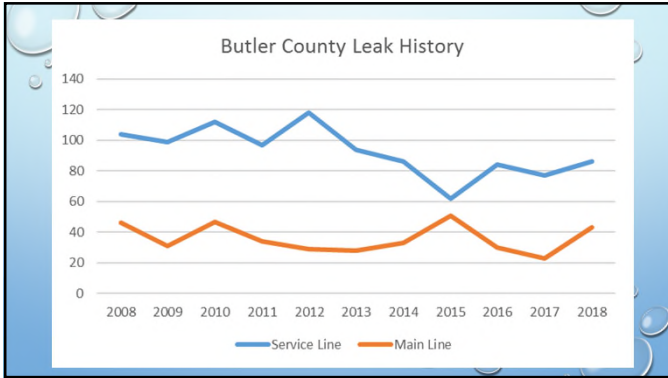
	Warren	Simpson	Butler
Asbestos Cement	1.2%	11.1%	1.7%
Cast Iron	6.2%	0.1%	0.0%
Ductile Iron	3.5%	1.1%	0.7%
PVC	89.0%	87.7%	97.6%

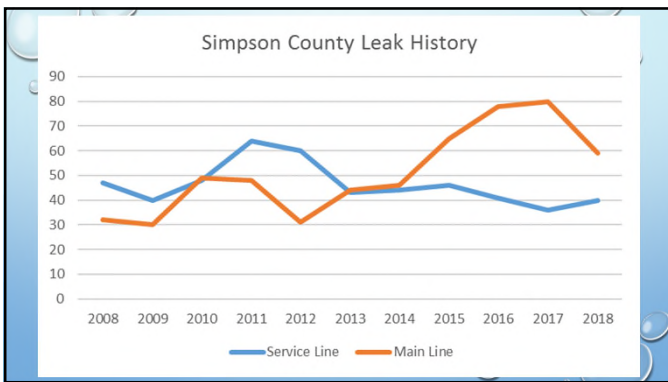
Pipe Age by Decade



Warren County Leak History







YEAR 2018 STATISTICS

	Warren County Water District	Simpson County Water District	Butler County Water System, Inc.
Description	Urban, Industrial, Agricultural	Agricultural, Some Industry	Rural
No. of Customers:	29,471	3,415	4,908
Residential	27,243	3,046	4,594
Commercial	2,107	336	301
Industrial	121	33	13
Largest Customer	Industrial	Feed Mill	Chicken House
Annually	181.7 MG	20.1 MG	3.1 MG
Daily	497,800 Gals	54,800 Gals	8,490 Gals

YEAR 2018 STATISTICS (CON'T)

	<u>WARREN</u>	<u>SIMPSON</u>	<u>BUTLER</u>
Miles of Distribution Main	1,156	397	518
Customers Per Mile of Main	25.5	8.6	9.5
Miles of Service Line	179	23	31
Gallons Sold:	2,745,187,000	340,563,000	256,515,000
% Residential	53%	52%	87%
% Commercial \ Industrial	47%	48%	13%
New Meter Applications	801	42	50

SOURCE OF SUPPLY

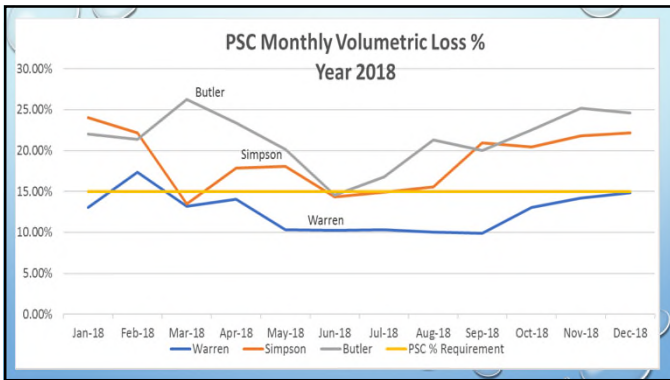
	<u>WARREN</u>	<u>SIMPSON</u>	<u>BUTLER</u>
Purchased (Gals)	3,145,932,000	423,024,000	
Produced (Gals)			329,354,000
Supplier	Bowling Green Municipal Utilities	White House Water District	N/A
Cost per 1,000 Gals	\$1.3570	\$2.6590	\$1.6138

**2018 PSC ANNUAL REPORT
WATER STATISTICS (Ref Page 30)**

<u>Ln</u>	<u>WARREN</u>	<u>SIMPSON</u>	<u>BUTLER</u>
4 Purchased	3,145,932,000	423,024,000	-
Produced	-	-	329,354,000
13 Sold	2,745,187,000	340,563,000	256,515,000
Total Lost	400,745,000	82,461,000	72,839,000
17 Wastewater Plant	-	-	-
18 System Flushing	10,800,000	2,571,000	2,343,000
19 Fire Department	172,000	39,000	81,000
20 Other	1,765,000	468,000	232,000
21 Total Other Water Used	12,737,000	3,078,000	2,656,000

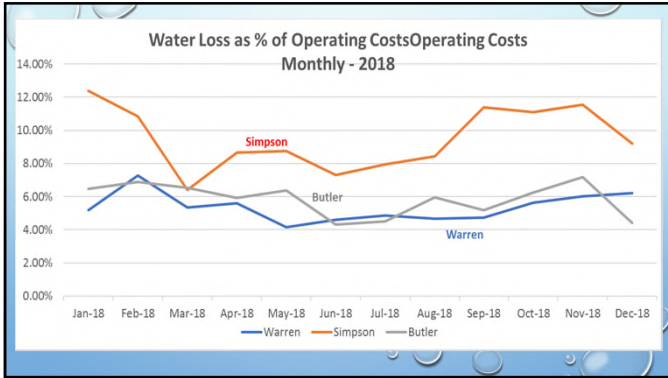
2018 PSC ANNUAL REPORT
WATER STATISTICS (REF PAGE 30)
(CONT)

<u>Ln</u>	<u>WARREN</u>	<u>SIMPSON</u>	<u>BUTLER</u>
24 Tank Overflows	121,000	-	266,000
25 Line Breaks	2,830,000	2,057,000	888,000
26 Line Leaks	382,446,000	76,350,000	66,249,000
27 Other	2,611,000	976,000	2,780,000
28 Total Line Loss	388,008,000	79,383,000	70,183,000
33 Line 28 divided by Line 4	12.3%	18.8%	21.3%



**FINANCIAL IMPACT
YEAR 2018**

	<u>WARREN</u>	<u>SIMPSON</u>	<u>BUTLER</u>
PSC Line Loss	388,008,000	79,383,000	70,183,000
Purchased \ Produced Cost per 1000 Gal	\$1.3570	\$2.6590	\$1.6138
Power Costs	\$0.1323	\$0.0622	\$0.1123
Total Pumping Costs	\$1.4893	\$2.7212	\$1.7261
Line Loss \$	\$577,863	\$216,019	\$121,143
Operating Costs	\$10,856,765	\$2,276,445	\$2,099,856
Line Loss as % of Operating Costs	5.3%	9.5%	5.8%



AWWA WATER AUDIT YEAR 2018

<u>System Attributes:</u>	<u>WARREN</u>	<u>SIMPSON</u>	<u>BUTLER</u>	
Apparent Losses	20.211	2.590	1.967	MG/Yr
+ Real Losses	<u>360.640</u>	<u>76.041</u>	<u>63.413</u>	MG/Yr
= Water Losses	380.852	78.631	65.380	MG/Yr
Unavoidable Annual Real Losses (UARL)	321.11	77.31	120.65	MG/Yr
Annual Cost of Apparent Losses	\$80,845	\$16,599	\$15,529	
Annual Cost of Real Losses	\$537,715	\$203,104	\$40,543	Variable Cost

AWWA WATER AUDIT YEAR 2018 (CON'T)

Performance Indicators:

<u>Financial:</u>	<u>WARREN</u>	<u>SIMPSON</u>	<u>BUTLER</u>
Non-revenue water as % by volume of Water Supplied	12.5%	19.3%	21.0%
Non-revenue water as % by cost of operating system*	5.9%	10.0%	2.8%

*Real Losses Valued at Variable Production Cost

**AWWA WATER AUDIT
YEAR 2018 (CON'T)**

Performance Indicators:

Operational Efficiency:	WARREN	SIMPSON	BUTLER	
Apparent Losses per service connection per day:	1.75	1.76	0.93	gals/conn/day
Real Losses per length of main per day:	854.72	524.76	335.07	gals/mile/day
Real Losses = Current Annual Real Losses (CARL):	360.64	76.04	63.41	MG/Yr
Infrastructure Leakage Index (ILI) [CARL/UARL]	1.12	0.98	0.53	
Data Validity Score	81	81	81	


SUMMARY

	WARREN	SIMPSON	BUTLER
Volumetric:			
PSC Water Loss %	12.3%	18.8%	21.3%
AWWA Non Revenue Water %	12.5%	19.3%	21.0%
Financial:			
PSC Water Loss as % of Operating Costs	5.3%	9.5%	5.8%
AWWA Non-Revenue % of Operating Costs	5.9%	10.0%	2.8%
Line Loss \$ (Purch/Prod + Pumping)	\$577,863	\$216,019	\$121,143
AWWA Annual Cost of Real Losses	\$537,715	\$203,104	\$40,543

**WATER LOSS EVALUATION
% vs \$**

WARREN COUNTY WATER DISTRICT
SIMPSON COUNTY WATER DISTRICT
BUTLER COUNTY WATER SYSTEM, INC.

QUESTIONS ?




**STOLL
KEENON
OGDEN**
P.L.L.C.

**ALL YOU EVER WANTED TO
KNOW ABOUT DEPRECIATION
.... AND THEN SOME**

Kentucky Rural Water Association –
Utility Leadership Institute
October 29, 2019


Katelyn Brown
Stoll Keenon Ogden PLLC
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(502) 568-5711



**STOLL
KEENON
OGDEN**
P.L.L.C.

ORDER OF PRESENTATION


- What is Depreciation?
- What Does it Mean to “Fully Fund” Depreciation?
- Consequences of Not Fully Funding Depreciation
- Reading Financial Statements




**STOLL
KEENON
OGDEN**
P.L.L.C.

ORDER OF PRESENTATION

- PSC Concerns with Depreciation
- Analysis of Various WDs and Cities
- How to Increase or Improve Depreciation Funding



WHAT IS DEPRECIATION?

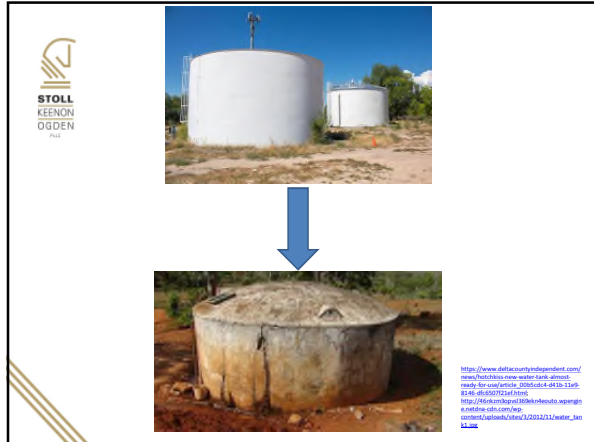


Definition of Depreciation

- The process of allocating the cost of a utility plant asset to expense over its service (useful) life in a rational and systematic manner
- Think of initial capital investment as a prepaid expense with a portion of that expense systematically recorded as Depreciation Expense in subsequent accounting periods



<https://www.2020bestdeals.com/used-cars/best-deal-2015-00149-00149-00149-00149-00149/>
<http://www.2020bestdeals.com/>



Why is Depreciation Important?


- Although non-cash, depreciation expense creates cash flow in regulated entities (like WDs & WAs) and municipal utilities
- Informs management, creditors, investors, and others of the utility's cost of operating
- Helps to more accurately match revenues with expenses
- Who determines your utility's depreciation?

Typical Ways that Useful Lives are Determined

- Rural Development (RD)
- Kentucky Infrastructure Authority (KIA)
- CPA
- Engineer
- PSC (NARUC Guidelines)
- Board




**WHAT DOES IT MEAN TO
“FULLY FUND”
DEPRECIATION?**




**“Fully Funding” Depreciation
means....**

- Setting aside cash equivalent to the utility's annual depreciation expense in order to purchase replacement assets in the future
- Set aside in a safe investment (CD or money market account)




**CONSEQUENCES OF NOT
FULLY FUNDING
DEPRECIATION**




Not Fully Funding Depreciation will....

- Cause the utility to have to borrow \$\$ to purchase the replacement asset
- Cause the utility to seek outside funding (added interest)
- Cause the utility to use funds budgeted for other purposes



READING FINANCIAL STATEMENTS




Financial Statements

- Depreciation Expense is an Income Statement account
 - But Income Statement only accounts for Interest Expense, does not take into account the principal of loans/bonds that must be paid
- Accumulated Depreciation is a Balance Sheet account
 - Shown on Statement of Net Position
- Statement of Cash Flows
 - Reflects principal payments



**STOLL
KEENON
OGDEN**
PAUL


**PSC CONCERNS WITH
DEPRECIATION**



**STOLL
KEENON
OGDEN**
PAUL


The PSC is concerned with:

- Long-term financial health of utilities
- Utility's aging infrastructure
- Frequency of rate cases



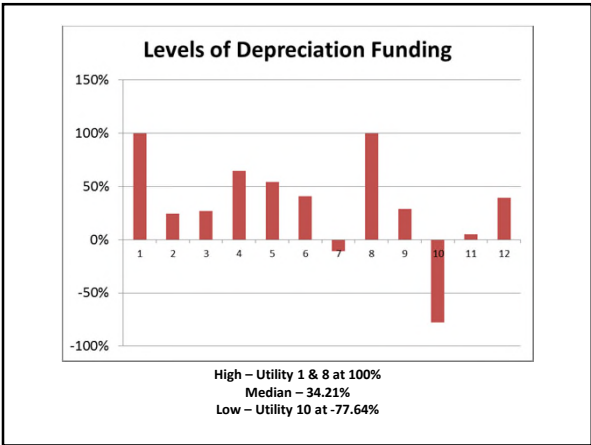
**STOLL
KEENON
OGDEN**
PAUL


**ANALYSIS OF VARIOUS
WATER DISTRICTS AND
CITIES**



Analyzed 12 WDs and Cities


- Labeled utilities #s 1-12 for anonymity
- Based on 2017 numbers
- Looked at:
 - Level of Depreciation Funding (% and \$)
 - # of customers
 - Depreciation Expense compared to other operating expenses
 - \$ of Debt Service Expense (P & I) and Debt Service Coverage






Utility	Depreciation Expense
1	\$ 941,370
2	\$ 390,702
3	\$ 576,885
4	\$ 404,238
5	\$ 272,221
6	\$ 309,108
7	\$ 923,626
8	\$ 2,935,452
9	\$ 151,146
10	\$ 404,363
11	\$ 228,085
12	\$ 217,039

High – Utility 8 at \$2,935,452
 Median - \$397,470
 Low – Utility 9 at \$151,146




Utility	Customer Count
1	8,285
2	3,436
3	4,625
4	3,391
5	5,158
6	7,348
7	6,855
8	26,878
9	3,517
10	3,785
11	2,663
12	1,180

High – Utility 8 at 26,878
Median – 4,205
Low – Utility 12 at 1,180




Depreciation Expense Compared to Other Operating Expenses

- For 9 of 12 of the WDs and cities analyzed, Depreciation Expense was either the highest operating expense or 2nd highest operating expense behind Water Purchased




Debt Service Expense vs. Debt Service Coverage

- Bond Ordinance or Bond Authorizing Resolution dictates the DSC
- Different funding agencies have different DSC requirements
 - KIA: 1.1
 - RD: 1.2
 - Some cities: 1.25 or higher
 - LWC: 1.5




Utility	Debt Service Expense	Debt Service Coverage
1	\$ 1,312,780	\$ 262,556
2	\$ 189,317	\$ 37,863
3	\$ 331,621	\$ 66,324
4	\$ 213,469	\$ 42,694
5	no debt	no debt
6	no debt	no debt
7	\$ 1,129,780	\$ 225,956
8	\$ 1,674,372	\$ 334,874
9	\$ 70,701	\$ 14,140
10	\$ 314,767	\$ 62,953
11	\$ 78,531	\$ 15,706
12	\$ 95,231	\$ 19,046

Debt Service Coverage
High – Utility 8 at \$334,874
Median - \$40,279
Low – Utility 9 at \$14,140



How to Increase or Improve Depreciation Funding

- Create a separate fund in which to deposit depreciation expense for future replacement of utility assets
 - FDIC concerns
- Evaluate whether or not you need to request a rate increase
- Discuss useful life of assets with the person/entity who decides your annual Depreciation Expense



CONCLUSION/SUMMARY

- Evaluate your own water utility's depreciation practices
- Determine whether or not current rates are sufficient
- Board Commissioners/Members must be good stewards



**STOLL
KEENON
OGDEN**
PAU

QUESTIONS?




LEGAL AND REGULATORY ASPECTS
OF WATER LOSS

Gerald Wuetcher
Stoll Keenon Ogden PLLC
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<https://twitter.com/gwuetcher>
(859) 231-3017




ORDER OF PRESENTATION

- Recent Developments
- Measuring Water Loss
- Ratemaking Considerations
- Water Loss Control Surcharges
- Potential Regulatory Liabilities




RECENT DEVELOPMENTS

- Increased PSC Emphasis on H₂O Loss
- Martin County Water District
- PSC Examines H₂O Loss Reporting
- “Leaky Eleven” Investigation




PSC EMPHASIZES H₂O LOSS

- Orders/Reports Highlight Financial Cost of H₂O Loss
- Warnings of “Additional Action” if reduction in loss not achieved
- Referral to Local Govt Officials
- High H₂O loss = PSC Reg Violation




PSC NOTICE

Based upon the updated information in the application, ABC District's unaccounted-for water loss is determined to be 37 percent for the updated period. Reduction of ABC District's unaccounted-for water loss to 15 percent would result in an approximate \$184,682 decrease to purchased water expense. Potentially, ABC District is paying approximately \$1.16 per 1,000 gallons sold, for expenses associated with unaccounted-for water loss in excess of the allowable 15 percent threshold.




PSC WARNING

The Commission is placing greater emphasis on monitoring utilities that consistently exceed the 15 percent unaccounted-for water loss threshold and strongly encourages ABC District to pursue reasonable actions to reduce its unaccounted-for water loss. Failure by ABC District to make significant progress towards reducing unaccounted-for water loss **may cause the Commission to pursue additional action with the utility.**




MARTIN COUNTY WATER DISTRICT

- 3-year Investigation – Continues
- 70 Percent Water Loss
- Serious H₂O Quality Problems
- Water Shortages
- [News Media Attention](#)




WATER LOSS REPORTING

- PSC Case No. 2018-00394
- Purpose: Review H₂O loss reporting
- All PSC H₂O utilities made parties
- PSC notes its greater emphasis on utilities that consistently exceed 15% unaccounted-for water loss




WATER LOSS REPORTING

- “Some utilities are having difficulty properly measuring and reporting their water loss”
- Revisions to method for calculating “unaccounted-for” water
- Utilities directed to comment




WATER LOSS REPORTING

- Record Closed (March 2019)
- Awaiting PSC Decision



“LEAKY ELEVEN” INVESTIGATION

- PSC Case No. 2019-00041
- Involves 11 Utilities with highest H₂O loss percentage – 35% Loss or Higher
- PSC: Excessive H₂O loss is “a potential warning sign of the financial health & operational well-being of H₂O utilities”




“LEAKY ELEVEN” INVESTIGATION

- Purpose of Proceedings:
 - Ascertain Reasons For High H₂O Loss
 - Identify Actions to Reduce H₂O Loss
- Promised additional proceedings for H₂O Utilities “consistently exceeding” 15%
- Intensive Discovery
- Hearings (July 2019)




“LEAKY ELEVEN” INVESTIGATION

- Purpose of Proceedings: Ascertain Reasons For High H₂O Loss Identify Actions to Reduce Line Loss
- Promised additional proceedings for H₂O Utilities “consistently exceeding” 15%
- Intensive Discovery
- Hearings (July 2019)




**“LEAKY ELEVEN” INVESTIGATION:
NEXT ACTIONS**

- Issue order directing action plan for each utility
- Publish report of findings, conclusions and recommendations
- Examine PSC’s requirements re: disallowing recovery for water loss




**“LEAKY ELEVEN” INVESTIGATION:
PRELIMINARY FINDINGS**

- Inadequate/Inconsistent Oversight & Management
 - Lack of experience or training
 - Failure to establish water loss targets or leak detection protocols
 - Poor recordkeeping



**“LEAKY ELEVEN” INVESTIGATION:
PRELIMINARY FINDINGS**

- Poor Financial and Accounting Practices
 - Infrequent rate increases; failure to match rates with expenses
 - Rate increases through other means (e.g., through grants & loans)
 - Unauthorized debt




**“LEAKY ELEVEN” INVESTIGATION:
PRELIMINARY FINDINGS**

- Unsustainable accounting practices such as using depreciation to cover operating costs
- Detrimental Extraneous Influences/Local Pressure




MEASURING WATER LOSS




MEASUREMENT STANDARDS

- Non-Revenue Water
 - AWWA M36 Methodology
- Unaccounted-for Water Loss
 - PSC-recognized Methodology




WHAT IS NON-REVENUE WATER?

“Those components of system input volume that are not billed and produce no revenue. Non-revenue water equals unbilled authorized consumption plus apparent and real losses.”




WHAT IS NON-REVENUE WATER?

Total Water Produced
+ Total Water Purchased
- Total Water Billed =
Non-Revenue Water



WHAT IS NON-REVENUE WATER?


Non-Revenue Water =
Apparent Losses + Real Losses + Unbilled Authorized Consumption



WHAT IS UNACCOUNTED-FOR WATER?

“Unaccounted-for water” means the volumetric sum of all water purchased and produced less the volume of water: (a) Sold; (b) Provided to customers without charge as authorized by the utility’s tariff; and (c) Used by the utility to conduct the daily operation and maintenance of its treatment, transmission, and distribution systems.


807 KAR 5:067




WHAT IS UNACCOUNTED-FOR WATER?

“[T]he difference of the total amount of water produced and purchased and the sum of water sold, water used for fire protection purposes, and water used in treatment and distribution operations (e.g. , backwashing filters, line flushing).”


Case No. 2011-00233, Order of 11/3/2011




WHAT IS UNACCOUNTED-FOR WATER?
Current PSC Annual Report Form:
Unaccounted-For Water = Total Line Loss
Total Line Loss =
Tank Overflows + Line Breaks + Line Leaks
+ [Other](#)



WHAT IS UNACCOUNTED-FOR WATER?
Revised PSC Annual Report Form:
Unaccounted-For Water = Total Line Loss
Total Line Loss =
Tank Overflows + Line Breaks + Line Leaks
+ Excavation Damages + Theft +
[Unknown Loss](#)




UNACCOUNTED-FOR WATER LOSS AND RATEMAKING



UNACCOUNTED-FOR WATER AND UTILITY RATES


807 KAR 5:066, Section 6(3):

“[F]or rate making purposes a utility’s unaccounted-for water loss shall not exceed fifteen (15) percent of total water produced and purchased, excluding water used by a utility in its own operations.”




EFFECT OF 807 KAR 5:066, §6(3)

- Utility may not recover cost of unaccounted-for water exceeding 15% of total water produced or purchased
- Disallowance based upon:
 - Production Cost
 - Purchased Water Cost
 - Pumping costs (purchased power)




EFFECT OF 807 KAR 5:066, §6(3)

- In 2018-19 PSC disallowed H₂O and purchase power expense in 15 of 20 water rate cases – 75% of all cases
- Total Amount Disallowed: \$1,165,675
- Average Disallowance: **\$77,712**




WHY 15 PERCENT?

- PSC Commissioner (3/2019): “Nationally accepted standard”
- AWWA has never adopted a policy/guidelines that 15% is acceptable
- PSC Staff unable to identify source
- 807 KAR 5:066 (1992) has no explanation




WHY 15 PERCENT?

- 15% limit in 807 KAR 5:067 (1981) with no explanation
- 1980 PSC Orders refer to “longstanding practice”
- 1957 AWWA Committee Report




REASONS FOR 15% RULE

- Protect Ratepayers from excessive losses
- Serves as an “incentive to promote efficient management”
- Encourages reasonable actions to control water loss




IS 15% RULE WORKING?

- No profit incentive for non-profit water utilities
- Creates incentive to under-report or falsely report water usage
- Almost half of PSC-regulated water utilities have greater than 15% water loss




IS THE 15% RULE WORKING?

	2015	2016	2017
Over 15%	46.7%	49.3%	46.3%
Over 20%	26.3%	26.1%	26.0%
Over 25%	15.3%	14.2%	17.9%
Over 30%	10.2%	14.2%	12.2%
Average %	17.31	17.43	17.6
Median %	14.43	14.82	14.43



CRITICISMS OF 15% RULE

- Percentage is affected by varying levels of customer consumption
- Water loss target dictated by pressure, terrain, and variable cost of H₂O
- Does not consider cost of repairs/new facilities to reduce loss




CRITICISMS OF 15% RULE

- No measure for data accuracy and reliability
- Creates an incentive to inaccurately report loss
- Leads to “Death Spiral”




RATEMAKING CONSIDERATIONS



IS 15 PERCENT APPROPRIATE MEASURE?

- 807 KAR 5:066, § 6(3): PSC may establish an alternative level
- Utility OR PSC may propose
- Proposal may be made in rate case or separate proceeding
- Utility must demonstrate alternative level is more reasonable




ARGUMENTS FOR ALTERNATIVE LEVEL

- Service Area Topography
- Age/Condition of Facilities
- Consolidated Systems w/ Legacy Issues
- New management/legacy problems
- Cost of Water
- Infrastructure Replacement/Repair not cost-effective




SERVICE TO FIRE DEPTS

- Enforcement of Tariff Reporting Requirements
- Failure to Assess Penalties
- Accuracy of Usage Reports
- Measurement of Fire Department Use



SYSTEM FLUSHING

- Flushing Usage Overstated
- PSC Likely to Question Accuracy of Reports
- Greater Attention to How Utilities Measure Use




OTHER RATE CASE ISSUES

- Properly Measuring Consumption
 - Periodic Testing of Utility Meters
 - Testing of H₂O Suppliers' Meters
 - Verification of Purchases
- Allocating Power Costs to Pumping
- Calculation of Water Treatment Costs




WATER LOSS CONTROL SURCHARGE




WHY SURCHARGE?

- Excessive water loss requires \$\$ to implement control measures
- No funds to pay H₂O expense or take corrective measures
- Disallowance creates "Death Spiral"
- Q: How can corrective measures be funded if not through general rates?




SURCHARGE EXAMPLES

- Water Loss Demonstration Project (1980s)
- Cannonsburg WD (2011-00217)
- Cannonsburg WD (2018-00376)
- Graves County WD (2018-00429)
- Estill County WD (2019-00119)




WATER LOSS DEMONSTRATION PROJECT

- Utilities with high H₂O loss permitted to assess surcharge to finance repairs
- Surcharge = disallowed H₂O cost + identified cost of repairs/improvements
- Temporary Surcharge (generally 3 years)
- Use of proceeds for H₂O loss efforts only
- Reporting Requirements




CANNONSBURG WATER DISTRICT

- 2012: PSC authorizes surcharge/requires comprehensive plan (2011-00217)
- Utility's Unaccounted-for H₂O: 29.9%
- 3-yr collection - \$5.53/mo - \$700,875
- Reporting requirements imposed
- PSC establishes case to monitor
- PSC approves zone metering plan (2014)




CANNONSBURG WATER DISTRICT

- Problems with Implementation
- New Manager hired 2016
- 2017-19: H₂O loss drops - 55% to 27%
- New Rate Case (2018-00376)
- PSC Staff recommends disallowance of \$373,853 of Purchased H₂O Expense




CANNONSBURG WATER DISTRICT

- WD requests additional surcharge
- Seeks \$510,000 (\$4.00 / mo.) to complete zone metering implementation (\$521,035 remains from 1st Surcharge)
- PSC OKs – Authorizes immediate collection




GRAVES COUNTY WATER DISTRICT (2018-00429)

- WD files for rate adjustment, requests \$136,000 for water leak detection repair
- PSC Staff recommends:
 - Disallow \$42,371 (excessive H₂O Loss)
 - 3-yr Surcharge - \$3.20 - \$183,323
- PSC orders hearing on WD's plan, encourages comprehensive plan




GRAVES COUNTY WATER DISTRICT (2018-00429)

- WD files for rate adjustment, requests \$136,000 for water leak detection repair
- PSC Staff recommends:
 - Disallow \$42,371 (excessive H₂O Loss)
 - 3-yr Surcharge - \$3.20 - \$183,323
- PSC orders hearing on WD's plan, encourages comprehensive plan




GRAVES COUNTY WATER DISTRICT (2018-00429)

- WD files supplemental proposal
- Proposes work plan with estimated cost of \$1.4 million
- Requests \$5.00/mo. Surcharge for 6 yrs – total amount \$1.7 million
- Proposes several reporting requirements & biennial review of surcharge




GRAVES COUNTY WATER DISTRICT (2018-00429)

- PSC OKs \$1.7 Million Surcharge
- Accepts All But 1 of Proposed Controls
- Rejects Automatic OK of Proposed Use if No PSC Action within 30 days
- Requires Annual Review
- Establishes Monitoring Proceeding




ESTILL COUNTY WATER DISTRICT NO. 1 (2019-00119)

- PSC ordered WD to file Corrective Action Plan
- Initial Cost: \$1,021,000
- WD requests \$3.54/mo surcharge for 3 years (minimum) - \$479,000
- Not part of general rate adjustment




ESTILL COUNTY WATER DISTRICT NO. 1 (2019-00119)

- Proposes reporting requirements
- Requests immediate collection, but no expenditure of funds without PSC approval of plan
- PSC approves immediate collection
- Review of Surcharge Still Ongoing




ELEMENTS OF VIABLE WATER LOSS CONTROL SURCHARGE

- Part of application for general rate adjustment
- Detailed Plan of Corrective Measures
- Detailed Information re: Costs
- Proposed Surcharge Total Amount = Excessive H₂O Costs + Cost of Repairs
- Flexibility – Amount & Expenditure



**ELEMENTS OF VIABLE WATER
LOSS CONTROL SURCHARGE**

- Record/reporting requirements
 - Rpt on Collections/Disbursements
 - Monthly H₂O loss reports
 - Itemized Listing of Expenditures
 - Separate interest bearing account for Proceeds
 - Termination of Surcharge/Refund




**ELEMENTS OF VIABLE WATER
LOSS CONTROL SURCHARGE**

- Advanced PSC review/approval programs
- Periodic Review of Surcharge Operation
- Advise PSC if Surcharge To Be Use As Collateral for Immediate Loan




**REGULATORY
LIABILITY**




KRS 278.030

“Every utility shall furnish adequate, efficient and reasonable service, and may establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service.”




807 KAR 5:066, § 7

“The utility’s facilities shall be designed, constructed and operated so as to provide adequate and safe service to its customers and shall conform to requirements of the Natural Resources Cabinet with reference to sanitation and potability of water.”




EXCESSIVE WATER LOSS AS PUNISHABLE OFFENSE

- PSC Inspection Reports: Water Loss over 15% is violation of 807 KAR 5:066, § 7
- Case No. 2019-00084:
 - Water Loss over 15% is violation of 807 KAR 5:066, § 7
 - Failure to limit water loss to 15% is failure to provide adequate service



EXCESSIVE WATER LOSS AS PUNISHABLE OFFENSE

- Violation of KRS 278.030
- Utility may be subjected to penalty
- Responsible Utility officers may be penalized for failure
- What constitutes a willful violation?



RESPONSE TO INSPECTION REPORT ALLEGATIONS

- Acknowledge Amount of Loss
- Note Corrective Actions Underway or Planned
- Dispute Allegation of Violation
- Make Clear Utility Does Not Accept PSC Staff's Position



RESPONSE TO INSPECTION REPORT ALLEGATIONS


- 15% Rule is a Different Regulation & Addresses only Rate Recovery of H₂O Costs
- "Adequate service" = sufficient quality of H₂O to meet demand – KRS 278.010(14)
- Line Loss above 15% does not equate with "unsafe service" - What Safety issues?
- Does not affect purity, pressure or quantity of H₂O – Definition of "Service"



WATER & FIRE PROTECTION

KRS 278.170(3):


- Permits free water service to fire depts for fire protection/training
- PSC-approved tariff re: free service
- Tariff must require Fire Dept to maintain estimates of H₂O usage and file periodic reports with utility



WATER & FIRE PROTECTION


807 KAR 5:095:

- Utility permitting free/reduced rate water service to fire depts must require quarterly reports of H₂O usage
- Utility tariffs must also provide for a penalty if failure to report H₂O usage.




WATER & FIRE PROTECTION

- Permitting H₂O withdrawals at no charge without any tariff provision violates KRS 278.160 & KRS 278.170(3)
- Failure to enforce requirements for reports violates KRS 278.170(3)
- Failure to assess penalty for lack of reports violates KRS 278.160



AVOIDING VIOLATIONS

- Enforce your Tariff's terms
- Enforce reporting requirements
 - Request Reports
 - Assess Penalties for No Reports
- Fire Depts failing to report must be charged for H₂O withdrawn



AVOIDING VIOLATIONS

- Consider a separate rate for Fire Depts firefighting usage
- Coordination/Education



QUESTIONS?

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<https://twitter.com/gwuetcher>
(859) 231-3017

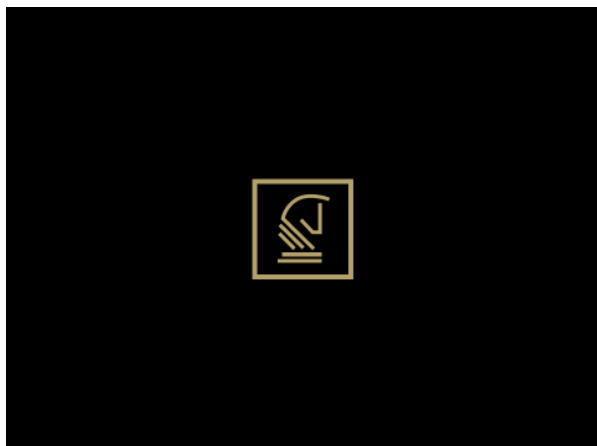


EXHIBIT 5

Kentucky Bar Association
Continuing Legal Education Commission
514 West Main Street
Frankfort, KY 40601 - 1812
Phone: 502-564-3795
Fax: 502-564-3225
<http://www.kybar.org>

Jeffrey Frey
Stoll Keenon Ogden
300 West Vine Street Suite 2100
Lexington KY 40507-1801

ID : 8660

Re : CLE Activity Accreditation
Date: October 04, 2019

The application for CLE accreditation for the activity listed below has been approved by the KBA CLE Commission. Kentucky attorneys attending or participating in the activity who have NOT claimed CLE credit must report their attendance either through the Member CLE Portal at www.kybar.org or by submitting a completed form #3.

Please contact Clifford Timberlake at (502) 564-3795 ext. 228 with any questions.

Sponsor:	Stoll Keenon Ogden		
Activity:	Kentucky Rural Water Association • Utility Leadership Institute		
Format:	Live - a program at a specific date and time - On site		
Location:	Bowling Green, ky		
Date:	10/29/2019		
Activity No.	213074	Sponsor No.	8660
TOTAL CREDITS:	6	ETHICS CREDITS	0

Ethics credits are INCLUDED in the TOTAL number of credits.

EXHIBIT 6

Wuetcher, Gerald

From: Thompson, Wendy (DLG) <wendy.thompson@ky.gov>
Sent: Monday, October 07, 2019 9:28 AM
To: Wuetcher, Gerald
Subject: RE: Application for Accreditation - County Elected Officials Training Program

Jerry,

You have been approved for 6 hours for this course and it is now listed on our web site.

Thanks!

From: Wuetcher, Gerald <Gerald.Wuetcher@skofirm.com>
Sent: Friday, October 4, 2019 5:15 PM
To: Thompson, Wendy (DLG) <wendy.thompson@ky.gov>
Subject: Application for Accreditation - County Elected Officials Training Program

****CAUTION** PDF attachments may contain links to malicious sites. Please contact the COT Service Desk ServiceCorrespondence@ky.gov for any assistance.**

Wendy:

Hello! I hope that all is well with you and your family.

I am writing to submit an application for approval of a training program that Kentucky Rural Water Association and Stoll Keenon Ogden PLLC will be jointly sponsoring. The application is attached. If you need any additional information, please e-mail or telephone.

Have a good weekend!

Sincerely,

Jerry

Gerald E. Wuetcher
Counsel to the Firm
Stoll Keenon Ogden PLLC
859-231-3000 (office)
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Lexington | Louisville | Frankfort | Hodgenville | Evansville | Indianapolis | skofirm.com

The following message, and any documents or previous e-mails attached to it, may contain confidential information protected by the attorney-client privilege. If it was sent to you in error, do not read it. Please inform the sender that you received it and then delete it. Thank you.



Elected County Officials Training Incentive Program Training Approval Request Form

Training Approval Requested By: Gerald E. Wuetcher

Title: Attorney Agency: Stoll Keenon Ogden PLLC

Phone: (859) 231-3017 E-mail: gerald.wuetcher@skofirm.com

Requester: Please complete both pages of this form, attach a copy of the detailed agenda that lists the start and end times of all training sessions while also indicating any breaks that may be given and submit to: Department for Local Government, 1024 Capital Center Drive, Suite 340, Frankfort, KY 40601
Phone: 800-346-5605 Fax: 502-573-3712 E-mail: Wendy.Thompson@ky.gov

Training Event Information

Training Title: Fifth Annual Water Law Series

Training Provider: Kentucky Rural Water Association/Stoll Keenon Ogden PLLC

Contact Name: Gerald E. Wuetcher Title: Attorney

Phone: (859) 231-3017 E-mail: gerald.wuetcher@skofirm.com

Fax: (859) 259-3517 Website: krwa.org

Training Intended For: *Fiscal Court* *County Clerk* *Sheriff* *Jailer* *All*

Registration Fees: *Yes: Dollar Amount:* \$ 249 *No*

Enrollment Limitations: *Yes: Maximum Enrollment:* # _____ *No*

Proof of Attendance: *Individual POA Form* *Sign-In/Out Sheets* *Individual Certificate*

Training Dates with Locations: October 29, 2019 - Holiday Inn University Plaza, Bowling Green, Kentucky

FOR DLG USE ONLY

Approved By: _____ Date: _____ Hours: _____

Denied By: _____ Date: _____

**Elected County Officials Training Incentive Program Training Approval Request Form
Page Two**

Training Title: Fifth Annual Water Law Series **Provider:** KRWA/Stoll Keenon Ogden PLLC

Has this training been specifically designed for Kentucky's elected county officials? Yes No

Describe the learning objectives and how the content pertains to improving job knowledge or skills.

Upon completion of course, elected officials will have increased knowledge of recently enacted legislation and recent Kentucky Court and Public Service Commission decisions that significantly affect the operation and management of water and wastewater utilities, including water districts and municipal utilities. They will gain a greater appreciation of some common legal issues that these utilities face and possible courses of action for addressing these issues.

List Trainers and their Titles/Qualifications (attach short Bio's if necessary):

See attached agenda and biographical materials

Describe any training materials that will be provided to the trainees:

Each attendee will be provides a copy of the presenter's presentation and presentation notes. Each will also be provided a flash drive containing approximately 1,500 pages in electronic format of applicable laws, regulations Kentucky court decisions, and Public Service Commission orders, as well as several reference publications

Is this training a requirement for County Officials? (If Yes check applicable officials) Yes No

Fiscal Court County Clerk Sheriff Jailer All

List corresponding KRS, KAR or other requiring entity:

KRS 74.020 (Water District Commissioners)

5th Annual Water Law Series

Presented by

**Kentucky Rural Water Association • Utility Leadership Institute
Stoll Keenon Ogden PLLC**

**Holiday Inn University Plaza | Sloan Convention Center
Bowling Green, Kentucky**

October 29, 2019

MORNING AGENDA

7:45 - 8:25 Registration and Refreshments

8:25 - 8:30 Welcome and Program Overview – Gary Larimore

8:30 - 9:30 Recent Developments in Utility Regulation – Damon Talley

This presentation reviews recent developments in public utility law and regulation. Topics include revisions to the Open Meetings Act, sovereign immunity, wholesale water purchase agreements, franchises, obtaining PSC approval before borrowing money, and laws enacted by General Assembly in its 2018 and 2019 Sessions. The presenter will also examine and discuss recent court and PSC decisions.

9:30 - 9:45 BREAK

9:45 - 10:45 Hot Topics in Employment Law: 2019 Update – Amy Miles

This presentation reviews general employment law principles and addresses recent developments in federal, state, and local employment laws. The presenter will also discuss a water commissioner's role in providing a hostile free work environment in the "Me Too" era.

10:45 - 11:00 BREAK

**11:00 - 12:00 Grading Kentucky's Drinking Water Infrastructure
Greg Heitzman & Russ Rose**

This presentation examines the results of the recent study of Kentucky's drinking water infrastructure by the American Society of Civil Engineers and its implications for Kentucky water utilities and the agencies that regulates those utilities. Presenters will discuss the regulatory and legal policies that produced the current state of Kentucky's infrastructure, the regulatory policies and legislative initiatives that are likely to result in reaction to the infrastructure study's finding, and the actions that water utility management and its legal counsel in preparation for that response.

12:00 - 1:00 LUNCH (Provided On-Site)

AFTERNOON AGENDA

1:00 - 2:00 Water Loss Evaluation: Demonstrating Compliance with PSC Water Loss Regulatory Standards – John Dix

The Kentucky Public Service Commission has placed increased emphasis on water loss as a metric to evaluate the operation of water utilities and determine compliance with its regulatory standards. In this presentation, the presenter will discuss the current method that the Commission uses to determine the appropriate level of water loss and then examine alternative methods of evaluating water loss that a water utility and its legal counsel may present to establish compliance with Public Service Commission regulatory standards.

2:00 - 2:15 BREAK

**2:15 - 3:15 All You Ever Wanted to Know About Depreciation . . .and Then Some
Katelyn Brown**

Depreciation is an important but frequently misunderstood concept in ratemaking. This presentation discusses the legal and accounting aspects of depreciation. The presenter will extensively discuss the Kentucky Public Service Commission's current treatment of depreciation. Using several recent Commission decisions, the presenter will point out pitfalls that water utilities and their legal counsel frequently encounter in rate proceedings and how these pitfalls can be avoided and approaches that counsel can pursue to ensure full recover of its depreciation expense through rates while avoiding lengthy and expensive administrative proceedings. The consequences of failing to adequately fund depreciation will also be examined.

3:15 - 3:25 BREAK

3:25 - 4:25 Legal and Regulatory Aspects of “Unaccounted-For” Water – Gerald Wuetcher

The Public Service Commission disallows any costs associated with “unaccounted-for water” exceeding 15 percent of a water utility's total water purchased or produced. This presentation addresses the legal and regulatory implications of this rule, the history of this rule, and the Commission's current regulatory stance towards water loss. Significant attention will be devoted to the use of surcharges to fund water loss reduction efforts and how to obtain authorization for such surcharges. Potential financial and regulatory risks posed to utilities and utility officers for high unaccounted-for water levels, including liability for civil penalties, and potential approaches to reducing the disallowance of the water costs in ratemaking proceedings will also be discussed.

4:25 - 4:30 Closing Remarks & Administrative Announcements – Gary Larimore



Katelyn L. Brown

Direct Phone: 502.568.5711
katelyn.brown@skofirm.com

BAR & COURT ADMISSIONS

Kentucky

EDUCATION

University of Kentucky
College of Law
2018, J.D., cum laude

University of Kentucky
2014, B.S. in Accounting

RECOGNITION

Faculty Cup Award, UK
College of Law, 2018

Student Bar Association
President, UK College of
Law, 2017-2018

Student Representative on
the College of Law Building
Committee, UK College of
Law, 2016-2018

Katelyn L. Brown

Katelyn Brown joined Stoll Keenon Ogden in 2018 as an Associate in the Louisville office, following completion of the firm's Summer Associate program in Lexington. She is part of the Utility & Energy and Public Finance practice groups at SKO.

Katelyn graduated from the University of Kentucky, where she went on to earn her J.D. with a cum laude distinction. She is also a Certified Public Accountant. During her time in law school she served as president of the Student Bar Association at UK College of Law and was the student representative on the Building Committee there. She also volunteered with the VITA (Volunteer Income Tax Assistance) Clinic. Katelyn has been recognized with several awards related to her achievements as a law student.

Utility & Energy Services: Katelyn is part of a team that represents utility companies on a wide range of issues before the state commissions in Indiana, Kentucky, Tennessee and Virginia, the Federal Energy Regulatory Commission and the Federal Communications Commission, local governments and trial and appellate courts. As part of her work with this practice group, she drafts pleadings for the largest electric utilities in Kentucky and researches regulations and drafts agreements between local water districts and cities.

Public Finance: Katelyn has a strong accounting background and recently received her CPA license, which assists her work in providing strategic counsel to clients. She joins an expert legal team at SKO in representing financial institutions and companies in their taxable and tax-exempt bond matters.

Pro Bono Award (for 50 or more hours of pro bono work during law school), UK College of Law, 2018

Volunteer Income Tax Assistance clinic volunteer, UK College of Law, 2016-2018

Staff Editor, *Kentucky Law Journal*, UK College of Law, 2016-2018

Singletary Scholar, University of Kentucky, 2010-2014

CALI awards: Legal Research & Writing (Rutledge Club), International Business Transactions

Best Brief for the Appellant (Rutledge Club)

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John M. Dix, P.E. is the General Manager of the Warren County Water District, Butler County Water System, Inc. and Simpson County Water District. Mr. Dix has served the water and wastewater utility business in South Central Kentucky since 1992 when he first joined Warren Water. Dix's career also includes serving as Vice President of the regional engineering firm Cannon & Cannon, Inc., City Engineer for Bartlett, Tennessee, and as a Submarine Naval Architect for the Department of the Navy. A Civil Engineering graduate of Virginia Tech in 1982, Dix is a registered Professional Engineer in Kentucky and Tennessee.

Dix was appointed to the state Water Resources Board by Governor Bevin in 2019, selected as president of Kentucky Rural Water Association, and also serves as secretary for the Rochester Dam Regional Water Commission. In 2017, Dix was named a vice president for the Bowling Green Area Chamber of Commerce and was chosen as board volunteer of the year in 2015.



Biography

**Greg C. Heitzman, PE, MBA
President
BlueWater Kentucky
Louisville, KY**

2016

Greg Heitzman is President of BlueWater Kentucky, a management consulting firm serving the water and wastewater industry. From 2011 to 2015, he served as Executive Director/CEO of the Louisville Metropolitan Sewer District (MSD). Prior to MSD, he worked 31 years with the Louisville Water Company serving as Chief Engineer from 1991 to 2007 and President/CEO from 2007 to 2013.

In his executive roles for Louisville MSD and Louisville Water, Greg provided leadership for Mayor Fischer's One Water Partnership to consolidate water services and administrative functions of Louisville MSD and Louisville Water. Greg also led strategic initiatives to expand water and wastewater services in the region, develop high performance teams, establish model programs for corporate controls (policy, procedures and work instructions), and develop new lines of business and technology to enhance revenue and reduce costs.

Greg obtained his Bachelor and Master's degrees in Civil Engineering from the University of Kentucky and an MBA from the University of Louisville. He is a licensed Professional Engineer in Kentucky and recipient of AWWA George Warren Fuller Award. He is an active member in both AWWA and the Water Environment Federation/Association. He currently serves on the following industry and community boards: Water Research Foundation; Water Information Sharing and Analysis Center (Water ISAC); Louisville Water Foundation; Better Business Bureau; and Tree Louisville Commission.

He and his wife, Linda, reside in Louisville. Their daughter, Claire, is married and teaches high school in Lexington, KY.



**625 Myrtle Street
Louisville, Kentucky
502-533-5073**



Amy L. Miles

Direct Phone: 502.568.5751
amy.miles@skofirm.com

BAR & COURT ADMISSIONS

Kentucky

U.S. Court Of Appeals,
Seventh Circuit

U.S. Court Of Appeals,
Sixth Circuit

U.S. District Court, Eastern
District Of Kentucky

U.S. District Court, Northern
District Of Indiana

U.S. District Court, Southern
District Of Indiana

U.S. District Court, Western
District Of Kentucky

EDUCATION

University of Louisville
Brandeis School of Law
2014, J.D., magna cum
laude

Centre College

Amy L. Miles

Amy joined Stoll Keenon Ogden's Louisville office in 2015 as an Associate in the Labor, Employment & Employee Benefits practice. Amy represents a variety of national, regional and local employers, from franchised auto dealerships to health care organizations.

As employment laws continually change, Amy counsels businesses and organizations on how to navigate complex statutes and regulations, which can create confusion around an employer's legal obligation to their employees. She provides practical, business-tailored advice that helps employers bridge the understanding gap in their organizations and avoid costly challenges in the courtroom.

Prior to beginning her practice at SKO, Amy served as a clerk for the honorable Candace J. Smith, U.S. Magistrate Judge in the Eastern District of Kentucky.

Labor, Employment & Employee Benefits: Amy has experience in all areas of employment law, from pre-litigation investigations to litigation and appeals. She also handles agency investigations, including proceedings before the Equal Employment Opportunity Commission, the Department of Labor and the Kentucky Commission on Human Rights.

Amy routinely advises employers on strategies to resolve workplace issues and prevent litigation by offering recommendations on day-to-day operational practices and broader employee-related policies. She has also conducted training for her clients relating to a variety of issues, including the Americans with Disabilities Act, the Family and Medical Leave Act and Title VII of the Civil Rights Act.

In cases of litigation, Amy represents employers responding to claims of discrimination, retaliation and wrongful termination, employment breach of contract, and wage and hour disputes, among other concerns.

B.A., cum laude

RECOGNITION

ABA-BNA Award for
Excellence in Labor and
Employment Law, 2014

University of Louisville
Brandeis School of Law Carl
A. Warns, Jr. Award, 2014

University of Louisville
Brandeis School of Law ALI
CLE Scholarship and
Leadership Award, 2014.

*University of Louisville Law
Review* Managing Editor,
Volume 52

Phi Kappa Phi

Brandeis Honor Society

Auto Dealer Services: Automobile manufacturers and franchised dealers are among the employers that Amy advises through her practice at SKO. She has a deep understanding of the industry and customizes her recommendations to match her clients' unique needs.

Health Care: Amy also counsels health care organizations and providers on a wide variety of employment-related matters. Her thorough knowledge of the evolving regulations governing the industry allows her to identify opportunities to reduce risks and costs.

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Russell (Russ) Rose grew up in Henry County Kentucky with a Farming background. He worked in the Agricultural industry before becoming a self-employed site contractor and has been in the water industry since 1997. He served as Assistant Manager for the North Shelby Water Company and the U.S. 60 Water District, Director for the LaGrange Utilities Commission, and the Chief Executive Officer for the Oldham County Water District since 2006. Oldham County Water has 21 employees, a 13 million gallon per day water treatment plant, serving over 8400 customers, and wholesaling water to the City of LaGrange.

He serves as the Vice-President for the Kentucky Rural Water Association, on the Board for the Ky Infrastructure Authority, Chair of the KIPDA Regional Water Management Council, and is a member of the AWWA. He also serves on several committees locally and statewide for the Division of Water, Ky Rural Water Association, and the Ky Chamber of Commerce.

Russ holds a Utility Management Certification from the National Rural Water Association, and is a Utility Management Institute Graduate. He is a licensed Water Operator and has been a licensed Wastewater Operator.

Faith and Family are an important part of Russ's life. Russ has been happily married to his wife Dana for 27 years. They have one daughter named Rachel.



Damon R. Talley

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 damon.talley@skofirm.com

BAR & COURT ADMISSIONS

Kentucky

U.S. District Court, Eastern District Of Kentucky

U.S. District Court, Western District Of Kentucky

United States Supreme Court

EDUCATION

University of Kentucky
 College of Law
 1975, J.D.

University of Kentucky
 College of Engineering
 1972, B.S.M.E.

RECOGNITION

Damon R. Talley

Damon joined Stoll Keenon Ogden's Utility & Energy practice as Of Counsel in 2015 and serves clients through the firm's Hodgenville, Lexington and Louisville offices.

Before his time at SKO, Damon spent 35 years in private practice working with public utilities throughout Kentucky. He is general counsel of the Kentucky Rural Water Association and has served in this capacity since 1979.

Given his substantial experience, Damon is frequently called upon to speak at training sessions sponsored by the Kentucky Rural Water Association, Public Service Commission, Division of Water, Utility Management Institute and other utility groups in the state.

Damon is also highly active in the local community and serves as a board member of several nonprofit organizations. He is a past board member of the Kentucky Infrastructure Authority. He was a charter member, long-time board member and two-term board chairman of the Kentucky FFA Foundation.

Utility & Energy: Damon represents public utility clients before the Kentucky Public Service Commission, as well as before federal and state trial and appellate courts. He handles matters such as rate adjustments, transfers of control, financing and construction applications, and consumer complaint proceedings.

Work Highlights

Damon serves as General Counsel of the Kentucky Rural Water Association and has served in this capacity since 1979.

Damon serves as General Counsel of the Kentucky Rural Water

Sullivan Medallion,
presented to Outstanding
Graduating Student,
University of Kentucky

Finance Corporation and has served in this capacity since 1995.

Moot Court Board,
president, University of
Kentucky College of Law

Outstanding Student,
University of Kentucky
College of Engineering

Omicron Delta Kappa,
president, University of
Kentucky

Kentucky Association of
Future Farmers of America,
president

Outstanding Citizen Award,
LaRue County Chamber of
Commerce, 1990

Outstanding Citizen Award,
Cave City Chamber of
Commerce, 1981

Outstanding Citizen Award,
Horse Cave Chambers of
Commerce, 1979

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BAR & COURT ADMISSIONS

Kentucky

U.S. Court Of Appeals For
The Armed Forces

U.S. District Court, Eastern
District Of Kentucky

U.S. District Court, Western
District Of Kentucky

EDUCATION

Emory University
1984, J.D.

Johns Hopkins University
1981, B.A.

Gerald E. Wuetcher

Jerry is Counsel to the Firm in SKO's Lexington office and is part of the Utility & Energy practice. He joined the firm in 2014, after working for more than 26 years at the Kentucky Public Service Commission (PSC) as a staff attorney, deputy general counsel and executive advisor.

Over the course of his career, Jerry has frequently appeared before the PSC in administrative proceedings involving electric, natural gas, water and sewer utility issues and has represented the PSC in state and federal courts. He also served as the PSC's representative in several interagency groups addressing water and wastewater issues. He drafted amendments to various provisions of Kentucky's public utility statutes and revisions to the PSC's administrative regulations.

From 2009-2013, Jerry was PSC's representative on the board of the Kentucky Infrastructure Authority. He developed and implemented the PSC's training program for water utility officials and was an instructor for that program.

Jerry is a frequent speaker on utility and local government issues before such organizations as the Kentucky Rural Water Association, Kentucky League of Cities, Kentucky Association of Counties and Utility Management Institute.

Along with his significant experience in the realm of civilian law, Jerry served for 27 years in the U.S. Army as a judge advocate before retiring at the rank of colonel in 2011. He occupied numerous roles on active duty and in a reserve status.

Utility & Energy: Jerry concentrates on public utility law in Kentucky, but also participates in general and commercial litigation, transactions, employment concerns, securities issues and mergers and acquisitions involving gas, electric and water companies. He

handles all facets of regulatory matters, including the negotiation of complex agreements and representation before state agencies and courts.

Work Highlights

Attorney, Kentucky Public Service Commission (1987-2014). Served as a staff attorney, deputy general counsel and executive advisor. Frequently appeared before the Commission in administrative proceedings involving electric, natural gas, water and sewer utility issues and represented the Commission in state and federal courts. Responsible for drafting and revising the Commission's regulations. Served as the Commission's representative in various interagency groups addressing water and wastewater issues. Served as the Commission's representative on the Kentucky Infrastructure Authority's Board of Directors (2009-2014). Developed the Public Service Commission's water training program for water utility officials.

Judge Advocate, U.S. Army (1984 – 2011). Served as a judge advocate in the U.S. Army on active and reserve status in numerous roles. Retired at the rank of Colonel.

Adjunct Professor of Law, University of Louisville (2011)

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EXHIBIT 7



MATTHEW G. BEVIN
GOVERNOR

CHARLES G. SNAVELY
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

ANTHONY R. HATTON
COMMISSIONER

300 SOWER BOULEVARD
FRANKFORT, KENTUCKY 40601

October 30, 2019

Kentucky Rural Water Assoc KRWA
Attn: Janet Cole
1151 Old Porter Pike
Bowling Green, Kentucky 42103

Agency Interest Number: 108571

RE: Operator Certification Training Approval for Continuing Education Hours

To Whom It May Concern:

Your training request has been received by the Division of Compliance Assistance, Certification and Licensing Branch. Course approvals are reviewed and approved based on core content outlined by the cabinet and the Kentucky Board of Certification of Wastewater System Operators and the Kentucky Board of Certification of Drinking Water Treatment and Distribution System Operators. The core content lists can be located on our website, dca.ky.gov/certification.

Your request was reviewed by the Kentucky Board of Certification of Wastewater System Operators and/or the Kentucky Board of Certification of Water Treatment and Distribution System Operators at their most recent board business meeting. This letter serves as notification of the board and/or cabinet determination for continuing education credit.

Course Title	Date	Hours & Type Approved	DCA Event ID#	Comments
5th Annual Water Law Series	10/29/2019	WW 3.0 Hours approved DW 6.0 Hours approved	20589	One time Approval

Upon completion of the approved training, the provider shall submit to the cabinet a completed Continuing Education Activity Report form. This form can be located on the program's website at dca.ky.gov/certification. The program will no longer accept rosters that are not submitted on the cabinet's Continuing Education Activity Report form or electronically through the cabinet's website. If a continuing education activity report was attached to the training approval request, please be aware that the operators will only receive credit for the number of hours approved by the board(s).

If you have any questions or need additional information, please contact the Division of Compliance Assistance, Certification and Licensing Branch at (502) 564-0323.

Sincerely,

E-Signed by Veronica Roland
VERIFY authenticity with e-Sign
Veronica Roland

Veronica Roland
Certification and Licensing Branch