

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|---|---|----------------------------|
| ELECTRONIC APPLICATION OF |) | |
| NORTHERN KENTUCKY WATER DISTRICT |) | |
| AND STOLL KEENON OGDEN PLLC FOR |) | CASE NO. 2023-00109 |
| ACCREDITATION AND APPROVAL OF A |) | |
| PROPOSED WATER DISTRICT |) | |
| MANAGEMENT TRAINING PROGRAM |) | |

NOTICE OF FILING

Pursuant to the Public Service Commission’s Order of April 28, 2023, Northern Kentucky Water District and Stoll Keenon Ogden PLLC give notice of the filing of the following documents concerning the water district management training program that is the subject of their application in this proceeding:

1. A sworn statement attesting that the proposed course of instruction entitled “Northern Kentucky Water Training 2023” was conducted on May 10, 2023 and that the materials found at Tab 4 of this Notice were provided to each attendee (**Tab 1**);
2. A description of all changes in the presenters and the proposed curriculum that occurred after the submission of the application for accreditation (**Tab 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 (**Tab 3**);
4. The materials provided to each program attendee (**Tab 4**);¹
5. Approval of the program for continuing legal education accreditation by the Kentucky Bar Association (**Tab 5**);

¹ In addition to the materials found at Tab 4, each attendee was provided with a flash drive containing other resource materials. A list of the materials on this “digital library” is the last document found at Tab 4.

6. Approval of the program for accreditation by the Kentucky Board of Certification of Water Treatment and Distribution System operators (**Tab 6**); and

7. Approval of the program for accreditation by the Department of Local Government (**Tab 7**).

Dated: May 16, 2023

Respectfully submitted,



Gerald E. Wuetcher
Stoll Keenon Ogden PLLC
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Lexington, Kentucky 40507-1801
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Telephone: (859) 231-3017
Fax: (859) 259-3517

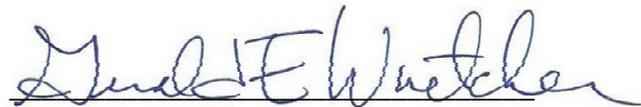
Counsel for Stoll Keenon Ogden PLLC

Tom Edge
General Counsel
Manager of Legal, Compliance, and Regulatory
Affairs
Northern Kentucky Water District
P.O. Box 18640
Erlanger, KY 41018
tedge@nkywater.org
Telephone: (859) 578-5457
Fax: (859) 426-2770

Counsel for Northern Kentucky Water District

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, and the Public Service Commission's Order of July 22, 2021 in Case No. 2020-00085, I certify that this document was transmitted to the Public Service Commission on May 16, 2023, and that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding.



Gerald E. Wuetcher

TAB 1

TAB 2

DESCRIPTION OF PROGRAM CHANGES

All presentations listed in the application were made. However, the presenters for the following topics revised or updated their presentations:

Employment Law in the Workplace
Recent Developments in Utility Regulation
Water Utility Tariffs: Practical Considerations
In the Dock: PSC Show Cause Proceedings
Kentucky Division of Water Law Updates

The revised presentations are found at Tab 4 of this Notice. In addition Rosemary Tutt, Manager of the Kentucky Public Service Commission's Consumer Services Branch, provided presentations on the requirements of the Commission's regulation on customer relations.

TAB 3

**WATER DISTRICT COMMISSIONERS ATTENDING
NORTHERN KENTUCKY WATER TRAINING PROGRAM 2023**

| LAST NAME | FIRST NAME | WATER DISTRICT | HRS |
|------------------|-------------------|--|------------|
| ALEXANDER | TIM | BOONE COUNTY WATER DISTRICT | 6.0 |
| BEALL | TOM | JESSAMINE-SOUTH ELKHORN WATER DISTRICT | 6.0 |
| BEST | TONY | NORTH MERCER WATER DISTRICT | 6.0 |
| CUNNINGHAM | CLYDE | NORTHERN KENTUCKY WATER DISTRICT | 6.0 |
| CURRY | JODY | OLDHAM COUNTY WATER DISTRICT | 6.0 |
| DAUGHERTY | JAMES | BOONE COUNTY WATER DISTRICT | 6.0 |
| KOESTER | JOE | NORTHERN KENTUCKY WATER DISTRICT | 6.0 |
| LANGE | JODY | NORTHERN KENTUCKY WATER DISTRICT | 6.0 |
| MACKE | FRED | NORTHERN KENTUCKY WATER DISTRICT | 6.0 |
| SHEPERSON | GERALD | NORTH MERCER WATER DISTRICT | 6.0 |
| WAGNER | DOUG | NORTHERN KENTUCKY WATER DISTRICT | 6.0 |
| WILLIAMS | RAYMOND | WEST SHELBY WATER DISTRICT | 6.0 |
| WINNIKE | NICK | NORTHERN KENTUCKY WATER DISTRICT | 6.0 |

TAB 4

MORNING AGENDA

7:45 – 8:30 Registration and Refreshments

8:30 – 8:35 Program Overview and Welcome

8:35 – 9:35 Recent Developments in Utility Regulation – Damon Talley

This presentation reviews recent developments in public utility law and regulation. Topics include unaccounted water loss, revisions to the Sales Tax laws concerning “Residential” exemptions, borrowing money, compliance with Public Service Commission Orders, keeping Minutes, and laws enacted by the 2023 General Assembly. The presenter will also examine and discuss recent court and PSC decisions.

9:35 – 9:45 Break

9:45 – 10:45 Water Utility Tariffs: Practical Considerations – Gerald Wuetcher

A water utility’s tariff offers a unique opportunity for the water utility to structure its relationship with its customers. This presentation will highlight various provisions that a water utility should have as part of its tariff to protect against financial and legal liability as well as avoid common customer disputes. In the first portion of his presentation, the presenter will discuss the statutory and regulatory framework for utility tariffs and the process by which a tariff may be revised. The presentation will conclude with some practical suggestions for improving a water utility’s tariff.

10:45 – 10:55 Break

10:55 – 11:55 Employment Law In the Workplace – Amy Miles

This presentation reviews existing federal and state employment laws designed to protect employees and applicants for employment. Presenter will discuss legal responsibilities of water utility board members regarding the prevention and elimination of discriminatory work and hiring practices and how these responsibilities can be met.

10:55 – 11:55 *Special Session I* – PSC Consumer Services, One-on-One Discussion – Rosemary Tutt

This is a question-and-answer session for utility customer representatives with the Manager of the Commission’s Consumer Services Branch. The requirements of the Commission’s regulation on customer relations will be examined in detail. Seating is limited.

11:55 – 12:30 Lunch (Provided on site)

AFTERNOON AGENDA

12:30 – 1:30 *Special Session II – PSC Consumer Services, One-on-One Discussion – Rosemary Tutt*

Second session.

12:30 – 1:30 In the Dock: PSC Show Cause Proceedings – Gerald Wuetcher

This presentation examines the methods the Public Service Commission uses to enforce KRS Chapter 278 and Public Service Commission regulations. It will review PSC enforcement hearing procedures and the sanctions that the Public Service Commission may impose for violations. The presenter will discuss various approaches to responding to Public Service Commission enforcement actions, including strategies to mitigate the severity of possible sanctions, and actions that utilities and their officers can take to prevent common statutory and regulatory violations. He will also discuss the potential liabilities that utility officers, including commissioners and directors, face and strategies to reduce those officers' exposure.

1:30 – 1:40 Break

1:40 – 2:40 Kentucky Division of Water Law Update – Alicia Jacobs

This presentation provides an overview of the organization and mission of the Kentucky Division of Water and its current regulatory initiatives. The presenter will also discuss the U.S. Environmental Protection Agency's proposed PFAS Rule, revisions to the Lead and Copper Rule, proposed revisions to the consumer confidence reports, and its recent guidance to state regulators to include a review of a water system's cybersecurity practices when conducting sanitary surveys and how they may affect Kentucky's public water systems.

2:40 – 2:45 Break

2:45 – 3:45 Legal Issues in the Operation & Management of Water Systems – Panel Discussion – Panelists: Tom Edge, Damon Talley, Gerald Wuetcher

A panel of attorneys will entertain audience questions regarding frequently recurring legal issues faced by water utilities. Discussion is expected to address KRS Chapter 74 and its effects on the management and operation of water districts, as well as other highly relevant statutory provisions, such as the Claims against Local Government Act, Bidding Requirements provision of KRS Chapter 424, Eminent Domain, Local Model Procurement Law, Whistle Blowers Act, and general laws related to special districts. Kentucky Public Service Commission regulatory requirements will also be discussed.

3:45 Closing Remarks/Administrative Announcements

ABOUT THE SPEAKERS

2023 Northern Kentucky Water Training

2835 Crescent Springs Road
Erlanger, KY 41018

WEDNESDAY, MAY 10, 2023

8:30 AM - 3:45 PM

TOM EDGE

Tom is General Counsel and Manager of Legal, Compliance, and Regulatory Affairs at the Northern Kentucky Water District. As General Counsel, Tom provides legal counsel and guidance to the District's Board of Commissioners and its Management Team on all legal matters including personnel law, real estate, contracts, tax, insurance, public monies and purchasing. He has been with Northern Kentucky Water District since January 2021. He previously served in the Campbell County Attorney's Office and maintained a private practice that included several municipalities. Tom has an Associate Degree in Information Systems Technology from the Community College of the Air Force, a Bachelor's Degree in Information Technology from American Military University, a Master's in Business Administration from American Public University, and a Juris Doctorate from Northern Kentucky University.

ALICIA JACOBS

Alicia is the manager of the Kentucky Division of Water's Drinking Water Branch. She oversees Kentucky's Safe Drinking Water Act compliance, public water system technical assistance, and the laboratory certification programs. Alicia has been with the Kentucky Division of Water since 2014, with experience in state government since 2007. She has a Bachelor of Science in zoology from Southern Illinois University. She currently chairs the Drinking Water and Clean Water Advisory subcommittees for Lead in Drinking Water, Compliance and Regulations, and PFAS.

AMY L. MILES

Amy is an attorney with Stoll Keenon Ogden PLLC in its Labor, Employment & Employee Benefits practice. She assists employers throughout Kentucky on matters ranging from wage and hour planning to compliance with state and federal laws, such as the Family Medical Leave Act. She coordinates with in-house counsel, human resources professionals and/or company leaders to ensure objectives and strategies are aligned with broader business goals. She has a Bachelor of Arts degree from Centre College, graduating cum laude, and graduated magna cum laude from the University of Louisville School of Law. While attending the University of Louisville School of Law, she served as managing editor the University of Louisville Law Review.

DAMON TALLEY

Damon is an attorney in the Utility & Energy practice group at Stoll Keenon Ogden, focusing on water and wastewater utility law. He represents water districts, water associations, water commissions, municipalities, privately owned utilities and numerous other clients. He aided in the development of the Kentucky Rural Water Association (KRWA) and has served as its general counsel since 1979. From 2000–2015, he served as KRWA’s representative on the Kentucky Infrastructure Authority Board. Damon is a frequent speaker at training sessions sponsored by organizations throughout the state of Kentucky, including the KRWA, Public Service Commission, Division of Water, Utility Leadership Institute, Utility Management Institute and other industry groups.

GERALD WUETCHER

Gerald is an attorney in Stoll Keenon Ogden’s Utility & Energy practice group. Prior to joining SKO, he spent more than 26 years at the Kentucky Public Service Commission (PSC), serving as staff attorney, deputy general counsel and executive advisor. He has experience in all areas of utility operations, particularly water and wastewater matters. He developed PSC’s training program for water utility officials. He also served as one of its principal instructors during his tenure at the organization. He is a regular presenter at seminars on utility law and regulation.

PROGRAM EVALUATION

2023 NORTHERN KENTUCKY WATER TRAINING

Is this your first time participating in this program? Yes No

If you have attended previously, how many years have you attended? _____

If you are an official or employee of a water or wastewater utility, please check the following that best describes your position.

- Commissioner Manager Engineer Attorney Customer Service
 Other (please describe) _____

If you are not affiliated with a water or wastewater utility, please describe your interest in this water training program: _____

How did you hear about this program?

- My utility eblast NKWD website Other: _____

Overall, please rate the quality of today's program.

- Excellent Good Fair Poor

Please rate the quality of the facilities and food.

- Excellent Good Fair Poor

Please rate the scope and format of the material offered.

- Excellent Good Fair Poor

Please evaluate the program's effectiveness in communicating relevant water quality concerns.

- Excellent Good Fair Poor

Please evaluate the overall program's duration.

- Excellent Good Fair Poor

| Strongly Disagree | Slightly Disagree | Neither Agree nor Disagree | Slightly Agree | Strongly Agree |
|-------------------|-------------------|----------------------------|----------------|----------------|
|-------------------|-------------------|----------------------------|----------------|----------------|

PLEASE RATE THE PRESENTATION, EMPLOYMENT LAW IN THE WORKPLACE

| | | | | | |
|--|--|--|--|--|--|
| Speaker was knowledgeable, professional & eager to provide information | | | | | |
| I enjoyed the presentation | | | | | |
| Opportunities for questions and group input were sufficient | | | | | |
| Attending this presentation was a good use of my time | | | | | |

PLEASE RATE THE PRESENTATION, RECENT DEVELOPMENTS IN UTILITY REGULATION

| | | | | | |
|--|--|--|--|--|--|
| Speaker was knowledgeable, professional & eager to provide information | | | | | |
| I enjoyed the presentation | | | | | |
| Opportunities for questions and group input were sufficient | | | | | |
| Attending this presentation was a good use of my time | | | | | |

PLEASE RATE THE PRESENTATION, KENTUCKY DIVISION OF WATER LAW UPDATE

| | | | | | |
|--|--|--|--|--|--|
| Speaker was knowledgeable, professional & eager to provide information | | | | | |
| I enjoyed the presentation | | | | | |
| Opportunities for questions and group input were sufficient | | | | | |
| Attending this presentation was a good use of my time | | | | | |

PLEASE RATE THE PRESENTATION, WATER UTILITY TARIFFS : PRACTICAL CONSIDERATIONS

| | | | | | |
|--|--|--|--|--|--|
| Speaker was knowledgeable, professional & eager to provide information | | | | | |
| I enjoyed the presentation | | | | | |
| Opportunities for questions and group input were sufficient | | | | | |
| Attending this presentation was a good use of my time | | | | | |

PLEASE RATE THE PRESENTATION, IN THE DOCK : PSC SHOW CAUSE PROCEEDINGS

| | | | | | |
|--|--|--|--|--|--|
| Speaker was knowledgeable, professional & eager to provide information | | | | | |
| I enjoyed the presentation | | | | | |
| Opportunities for questions and group input were sufficient | | | | | |
| Attending this presentation was a good use of my time | | | | | |

PLEASE RATE THE PRESENTATION, LEGAL ISSUES IN THE OPERATION & MANAGEMENT OF WATER SYSTEMS – PANEL DISCUSSION

| | | | | | |
|---|--|--|--|--|--|
| Panelists were knowledgeable, professional & eager to provide information | | | | | |
| I enjoyed the panel discussion | | | | | |
| Opportunities for questions and group input were sufficient | | | | | |
| Attending this presentation was a good use of my time | | | | | |

PLEASE USE THE SPACE BELOW TO INCLUDE ADDITIONAL COMMENTS OR TOPICS YOU'D LIKE TO HEAR ABOUT AT FUTURE WATER TRAINING PROGRAMS

HOT LEGAL TOPICS

May 10, 2023

Damon R. Talley
Stoll Keenon Ogden PLLC
damon.talley@skofirm.com

SPONSORED BY  

1

DISCUSSION TOPICS

1. PSC Filings
2. Comply with PSC Orders
3. 2023 General Assembly
4. HB 8 Update
5. Borrowing Money



2

DISCLAIMER



3

**PSA
for
PSC**



4

Reporting Requirements

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



5

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



6



7

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

8

E-Mail Address

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

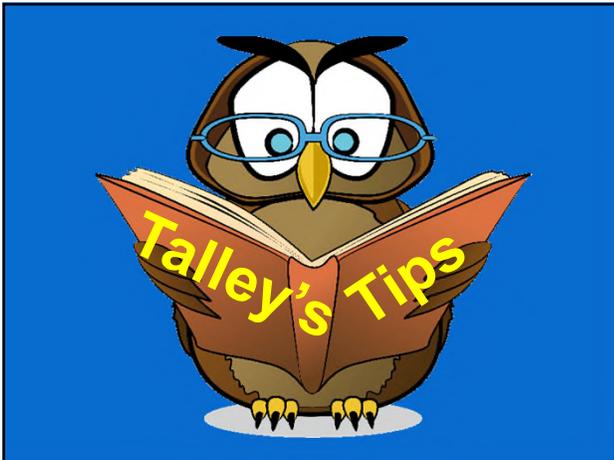
9

Why Municipals?

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



10



11

Default Regulatory E-mail Address

- Send E-mail to PSC
 - psc.reports@ky.gov
 - PSCED@ky.gov
- Send Letter to PSC
 - Linda C. Bridwell,
Executive Director



12

Comply With All PSC Orders



13

2023 General Assembly



14

Notable Bills

- HB 360 – New Sales Tax Exemption
- HB 522 – Procurement \$30,000 Threshold Increased to \$40,000



15

Notable Bills (cont.)

- SB 263 – Regionalization
 - Numerous Incentives
 - Both Water & Sewer
 - Regionalization
 - Ownership or
 - Common Management



16

Materials Purchased by Contractor

HB 360 See Pages 58 - 60

- New Sales Tax Exemption
 - Materials Purchased by Contractor
 - For Water or Sewer Project
 - For Certain Utilities



17

HB 360

- Eligible Utilities
 - Municipally Owned Utility
 - Water District
 - Water Commission
 - Sanitation District
 - Joint Sewer Agencies
 - Chapter 58 Utility
 - Other Governmental Agency



18

HB 360

- Not Eligible
 - Water Associations
 - Investor Owned Utilities
 - Ky. American Water
 - Water Service Corp. of Ky.
 - Privately Owned Utilities



19

HB 360

- Codified in KRS 139.480(34)
- Retroactive to 1-1-23
- Materials Would be Exempt if Purchased Directly by Utility



20

HB 360

- DOR Form 51A383 (4-23)
- Who Signs Form
 - Utility
 - Contractor
 - Subcontractor
(if it Purchases Materials)
- Submit Form to Vendor

Handout



21

Procurement

HB 522 (KRS 424.260) &
(KRS 45A.385)

- Threshold: \$40,000
- Effective: June 28, 2023



25

Amendment to HB 8 (2022)

- HB 360 (See page 42)
- Modifies Residential Exemption For:
 - Mobile Home Park
 - Multi-Unit Apartment
 - RV Park
- More User Friendly
 - Residents Do **Not** Sign D of D



26

Amendment to HB 8 (2022)

- Additional Requirements
 - Master Meter
 - Owner Signs New D of D
 - All Occupants Must Be Ky. Residents
 - Place of Domicile
- New D of D Form
 - 51A382 (4-23)



27

Form 51A382 (4-23)

- Only Owner or Operator Signs
- No Tenant Signs D of D
- Effective: When Form 51A382 Is Submitted
- See DOR FAQ

Handout



28

29

**HOUSE BILL 8
RESIDENTIAL SALES TAX
EXEMPTION FOR
UTILITY CUSTOMERS**

30

HB 8

- Modifies Residential Sales Tax Exemption for Utility Customers
 - Water
 - Sewer
 - Electric
 - Natural Gas
- Codified in KRS 139.470(7)



31

HB 8

BEFORE

- Water Dist. & Water Assoc.
 - PSC Tariff Controlled
- Cities
 - Ordinance Controlled



32

HB 8

AFTER 1-1-2023: KRS Controls

- Must be a Ky. Resident
- Only One (1) Meter Exempt per Customer
- “New” Customers Must Sign Declaration of Domicile (D of D)



33

Declaration of Domicile (D of D)

- If “Trigger” event Occurs
 - Customer Must Sign D of D
 - Keep D of D on File
 - Do Not Send to Dept. of Revenue (DOR)
- All Utilities Use Same Form
(Write Water & Sewer on D of D)



37

(KARS 132)
 Commonwealth of Kentucky
 Department of Revenue
DECLARATION OF DOMICILE FOR PURCHASE OF RESIDENTIAL UTILITIES

(LANDLORDS OR OTHER ACCOUNTHOLDERS OF MULTI-UNIT DWELLINGS SERVED BY A SINGLE METER
 (MULTI-METER) USE THE MULTI-METER DECLARATION OF DOMICILE)

An individual who has purchased or will purchase the declaration may only be considered for the purchase of water, sewer, gas, and land by Kentucky residents for use in heating, water heating, cooking, lighting, and other residential uses. Fuel sales included but not be allowed for water, gas, electricity, fuel oil, natural gas, coal, solar, wind, and water.

I, _____, in the account holder for _____, Service Address _____
 _____, name of address listing the Declaration printed in block, _____, with first resident or

 (Indicate the relationship to the address)

I declare that the address listed is my place of domicile or the place of domicile of _____, my principal
 and the purchase of residential utilities for use at this address meets the qualifications for exemption from Kentucky sales
 and the purchase of residential utilities for use at this address meets the qualifications for exemption from Kentucky sales
 and the purchase of residential utilities for use at this address meets the qualifications for exemption from Kentucky sales
 and the purchase of residential utilities for use at this address meets the qualifications for exemption from Kentucky sales

Although, I acquired the account associated with the above listed service address be classified as exempt from sales
 and the purchase of residential utilities for use at this address meets the qualifications for exemption from Kentucky sales
 and the purchase of residential utilities for use at this address meets the qualifications for exemption from Kentucky sales

Under penalties of perjury, I swear or affirm that the information on this declaration is true and correct as to every material
 matter.

_____, New Service _____, Other Service _____
 Signature of customer or representative _____
 Date _____

*KRS 132.070(7) describes a place of domicile as "the place where an individual has his or her legal, true, fixed and
 permanent home, and address, establishment, and to which, whenever the individual is absent, the individual has the
 intention of returning."

Instructions

- Submit the Declaration of Domicile to each applicable utility provider or local electric cooperative, not to the Department of Revenue.
- Each utility provider may have only one place of domicile that may be listed as a responsible party for other services sold except.
- The change in residency for records will be effective on the first day of the new billing cycle after the date of receipt of this declaration by the utility provider or local electric cooperative.

Department of Revenue Contact Information:
 Phone: 502-568-9170
 Email: DOR.RevenueServices@ky.gov

Hardin County Water District No. 2
 P.O. Box 100, Hardin, KY 40325
 Phone: 252-228-4200 or 252-228-4201
 www.hardin.org

38

What Happens if Utility Does Not Comply?

- DOR Audit
 - Utility is Responsible for Paying Sales Tax
 - Unless Customer
 - “Grandfathered” or
 - D of D on File



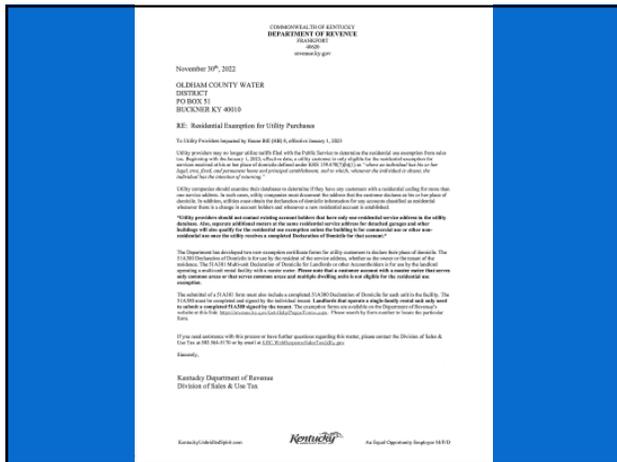
39

Department of Revenue

- D of D Template in Final Form
- DOR FAQs on Website
- DOR Letter 11-30-2022
- PSC Website Has Links



40



41

PSC

- Tariffs
 - Confusion
 - KRWA E-News
 - Check Your Tariff
 - Ask Your Lawyer



42

Any QUESTIONS



About HB 8 ?

43

Borrowing



44

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.



45

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)



46



Violation

47

**Show
Cause
Cases**



48

2022 Show Cause Cases Borrowing Money

First Case: 2022-061

Second Case: 2022-197



49

2022 Case # 1

Case No. 2022 - 061

Opened: 04 - 08 - 2022

Issue: KRS 278.300
(2 Violations)
Repeat Offender - 2013

Decided: 11 - 14 - 2022



50

2022 Case # 1

Facts: (1) Refinanced RD Loans
w/o PSC Approval
07-23-2021

Facts: (2) Bought Truck
w/o PSC Approval
➤ Bank Loan
➤ 75 Months

Discovered: PSC Staff – Rate Case



51

2022 Case # 1

Corrective Action:

- Filed Application for Retroactive Approval (Case No. 2021-465)
 - PSC Denied
 - No Retroactive Approval



52

2022 Case # 1

Defenses:

- Ignorance
- Lawyer Said No PSC Approval Needed
- Relied on Bank
- New Manager



53

2022 Case # 1

Case Status:

- Switched Lawyers
- Discovery Stage
 - 2 Rounds
- Hearing Date: None



54

2022 Case # 1

Outcome:

- Chairman
 - Fined \$500
 - 12 Hours of Training
 - Previous Offender (2012)
 - Tongue Lashing



55

2022 Case # 1

Outcome:

- Other Commissioners
 - No Fine
 - 12 Hours of Training
- Bond Lawyer
 - Reimburse Utility for Lawyer Fees



56

2022 Case # 2

Case No. 2022 - 197

Opened: 08- 11 - 2022

Issues: Violated:

➤KRS 278.300

➤KRS 278.020

Decided: Pending



57

2022 Case # 2

Background Facts:

- 11-18-21: Purchased Office Bldg.
- 11-18-21: Financed Portion of Cost with a 7 year Loan
- 03-15-22: Applied for Retroactive Approval of Loan

... continued



58

2022 Case # 2

Background Facts (continued):

- 05-13-22: PSC Issues DR
- 05-??-22: Bank Loan PIF
- 05-27-22: PSC Application Withdrawn by Utility

... continued



59

2022 Case # 2

Background Facts (continued):

- 06-20-22: PSC Dismisses Case & States Intent to File Show Cause Case
- 08-11-22: PSC Opens Show Cause Case



60

2022 Case # 2

Utility's Defenses:

- Loan Paid Off
- No CPCN Needed Since Building was Purchased & Not Constructed
- Relied Upon Advice of Counsel
- Good, Honest & Decent People



61

2022 Case # 2

Case Status:

- Discovery Stage
 - 2 Rounds Thus Far
- Hearing Date: ???
- Ordered Utility to File Rate Case



62

2022 Case # 2

Case Status:

- No Hearing Date Yet
- Probably Waiting for Results of Rate Case



63

QUESTIONS?

damon.talley@skofirm.com
270-358-3187

STOLL
KEENON
OGDEN

64



**DECLARATION OF DOMICILE FOR
PURCHASE OF RESIDENTIAL UTILITIES**

**(LANDLORDS OR OTHER ACCOUNTHOLDERS OF MULTI-UNIT DWELLINGS SERVED BY A SINGLE METER
(MASTER METER) USE THE MULTI-UNIT DECLARATION OF DOMICILE)**

In accordance with the provisions of KRS 139.470(7) this declaration may only be executed for the purchase of sewer services, water, and fuel by Kentucky residents for use in heating, water heating, cooking, lighting, and other residential uses. "Fuel" shall include but not be limited to natural gas, electricity, fuel oil, bottled gas, coal, coke, and wood.

_____ is the accountholder for _____
Name of Accountholder *Service Address*

I, _____, am the resident or
Name of Individual Signing the Declaration (cannot be landlord)

Relationship of the undersigned to the resident

I declare that the address listed is my place of domicile* or the place of domicile* of _____
Name of Resident

and the purchase of residential utilities for use at this address meets the qualifications for exemption from Kentucky sales and use tax under KRS 139.470(7).

Accordingly, I request the account associated with the above listed service address be classified as exempt from sales and use tax. I understand the exemption will begin on the date of the first full billing cycle after the date of receipt of this declaration by the utility provider or rural electric cooperative.

Under penalties of perjury, I swear or affirm that the information on this declaration is true and correct as to every material matter.

Signature of resident or representative

Date

* KRS 139.470(7) describes a place of domicile as "the place where an individual has his or her legal, true, fixed and permanent home and principal establishment, and to which, whenever the individual is absent, the individual has the intention of returning."

Instructions

- Submit the Declaration of Domicile to each applicable utility provider or rural electric cooperative, not to the Department of Revenue.
- Each resident may have only one place of domicile but may be listed as a responsible party for other service addresses.
- The change in taxability for accounts will be effective on the first day of the first full billing cycle after the date of receipt of this declaration by the utility provider or rural electric cooperative.

Department of Revenue Contact Information:

Phone: 502-564-5170

Email: DOR.Webresponsesalestax@ky.gov



**MULTI-UNIT DECLARATION OF DOMICILE FOR AN OWNER
OR OPERATOR OF A MULTI-UNIT RESIDENTIAL RENTAL FACILITY
OR MOBILE HOME AND RECREATIONAL VEHICLE PARK**

Under penalties of perjury, I declare that I am the owner or operator of a multi-unit residential rental facility or mobile home and recreational vehicle ("RV") park, and that the sewer services, water or fuel being purchased is for use by Kentucky residents in their place of domicile in accordance with KRS 139.470(7). I swear or affirm that the declaration I am submitting includes 100% of the dwelling units at the service address below. The purpose of this declaration is to exempt the residents from the cost of sales tax on their utility usage.

Service Address *Number of Dwelling Units*

Account Number (if available) _____ Account Name (printed) _____

Authorized Signature _____ Date _____

Instructions

- **DO NOT SUBMIT THIS FORM TO THE DEPARTMENT OF REVENUE. Submit this Multi-Unit Declaration of Domicile form to each applicable utility provider or rural electric cooperative.**
- This Declaration of Domicile is for owners, operators, landlords or other persons holding an account with a utility provider or rural electric cooperative which serves multiple dwelling units at a multi-unit residential rental facility, mobile home park, or RV park.
- Submit this form for each meter that measures utility service to multiple rental units.
- Do not submit this form for any meter that measures utility service exclusively for the common areas of a multi-unit residential rental facility, mobile home park, or RV park (e.g., parking lot lighting, gas, and electric service for a common laundry room, etc.). Accounts for meters that measure service exclusively to common areas of a multi-unit residential rental facility, mobile home park, or RV park are not eligible for the residential sales tax exemption.
- Do not submit this Multi-Unit Declaration of Domicile for any single meter that measures service to both residential and common areas if the common area usage measured by that meter is greater than 10% of the total meter usage.* Accounts for meters that serve both common areas and residential areas where the common area usage is greater than a de minimis amount (greater than 10% of the total metered usage) are not eligible for the residential sales tax exemption.
- The change in taxability for accounts will be effective on the first day of the first full billing cycle after the date of receipt of this Multi-Unit Declaration of Domicile by the utility provider or rural electric cooperative.

Department of Revenue Contact Information:

Phone: 502-564-5170

Email: DOR.Webresponsesalestax@ky.gov

* If your utility meter does not measure common area usage separately from residential usage, you may estimate common area usage based on the hourly common area usage compared to hourly residential usage over a 7-day period. You must calculate a new estimation for each calendar year and maintain documentation of your calculations for verification by the Department of Revenue upon request. **Do not send common area usage calculations to your utility provider or rural electric cooperative.**

Important—Certificate not valid
unless completed in full.



**CERTIFICATE OF EXEMPTION
FOR BUILDING MATERIALS, FIXTURES AND SUPPLIES
PURCHASED BY A CONSTRUCTION CONTRACTOR FOR
A SEWER OR WATER PROJECT WITH A
GOVERNMENTAL AGENCY**

In accordance with KRS 139.480(34), this certificate may be executed only for those purchases (*on or after 01/01/2023*) of building materials, fixtures and supplies that will be permanently incorporated into a structure or improvement to real property, or will be completely consumed, in fulfilling a construction contract with a governmental agency for the purpose of furnishing water or sewer services to the general public. The building materials, fixtures and supplies purchased must also be exempt from the sales and use tax if purchased directly by the governmental agency. This certificate must be executed jointly by the governmental agency and the construction contractor who is under contract with the governmental agency and purchases the property to fulfill the terms of the construction contract.

THE UNDERSIGNED HEREBY CERTIFIES THAT THE PROPERTY TO BE PURCHASED FROM:

_____ Vendor Name and Address

will be permanently incorporated into a structure or improvement to real property, or will be completely consumed, in fulfilling a construction contract with a governmental agency for the purpose of furnishing water or sewer services to the general public.

Type and description of property to be purchased:

Building Materials: _____

Fixtures: _____

Supplies: _____

Project Period of Construction Contract: Start Date _____ End Date _____

This jointly executed certificate of exemption, shall be valid only for purchases made for the project period of the construction contract indicated on the certificate at the time of purchase. A construction contractor shall jointly execute a new certificate with a government agency for additional purchases of building materials, fixtures and supplies required for the same project after the initial expiration date or for additional projects.

I, the purchaser, understand that if the property described above is used in a nonexempt manner, I am liable for the payment of sales tax as provided in KRS 139.270, as if I were the retailer making a retail sale of the property at the time of such use and the cost to me shall be deemed the gross receipts from such retail sale. I will immediately remit to the Department of Revenue, Frankfort, Kentucky 40620, the required tax measured by the purchase price of the property. I also understand that the department shall hold the purchaser liable for the remittance of the tax and may apply any penalties as provided in KRS 139.990.

Under penalties of perjury, I swear or affirm that the information on this certificate is true and correct as to every material matter.

_____ Governmental Agency Exemption Number

_____ Governmental Agency Authorized Signature Date

_____ Construction Contractor Name (Print) FEIN

_____ Construction Contractor Authorized Signature Date

_____ Sub-Contractor Name (Print) FEIN

_____ Sub-Contractor Authorized Signature Date

CHAPTER 179**(SB 263)**

AN ACT relating to the regionalization of public water and wastewater systems.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 224A.011 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Administrative fee" means a fee assessed and collected by the authority from borrowers and applicants under assistance agreements, to be used for operational expenses of the authority;
- (2) "Applicable interest rate" means the rate of interest which shall be used as part of the repayment criteria for an assistance agreement between a governmental agency and the authority, and shall be determined by the authority pertinent to the source of funds from which the assistance agreement is funded;
- (3) "Applicant" means a governmental agency or private sector entity that has submitted an application to the office for a grant from the broadband deployment fund;
- (4) "Application" means an application submitted by an applicant for a grant from the broadband deployment fund;
- (5) **"Asset management plan" means a plan for the water and wastewater utility that includes:**
 - (a) **Identification of all the capital assets owned by or used in the operations of the utility;**
 - (b) **A detailed engineering analysis of asset condition and useful life to be used to develop an infrastructure inspection, repair, and maintenance program;**
 - (c) **A description of how the utility will annually review the infrastructure needs;**
 - (d) **A description of how the utility will conduct planned maintenance;**
 - (e) **A description of how the utility will conduct timely repair, replacement, or upgrade of capital assets, including pumps, motors, and pipes; and**
 - (f) **An analysis of customer rates necessary to support the asset management plan, including emergency repairs;**
- (6) "Assistance agreement" means the agreement to be made and entered into by and between a governmental agency or a private entity and the authority, as authorized by this chapter, providing for a lease, loan, services, or grant to a governmental agency or a private entity or for the purchase of obligations issued by the governmental agency, and for the repayment thereof to the authority by the governmental agency or a private entity;
- ~~(7)(6)~~ "Authority" means the Kentucky Infrastructure Authority, which is created by this chapter;
- ~~(8)(7)~~ "Authority revenues" means the totality of all:
 - (a) Service charges;
 - (b) Utility tax receipts, to the extent not otherwise committed and budgeted by the authority during any fiscal period of the authority;
 - (c) Any gifts, grants, or loans received, to the extent not otherwise required to be applied;
 - (d) Any and all appropriations made to the authority by the General Assembly of the Commonwealth of Kentucky, to the extent not otherwise required to be applied;
 - (e) All moneys received in repayment of and for interest on any loans made by the authority to a governmental agency, except as provided in KRS 224A.111, 224A.1115, and 224A.112, or as principal of and interest on any obligations issued by a governmental agency and purchased by the authority, or as receipts under any assistance agreement;

- (f) The proceeds of bonds or long-term debt obligations of governmental agencies pledged to the payment of bond anticipation notes issued by the authority on behalf of the said governmental agency to provide interim construction financing; and
- (g) Payments under agreements with any agencies of the state and federal government;
- ~~(9)~~~~(8)~~ "Borrower or borrowing entity" means any agency of the state or its political subdivisions, any city, or any special district created under the laws of the state acting individually or jointly under interagency or interlocal cooperative agreements to enter into assistance agreements with the authority;
- ~~(10)~~~~(9)~~ "Broadband deployment fund" means a fund to assist with the construction, development, or improvement of broadband infrastructure, broadband services, or technologies that constitute a part of, or are related to, broadband infrastructure or broadband services, to provide for broadband service in underserved or unserved areas of the Commonwealth;
- ~~(11)~~~~(10)~~ "Broadband deployment project" means a proposed deployment of broadband service infrastructure set forth in an application for which grant funding under KRS 224A.112;
- ~~(12)~~~~(11)~~ "Broadband deployment project area" means a geographic area determined by census block, shapefile geospatial data, or list of addresses which has been proposed for grant funding under this section and KRS 224A.110, 224A.112, and 224A.1121;
- ~~(13)~~~~(12)~~ "Census block" means the smallest geographic unit used by the United States Census Bureau that is reported on the Federal Communications Commission (FCC) Form 477 relating to fixed broadband deployment data;
- ~~(14)~~~~(13)~~ "Community flood damage abatement project" means any structural or nonstructural study, plan, design, construction, development, improvement, or other activity to provide for flood control;
- ~~(15)~~~~(14)~~ "Construction" means and includes but is not limited to:
 - (a) Preliminary planning to determine the economic and engineering feasibility of infrastructure projects, the engineering, architectural, legal, fiscal, and economic investigations, and studies necessary thereto, and surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary to the construction of infrastructure or solid waste projects;
 - (b) The erection, building, acquisition, alteration, remodeling, improvement, or extension of infrastructure or solid waste projects; and
 - (c) The inspection and supervision of the construction of infrastructure or solid waste projects and all costs incidental to the acquisition and financing of same. This term shall also relate to and mean any other physical devices or appurtenances in connection with, or reasonably attendant to, infrastructure or solid waste projects;
- ~~(16)~~~~(15)~~ "Dams" means any artificial barrier, including appurtenant works, which does or can impound or divert water, and which either:
 - (a) Is or will be twenty-five (25) feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the Energy and Environment Cabinet; or
 - (b) Has or will have an impounding capacity at maximum water storage elevation of fifty (50) acre feet or more;
- ~~(17)~~~~(16)~~ "Distribution facilities" means all or any part of any facilities, devices, and systems used and useful in obtaining, pumping, storing, treating, and distributing water for agricultural, industrial, commercial, recreational, public, and domestic use;
- ~~(18)~~~~(17)~~ "Energy and Environment Cabinet" means the Kentucky Energy and Environment Cabinet, or its successor, said term being meant to relate specifically to the state agency which is designated as the water pollution agency for the Commonwealth of Kentucky, for purposes of the federal act;
- ~~(19)~~~~(18)~~ "Federal act" means the Federal Clean Water Act (33 U.S.C. secs. 1251 et seq.) as said federal act may be amended from time to time in the future, or any other enactment of the United States Congress providing funds that may assist in carrying out the purposes of the authority;
- ~~(20)~~~~(19)~~ "Federally assisted wastewater revolving fund" means that fund which will receive federal and state funds or the proceeds from the sale of revenue bonds of the authority for the purpose of providing loans to finance construction of publicly owned treatment works as defined in Section 212 of the federal act and for the

implementation of a management program established under Section 319 of the federal act and for the development and implementation of a conservation and management plan under Section 320 of the federal act;

- ~~(21)~~~~(20)~~ "Governmental agency" means any incorporated city or municipal corporation, or other agency, or unit of government within or a department or a cabinet of the Commonwealth of Kentucky, now having or hereafter granted, the authority and power to finance, acquire, construct, or operate infrastructure or solid waste projects. This definition shall specifically apply but not by way of limitation to incorporated cities; counties, including any counties containing a metropolitan sewer district; sanitation districts; water districts; water associations; sewer construction districts; metropolitan sewer districts; sanitation taxing districts; a regional wastewater commission established under KRS 65.8901 to 65.8923; and any other agencies, commissions, districts, or authorities (either acting alone, or in combination with one another in accordance with any regional or area compact, or intergovernmental cooperative agreements), now or hereafter established in accordance with the laws of the Commonwealth of Kentucky having and possessing the described powers described in this subsection;
- ~~(22)~~~~(21)~~ "Industrial waste" means any liquid, gaseous, or solid waste substances resulting from any process of industry, manufacture, trade, or business, or from the mining or taking, development, processing, or recovery of any natural resources, including heat and radioactivity, together with any sewage as is present therein, which pollutes the waters of the state, and specifically, but not by way of limitation, means heat or thermal differentials created in the waters of the state by any industrial processing, generating, or manufacturing processes;
- ~~(23)~~~~(22)~~ "Infrastructure project" means any construction or acquisition of treatment works, facilities related to the collection, transportation, and treatment of wastewater as defined in KRS 65.8903, distribution facilities, or water resources projects instituted by a governmental agency or an investor-owned water utility which is approved by the authority and, if required, by the Energy and Environment Cabinet, Public Service Commission, or other agency; solid waste projects; dams; storm water control and treatment systems; gas or electric utility; broadband deployment project; or any other public utility or public service project which the authority finds would assist in carrying out the purposes set out in KRS 224A.300;
- ~~(24)~~~~(23)~~ "Infrastructure revolving fund" means that fund which will receive state funds, the proceeds from the sale of revenue bonds of the authority or other moneys earmarked for that fund for the purpose of providing loans or grants to finance construction or acquisition of infrastructure projects as defined in this section;
- ~~(25)~~~~(24)~~ "Loan or grant" means moneys to be made available to governmental agencies by the authority for the purpose of defraying all or any part of the total costs incidental to construction or acquisition of any infrastructure project;
- ~~(26)~~~~(25)~~ "Market interest rate" means the interest rate determined by the authority under existing market conditions at the time the authority shall provide financial assistance to a governmental agency;
- ~~(27)~~~~(26)~~ ***"Merger" means the act of merging ownership, consolidating, or establishing common management or operations with a contract of more than five (5) years between more than one (1) governmental agency or utility as defined in KRS 278.010. This may include changes to contracts already in place. Merger does not require a physical connection to be established;***
- ~~(28)~~ "Obligation of a governmental agency" means a revenue bond, bond anticipation note, revenue anticipation note, lease, or other obligation issued by a governmental agency under KRS 58.010 et seq. or other applicable statutes;
- ~~(29)~~~~(27)~~ "Office" means the Office of Broadband Development;
- ~~(30)~~~~(28)~~ "Person" means any individual, firm, partnership, association, corporation, or governmental agency;
- ~~(31)~~~~(29)~~ "Pollution" means the placing of any noxious or deleterious substances ("pollutants"), including sewage and industrial wastes, in any waters of the state or affecting the properties of any waters of the state in a manner which renders the waters harmful or inimical to the public health or to animal or aquatic life, or to the use, present or future, of these waters for domestic water supply, industrial or agricultural purposes, or recreational purposes;
- ~~(32)~~~~(30)~~ "Prioritization schedules" means the list of wastewater treatment works, distribution facilities and water resources projects which the Energy and Environment Cabinet has evaluated and determined to be of priority for receiving financial assistance from the federally assisted wastewater revolving fund and the federally assisted drinking water revolving fund, or the list of infrastructure projects which the authority has evaluated

and determined to be of priority for receiving financial aid from the infrastructure revolving fund. The evaluation by the authority of infrastructure projects for water systems shall be undertaken with input from the appropriate area development district;

- ~~(33)~~~~(31)~~ "Recovered material" means those materials which have known current use, reuse, or recycling potential, which can be feasibly used, reused, or recycled, and which have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing but does not include materials diverted or removed for purposes of energy recovery or combustion except refuse-derived fuel (RDF), which shall be credited as a recovered material in an amount equal to that percentage of the municipal solid waste received on a daily basis at the processing facility and processed into RDF; but not to exceed fifteen percent (15%) of the total amount of the municipal solid waste received at the processing facility on a daily basis;
- ~~(34)~~~~(32)~~ "Recovered material processing facility" means a facility engaged solely in the storage, processing, and resale or reuse of recovered material but does not mean a solid waste facility if solid waste generated by a recovered material processing facility is managed in accordance with KRS Chapter 224 and administrative regulations adopted by the cabinet;
- ~~(35)~~~~(33)~~ "Revenue bonds" means special obligation bonds issued by the authority as provided by the provisions of this chapter, which are not direct or general obligations of the state, and which are payable only from a pledge of, and lien upon, authority revenues as provided in the resolution authorizing the issuance of the bonds, and shall include revenue bond anticipation notes;
- ~~(36)~~~~(34)~~ "Service charge" means any monthly, quarterly, semiannual, or annual charge to be imposed by a governmental agency, or by the authority, for any infrastructure project financed by the authority, which service charge arises by reason of the existence of, and requirements of, any assistance agreement;
- ~~(37)~~~~(35)~~ "Sewage" means any of the waste products or excrements, or other discharges from the bodies of human beings or animals, which pollute the waters of the state;
- ~~(38)~~~~(36)~~ "Shapefile" means a file format for storing, depicting, and analyzing geospatial data showing broadband coverage;
- ~~(39)~~~~(37)~~ "Solid waste" means "solid waste" as defined by KRS 224.1-010(30)(a);
- ~~(40)~~~~(38)~~ "Solid waste facility" means any facility for collection, handling, storage, transportation, transfer, processing, treatment, or disposal of solid waste, whether the facility is associated with facilities generating the waste or otherwise, but does not include a container located on property where the waste is generated and which is used solely for the purpose of collection and temporary storage of that solid waste prior to off-site disposal, or a recovered material processing facility;
- ~~(41)~~~~(39)~~ "Solid waste project" means construction, renovation, or acquisition of a solid waste facility which shall be instituted and owned by a governmental agency;
- ~~(42)~~~~(40)~~ "Solid waste revolving fund" means that fund which shall receive state funds, the proceeds from the sale of revenue bonds of the authority, or other moneys earmarked for the purpose of providing loans or grants to finance solid waste projects defined in this section;
- ~~(43)~~~~(41)~~ "State" means the Commonwealth of Kentucky;
- ~~(44)~~~~(42)~~ "System" means the system owned and operated by a governmental agency with respect to solid waste projects, treatment works, or infrastructure projects financed as provided by the assistance agreement between the governmental agency and the authority;
- ~~(45)~~~~(43)~~ "Treatment works" or "wastewater treatment works" means all or any part of any facilities, devices, and systems used and useful in the storage, treatment, recycling, and reclamation of wastewater or the abatement of pollution, including facilities for the treatment, neutralization, disposal of, stabilization, collecting, segregating, or holding of wastewater, including without limiting the generality of the foregoing, intercepting sewers, outfall sewers, pumping power stations, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof, and any wastewater treatment works, including site acquisition of the land that will be an integral part of the wastewater treatment process, or is used for ultimate disposal of residues resulting from wastewater treatment, together with any other facilities which are deemed to be treatment works in accordance with the federal act;
- ~~(46)~~~~(44)~~ "Underserved area" means any project area where broadband service with a minimum one hundred (100) megabits per second downstream and twenty (20) megabits per second upstream is not available;

- (47)~~(45)~~ "Unserved area" means any project area where broadband service with a minimum twenty-five (25) megabits per second downstream and three (3) megabits per second upstream is not available;
- (48)~~(46)~~ "Utility tax" means the tax which may be imposed by the authority on every purchase of water or sewer service in the Commonwealth of Kentucky;
- (49)~~(47)~~ "Variable rate revenue bonds" means revenue bonds the rate of interest on which fluctuates either automatically by reference to a predetermined formula or index or in accordance with the standards set forth in KRS 224A.120;
- (50)~~(48)~~ "Wastewater" means any water or liquid substance containing sewage, industrial waste, or other pollutants or contaminants derived from the prior use of these waters;
- (51)~~(49)~~ "Water resources" means all waters of the state occurring on the surface, in natural or artificial channels, lakes, reservoirs, or impoundments, and in subsurface aquifers, which are available, or which may be made available to agricultural, industrial, commercial, recreational, public, and domestic users;
- (52)~~(50)~~ "Water resources project" means any structural or nonstructural study, plan, design, construction, development, improvement, or any other activity including programs for management, intended to conserve and develop the water resources of the state and shall include all aspects of water supply, facilities to collect, transport, and treat wastewater as defined in KRS 65.8903, flood damage abatement, navigation, water-related recreation, and land conservation facilities and measures; and
- (53)~~(51)~~ "Waters of the state" means all streams, lakes, watercourses, waterways, ponds, marshes, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, which are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters which do not combine or effect a junction with natural, surface, or underground waters.

➔Section 2. KRS 224A.300 is amended to read as follows:

- (1) The General Assembly finds that it is necessary to encourage regionalization, consolidation, and partnerships among governmental agencies, and private parties when appropriate, with the goal of making **public**~~potable~~ water and wastewater treatment **secure for**~~available to~~ all Kentuckians. **This is accomplished** through the maximization of financial, **managerial, and technical** resources and the **protection**~~conservation~~ of **source water**~~natural resources~~ of the Commonwealth. Based on these findings, the General Assembly declares that the Kentucky Infrastructure Authority shall implement a program for **reliable infrastructure and the security and safety of water and wastewater systems**~~the provision of water services~~ as authorized in the budget and directed by the General Assembly. **The Energy and Environment Cabinet shall provide technical support to the Kentucky Infrastructure Authority as needed to implement this program.**
- (2) The authority shall be responsible for the management and operation of the Water Resource Information System. The authority shall maintain and, at least annually, update the information contained in this system to ensure its accuracy.
- (3) The authority may request all branches of state and local government, including special districts and water districts, to provide information relating to the status of existing plants, the financial condition of existing systems, and the existing regulatory authority held by agencies of government regarding the issue of water~~resource development and~~ management. All branches of state and local government shall, to the extent reasonable and appropriate, comply with such requests for information.
- (4) The authority shall promulgate administrative regulations that require a water supply and distribution system receiving or seeking funding to provide current information regarding the financial, managerial, and technical aspects of its system and, thereafter, to furnish updates to the information so provided.

➔Section 3. KRS 224A.302 is amended to read as follows:

Within twelve (12) months of July 14, 2000, each area development district shall establish~~2020~~ water management areas. The entire area within the area development district shall be included in one (1) or more~~2020~~ water management areas. The area development district may determine the boundaries of water management areas by considering geographical or topographical conditions and the potential integration of existing water systems. Where water management areas may lie within more than one (1) area development district, the area development districts shall share planning and plan implementation responsibilities. The area development districts shall develop maps of uniform scale to show, accurately and clearly, the boundaries of **each**~~the 2020~~ water management **area**~~areas~~.

➔Section 4. KRS 224A.304 is amended to read as follows:

A ~~[2020]~~ water *and wastewater* service *regionalization* account is established within the infrastructure revolving fund. The purpose of the account shall be to *enhance the effectiveness, reliability, and resilience of the state's water and wastewater systems, and where inefficiencies exist, to eliminate structural and administrative duplication of infrastructure and service delivery systems, by using a variety of tools, including but not limited to regionalization, merger, and consolidation* ~~[assist in making potable water available to all Kentuckians by the year 2020]~~. The authority shall manage the account as funding is authorized by the General Assembly and in a manner to achieve the purposes set out in KRS 224A.300.

➔Section 5. KRS 224A.306 is amended to read as follows:

- (1) The authority shall require the following as conditions for receiving assistance from any fund administered by the authority for infrastructure projects related to water *and wastewater* service:
 - (a) Establishment and use of a financial accounting system that accounts for the operations of water treatment and distribution separately from all other operations of the applicant;
 - (b) Establishment of service rates based upon the cost of providing the service; and
 - (c) An agreement that the authority may require an audit to be conducted of the applicant at least once every two (2) years.
- (2) The authority shall require all applicants within a class to use the same accounting system. The authority may accept present accounting systems in use and applied uniformly to all applicants within a class, for example, the uniform system of accounts established by the National Association of Regulatory Utility Commissioners.
- (3) The authority may assist water providers to establish accounting systems that meet the requirements of this section. The authority may provide assistance by paying for third-party private contractors or assistance from the Kentucky Auditor of Public Accounts.
- (4) The authority may pay for costs related to establishing a new uniform accounting system for the use of governmental agencies that merge or consolidate their water services if:
 - (a) The merging or consolidating entities use different accounting systems; *and*
 - (b) The merger or consolidation is consistent with a ~~[2020]~~ water management planning council plan as reviewed and prioritized under KRS 151.607; ~~and~~
 - ~~(c) At least one (1) governmental agency water system is a partner in the merger or consolidation.~~
- ~~(5) The authority may fund the requirements of this section from the 2020 water service account.~~

➔Section 6. KRS 224A.308 is amended to read as follows:

- (1) The authority shall establish a program to assist governmental agencies in detecting water loss from distribution lines *or develop or maintain asset management plans*. ~~This [The program]~~ may include contracting with third parties to conduct water loss audits, *the creation of asset management plans*, and leak detection. The *assistance* ~~[program]~~ may include giving low interest loans, on a priority basis established by the authority consistent with the findings and purposes set out in KRS 224A.300, for the repair or replacement of distribution facilities, deemed reasonable by the authority, undertaken as a result of the water loss audit.
- (2) The authority may forgive any amount of a distribution facility repair or replacement loan from the authority remaining unpaid if:
 - (a) Within five (5) years of entering into the loan agreement the governmental agency merges with or consolidates with at least one (1) other public or private water *system* ~~[supplier]~~; and
 - (b) The merger or consolidation is consistent with a ~~[2020]~~ water management planning council plan as reviewed and prioritized under KRS 151.607.
- ~~(3) The authority may fund the requirements of this section from the 2020 water service account.~~

➔Section 7. KRS 224A.310 is amended to read as follows:

- (1) The authority shall establish an incentive program that allocates funds from the *water and wastewater service regionalization account* ~~[2020 water service account in a manner]~~ that encourages the regionalization, merger, and consolidation of water *and wastewater* systems and elimination of structural and administrative

duplication. *Established incentives*~~[The incentive funds]~~ may be used by government owned and private systems.

- (2) The incentive program shall target water *and wastewater* systems that have high debt, inadequate operational and maintenance resources, high maintenance costs, old and inadequately maintained treatment works, a history of violations of the Division of Water's statutes and administrative regulations due to inadequate operational and maintenance resources, or insufficient financial resources to extend system service to unserved or underserved areas.
- (3) In developing the incentives to encourage governmental agencies to merge, regionalize, consolidate, and partner with target systems *and develop or maintain an asset management plan*, the authority shall give~~[the highest funding]~~ priority to those projects which have been identified in a~~[2020]~~ water management planning council plan prioritized under KRS 151.607 and meet the funding priorities established by the authority.

➔Section 8. KRS 224A.312 is amended to read as follows:

- (1) The authority shall develop an incentive program that allocates funds~~[from the 2020 water service account]~~ to encourage new infrastructure projects to provide service to unserved areas and improve service to underserved areas of the state. The incentives may be used by government owned and private systems.
- (2) The incentives shall be developed to give~~[the highest funding]~~ priority to those projects that have been identified in a~~[2020]~~ water management planning council plan prioritized under KRS 151.607 and meet the funding priorities established by the authority.

➔Section 9. KRS 224A.316 is amended to read as follows:

- (1) In furtherance of the goal of making access to *public*~~[potable]~~ water and wastewater *systems more resilient and*~~[treatment]~~ available to *the public*~~[all Kentuckians]~~, the General Assembly finds and declares that governmental agencies should provide to water and wastewater systems the requisite financial resources to:
 - (a) Develop the technical, managerial, and operational expertise needed to properly operate and maintain their drinking water and wastewater systems;
 - (b) Conserve, protect, and maximize the resources needed to offer drinking water and wastewater systems and services;
 - (c) Upgrade drinking water and wastewater systems and services to prevent water loss *and inflow and infiltration* from degrading infrastructure; and
 - (d) Leverage existing finance with anticipated federal dollars or with other sources as may be available from time to time to create a larger pool of finance for water and wastewater systems to make improvements while keeping customer rates affordable.
- (2) The Kentucky Infrastructure Authority shall implement a program to assist governmental agencies that provide drinking water and wastewater services with the financial resources for both capital and non-capital expenses, including but not limited to:
 - (a) Developing technical, operational, and maintenance resources and expertise;
 - (b) Improving utility infrastructure planning, repair, maintenance, renovation, and management of plants and assets;
 - (c) Obtaining technical expertise in areas of rate-setting, cost-of-service, and proper utility accounting standards for the utility type;
 - (d) Performing and correcting deficiencies from drinking water, wastewater, and financial audits;
 - (e) Providing finance for financial inadequacies, including debt service coverage through relief or refinance of the drinking water or wastewater system's debt;
 - (f) Payment assistance for other financial inadequacies such as excessive maintenance costs, fines and penalties from past violations, or consultants; and
 - (g) Extending finance for inadequately maintained distribution, collection, or treatment works, including service extensions to unserved or underserved areas and the renovation of treatment works to conserve resources.

- (3) ***The authority shall give priority for projects that are regional in nature and achieve the purposes set out in Section 2 of this Act.***

➔Section 10. KRS 151.601 is amended to read as follows:

- (1) ~~{2020}~~Water management planning councils shall be established for each county with the assistance of the appropriate area development district. Two (2) or more counties may form a multicounty 2020 water management planning council. The planning councils shall, as a minimum, be comprised of the following:
- (a) Each county ***judge/executive***~~{judge-executive}~~ or mayor of an urban-county government, or his or her authorized representative;
 - (b) One (1) representative selected by each community public water system, as defined in 401 KAR 8:010 sec. 1(71)(a), that provides water to persons in the county;
 - (c) One (1) representative selected by a local health department in the county; and
 - (d) One (1) representative selected by each city with a population equal to or greater than one thousand (1,000) based upon the most recent federal decennial census that is not a water supplier or distributor, unless that city chooses to be represented by another member of the planning council.
- (2) If, after the~~{2020}~~ water management planning council appointments have been made, a county judge/executive or mayor of an urban-county government determines that any areas of the county or urban county government remain unrepresented on the planning council, the county judge/executive or mayor of the urban-county government may appoint an individual to represent that area.
- (3) The county judge/executive or mayor of an urban-county government or the county judge/executive or the mayor's designated representative shall serve as the chair of the~~{2020}~~ water management planning council of which either the county judge/executive or the mayor is a member.
- (4) Members of the~~{2020}~~ water management planning councils shall serve without pay but may be reimbursed by counties or appointing agencies for reasonable expenses incurred to carry out the work of the councils.
- (5) The area development districts shall develop a forum for the chairpersons of the ~~{2020}~~water management planning councils or multicounty planning councils to meet on at least a quarterly basis for the purpose of developing regional service strategies consistent with the findings and purpose set out in KRS 224A.300.

➔Section 11. KRS 151.603 is amended to read as follows:

- (1) Each~~{2020}~~ water management planning council shall~~{by July 1, 2001}~~ develop ***and maintain*** a plan consistent with the county long-range water supply plan developed under KRS 151.114 and the water supply planning process set out in KRS Chapter 151 and administrative regulations of the cabinet and the purposes set out in KRS 224A.300. The plan shall include a water needs forecast for the county ***in five (5) year increments within a twenty-five (25) year planning cycle with the first cycle beginning in 2025***~~{for dates five (5), ten (10), fifteen (15), and twenty (20) years after the year 2000}~~. The plan shall include a strategy for ***improving reliability and resiliency of water service***, delivering ***public***~~{potable}~~ water ~~{as needed into the}~~ underserved and unserved areas~~{of the county}~~, and shall ***consider***~~{encourage the}~~ merger,~~{and}~~ consolidation, ***and management*** of water systems ***to achieve the purposes set out in Section 2 of this Act***. The ***Energy and Environment Cabinet, in collaboration with the authority as agreed upon in the State Revolving Fund Memorandum of Agreement,***~~{authority}~~ may disapprove and direct redevelopment of a plan under this subsection for inconsistencies with the purposes set out in KRS 224A.300.
- (2) The~~{2020}~~ water management planning councils or multicounty planning councils shall assume the role and function of the planning units established to implement the water supply planning process set out in KRS 151.114 and administrative regulations of the cabinet.

➔Section 12. KRS 151.605 is amended to read as follows:

- (1) The~~{2020}~~ water management planning councils or multicounty planning councils may employ a water service coordinator. Planning councils may jointly employ a water service coordinator. The water service coordinator shall assume the role and function of the county long-range planning representative appointed under KRS 151.114 and the water supply planning process set out in KRS Chapter 151 and administrative regulations of the cabinet. In addition, water service coordinators shall assist the~~{2020}~~ water planning councils or multicounty planning councils in developing the plans required under KRS 151.603.

- (2) The Kentucky Infrastructure Authority may establish by administrative regulations a program to provide or supplement funding for a multicounty planning council water service coordinator for a period of three (3) years from July 14, 2000. There shall be no more than one (1) position funded per area development district.
- (3) All state agencies shall cooperate with and assist the~~[-2020]~~ water management planning councils as appropriate to accomplish the purposes set out in KRS 224A.300.

➔Section 13. KRS 151.607 is amended to read as follows:

- (1) After July 1, 2001, and annually thereafter, each area development district shall review and prioritize the planning councils' plans for underserved and unserved areas within the~~[-2020]~~ water management area for that district. The review and prioritization shall be conducted with the assistance and input of the authority and the water management councils for the counties or multicounty areas within a~~[-2020]~~ water management area. These prioritization plans shall be submitted to the authority for review and approval. The authority may suggest changes necessary for the purpose of qualifying for financial assistance from the~~[-2020]~~ water service account of the Kentucky Infrastructure Authority.
- (2) Factors to be considered in prioritizing the plans for underserved and unserved areas within a~~[-2020]~~ water management area include:
 - (a) The current and potential customer base that would benefit from water service;
 - (b) The adequacy, cost-effectiveness, and dependability of water sources, water treatment capacity, and distribution lines that may be used to provide water service; and
 - (c) The potential to *consolidate or merge management or operations to provide efficient and affordable services*~~[eliminate or prevent duplication of water distribution lines and facilities that may be used to provide the service]~~.

➔Section 14. The following KRS section is repealed:

224A.314 Study of water resource potential of underground coal mines and high yield water wells -- Funding for study.

Signed by Governor April 6, 2023.

House Bill 360: Sales Tax Exemption for Construction Materials for Governmental Water and Sewer Service Providers

UNOFFICIAL COPY

23 RS HB 360/EN

1 vehicle, including any towed unit, used exclusively in interstate commerce for
2 the conveyance of property or passengers for hire, provided the motor vehicle
3 is licensed for use on the highway and its declared gross vehicle weight with
4 any towed unit is forty-four thousand and one (44,001) pounds or greater.
5 Nominal intrastate use shall not subject the property to the taxes imposed by
6 this chapter;

7 (b) Repair or replacement parts for the direct operation and maintenance of a
8 motor vehicle operating under a charter bus certificate issued by the
9 Transportation Cabinet under KRS Chapter 281, or under similar authority
10 granted by the United States Department of Transportation; and

11 (c) For the purposes of this subsection, "repair or replacement parts" means tires,
12 brakes, engines, transmissions, drive trains, chassis, body parts, and their
13 components. "Repair or replacement parts" shall not include fuel, machine
14 oils, hydraulic fluid, brake fluid, grease, supplies, or accessories not essential
15 to the operation of the motor vehicle itself, except when sold as part of the
16 assembled unit, such as cigarette lighters, radios, lighting fixtures not
17 otherwise required by the manufacturer for operation of the vehicle, or tool or
18 utility boxes;

19 (32) Food donated by a retail food establishment or any other entity regulated under
20 KRS 217.127 to a nonprofit organization for distribution to the needy;~~and~~

21 (33) Drugs and over-the counter drugs, as defined in KRS 139.472, that are purchased
22 by a person regularly engaged in the business of farming and used in the treatment
23 of cattle, sheep, goats, swine, poultry, ratite birds, llamas, alpacas, buffalo, aquatic
24 organisms, or cervids;

25 **(34) (a) Building materials, fixtures, or supplies purchased by a construction**
26 **contractor if:**

27 **1. Fulfilled by a construction contract for a sewer or water project with:**

- 1 a. A municipally owned water utility organized under KRS Chapter
2 96;
- 3 b. A water district or water commission formed or organized under
4 KRS Chapter 74;
- 5 c. A sanitation district established under KRS Chapter 220 or
6 formed pursuant to KRS Chapter 65;
- 7 d. A nonprofit corporation created under KRS 58.180 to act on
8 behalf of a governmental agency in the acquisition and
9 financing of public projects;
- 10 e. Regional wastewater commissions formed under KRS Chapter
11 278;
- 12 f. A municipally owned joint sewer agency formed under KRS
13 Chapter 76; or
- 14 g. Any other governmental agency; and
- 15 2. The building materials, fixtures, or supplies:
- 16 a. Will be permanently incorporated into a structure or
17 improvement to real property, or will be completely consumed, in
18 fulfilling a construction contract for the purpose of furnishing
19 water or sewer services to the general public; and
- 20 b. Would be exempt if purchased directly by the entities listed in
21 subparagraph 1. of this paragraph.
- 22 (b) As used in this subsection, "construction contract" means a:
- 23 1. Lump sum contract;
- 24 2. Cost plus contract;
- 25 3. Materials only contract;
- 26 4. Labor and materials contract; or
- 27 5. Any other type of contract.

1 (c) The exemption provided in this subsection shall apply without regard to the
 2 payment arrangement between the construction contractor, the retailer, and
 3 the entities listed in paragraph (a)1. of this subsection or to the place of
 4 delivery for the building materials, fixtures, or supplies;

5 (35) (a) On or after February 25, 2022, the rental of space for meetings,
 6 conventions, short-term business uses, entertainment events, weddings,
 7 banquets, parties, and other short-term social events, as referenced in
 8 Section 7 of this Act, if the tax established in Section 7 of this Act, is paid by
 9 the primary lessee to the lessor.

10 (b) For the purpose of this subsection, "primary lessee" means the person who
 11 leases the space and who has a contract with the lessor of the space only if:

12 1. The contract between the lessor and the lessee specifies that the lessee
 13 may sublease, subrent, or otherwise sell the space; and

14 2. The space is then sublet, subrented, or otherwise sold to exhibitors,
 15 vendors, sponsors, or other entities and persons who will use the space
 16 associated with the event to be conducted under the primary lease; and

17 (36) Prewritten computer software access services sold to or purchased by a retailer
 18 that develops prewritten computer software for print technology and uses and
 19 sells prewritten computer software access services for print technology.

20 ➔Section 14. KRS 139.481 is amended to read as follows:

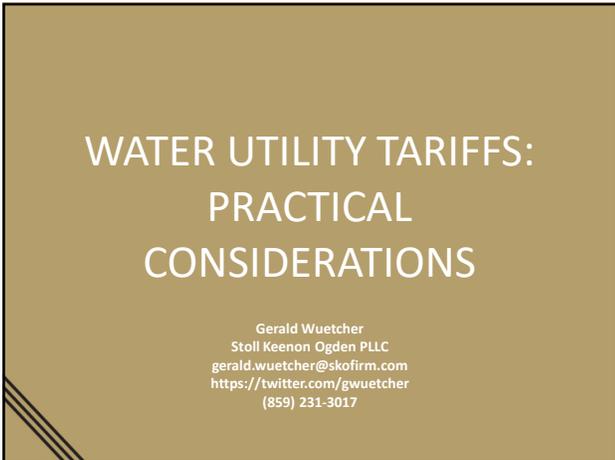
21 (1) On and after January 1, 2023, every person claiming an exemption provided under
 22 KRS 139.480(4) to (9), ~~[KRS 139.480](11)~~, ~~[KRS 139.480](13)~~ to (15), ~~and KRS~~
 23 ~~139.480](23)~~ to (30), and (33) shall provide to the seller or retailer a valid
 24 agriculture exemption license number issued by the department.

25 (2) A person is eligible to apply for an agriculture exemption license number if the
 26 person is:

27 (a) Regularly engaged in the occupation of tilling and cultivating the soil for the



1



2



3

LEGAL FRAMEWORK

4



KRS 278.030

Provides that every utility may:

- Demand and **collect fair, just and reasonable rates**
- Establish **reasonable rules** governing the **conduct of its business** and **the conditions under which it will provide service**
- Employ **reasonable classifications** of its service, patrons, and rates

5



KRS 278.160(1)

Under rules prescribed by the commission, **each utility shall file with the commission**, within such time and in such form as the commission designates, schedules showing **all rates and conditions for service established by it and collected or enforced**. The utility shall keep copies of its schedules **open to public inspection** under such rules as the commission prescribes.

6



KRS 278.160(2)

No utility shall **charge, demand, collect or receive** from any person a **greater or less compensation** for any service rendered or to be rendered than that **prescribed in its filed schedules**, and no person shall receive any **service** from any utility for a **compensation greater or less** than that **prescribed in such schedules**.

7



WHAT IS A RATE?

[A]ny individual or joint **fare, toll, charge, rental, or other compensation for service** rendered or to be rendered by any utility, and **any rule, regulation, practice, act, requirement, or privilege** in any way **relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff thereof**.

KRS 278.010(12)

8



EXAMPLES OF A "RATE"

- Commodity Charge
- Water Meter Installation Charge
- Billing Recalculation Policy
- Length Of Time To Pay Bill
- Minimum Contract Period
- Rule/Regulation

9



WHAT IS A CONDITION OF SERVICE?

Requirement, action or task that must be met or taken by applicant/customer for service as a prerequisite for receiving or continuing to receive service.

10



EXAMPLES OF A "CONDITION OF SERVICE"

- Completing An Application Form
- Providing Evidence Of Inspections
- Deposit Requirement
- Easement Requirement
- Technical Specifications For Connection

11



EFFECT OF KRS 278.160

- Tariff Has The Status Of Law
- Only Filed Rates May Be Charged
- Only Filed C of S May Be Imposed
- Filed Rates/C of S **MUST** be Enforced
- Tariff Governs Utility's Relationship With Customer

12



FAILURE TO COMPLY WITH KRS 278.160

- Refund/Backbilling
- Assessment of Penalties
- Removal of WD Commissioners
- Compensatory & Punitive Damages

13

REVISING TARIFFS: PROCEDURE

14



GENERAL PROCEDURES

- 30 Days Prior Notice To PSC
- Notice Is Filing Of New Tariff Sheet
- Submit Cover Letter & Tariff Sheet
- Tariff Sheet Must Comply With PSC Regs

15



GENERAL PROCEDURES

- Tariff Sheet Should State Effective Date
- Attorney Is **NOT** Required
- Public Notice Must Be Provided

16



PUBLIC NOTICE

- Three Methods to Provide Notice
- For Contents of Notice, See 807 KAR 5:011
- Post Copy of Notice at Office
- Post Notice on Utility’s Website and Social Media Accounts

17



PSC RESPONSE TO FILING

- Take No Action – Becomes Effective 30 days from Filing
- Request Minor Modifications
- Suspend & Investigate
- Final Action Within 10 Months of Filing

18



NONRECURRING CHARGES

A charge designed to recover customer-specific cost incurred that would otherwise result in monetary loss to the utility or increased rates to other customers to whom no benefits accrue from the service provided or action taken.

19



EXAMPLES OF NONRECURRING CHARGES

- Meter Connection Fees
- Inspection Fees
- Returned Check Charges
- Turn-off/Turn-on Charge
- Field Collection Charge
- Meter Resetting Charge

20



NONRECURRING CHARGES

- Letter Filing/No Attorney Required
- Specific Cost Justification
- Revenue may not exceed costs
- Income Statement & Balance Sheet
- Stmt Why Not Filed in Rate Case
- Tariff Sheet

21



NRC: RECENT CHANGE

- As of 11/2020, Labor expense no longer included in cost calculations
- PSC Case No. 2020-00141:
“Unreasonable to allocate a cost already incurred to maintain system
Specific Cost Justification

22



NRC: EFFECT OF CHANGE

| CHARGE | ACTUAL | ALLOWED |
|----------------------------|---------|---------|
| Connection | \$55.00 | \$10.44 |
| Meter Test Request | \$65.00 | \$20.44 |
| Reconnection | \$55.00 | \$10.44 |
| Service Call Investigation | \$55.00 | \$10.44 |
| Reconnection (After Hours) | \$65.00 | \$53.62 |

23



NRC: EFFECT OF CHANGE

| CHARGE | ACTUAL | ALLOWED |
|---------------------|---------|---------|
| Fire Hydrant Permit | \$53.03 | \$16.00 |
| Meter Test | \$63.45 | \$ 4.00 |
| Overtime Charge | \$66.39 | \$49.00 |
| Service Charge | \$53.40 | \$ 4.00 |
| Return Check Charge | \$10.00 | \$ 5.00 |

24



SPECIAL CONTRACTS

- Contracts that provide for rates or conditions of service not in general tariffs
- Designed to address unusual customer circumstances
- Must be filed with PSC

25

TARIFF PROVISIONS TO CONSIDER

26



REQUIRED PROVISIONS

- Deposit Requirements
- Special Charges
- Monthly Budget Plan Availability
- Reconnection Charge
- Requested Meter Test Charge

27



REQUIRED PROVISIONS

- Rules & Administrative Regulations
- Rules Re: Size, Design, Material and Installation of Service Lines
- Rules Re: Service Line Installation & Maintenance
- Customer Usage Monitoring Procedures

28



APPLYING FOR SERVICE

- Is Customer Required to Complete Application or Agreement?
- Are **ALL** Contents Listed in Tariff?
- Case No. 2013-00309: All Conditions/Requested Info In Application Must Be in Tariff or Form Must Be Filed

29



APPLICATION: CUSTOMER INFO

- Name and Address
- Social Security Number - **NO**
- Driver's License No.*
- E-mail Address
- Mobile Telephone No.

30



**APPLICATION:
CUSTOMER INFO**

- Employer’s Name & Address
- Marital Status
- Spouse’s Name
- Own or Rent?
- Rental Agreement

31



**APPLICATION:
CUSTOMER INFO**

- Adults Living In Household
- “Do You or Any Household Members Owe The Utility For Unpaid Water Service Or Other Tariff Charges?”

32



**APPLICATION:
PHOTO ID PRESENTMENT**

- May not limit ID to government-issued photo ID
- Alternate ID forms permitted for voter registration should be accepted ILO photo ID

33



**APPLICATION:
CONDITIONS FOR SERVICE**

- Comply With Rules & Regulations
- Release of Liability If Not Present At Service Turn-On
- Duty to Maintain Current Info
- Pay All Charges & Fees
- Attorney Fees/Collection Fees

34



**APPLICATION:
CONDITIONS FOR SERVICE**

- Electronic Delivery of Bills
- Electronic Delivery of Notices
- Permission to Send Text Messages
- Easements

35



DEPOSITS

- Utility May Require Deposit
- Must State Method For Calculating Deposit Amount
- Criteria for Requiring Deposit
- Policy/Rules on Refunding
- Policy on Interest

36



RENTER ISSUES

- Deposit Requirement Based On Status as Renter **Prohibited**
- Deposit Requirement on Landlord for Renter’s Benefit **Disfavored**
- Required Payment Guaranty from Landlord **Disfavored**

37



PAYMENT

- Form of Payment
- Fees For Credit Card/ACH Payment
- Returned Check Fee
- Payment Date
- “Dropbox” Payment
- Multiple Structures/Single Meter

38



LATE PAYMENT FEES: GENERAL RULES

- Assessed if no payment by due date
- Assessed only once on any bill
- No penalty on unpaid penalties
- Payments applied 1st for service
- Late Posting/Delays in Transit
- Federal/State Agencies

39



**LATE PAYMENT FEES:
RECENT HISTORY**

- COVID-19: PSC prohibits assessment of fees (3/15/2020)
- Summer 2020: PSC collects data on payment delinquency
- 9/21/2020: Ends prohibition on assessment; expresses doubt re: reasonableness/effectiveness

40



**LATE PAYMENT FEES:
RECENT HISTORY**

- Prohibits WD from assessing fees (11/6/2020)
- Finds late payment fees not cost-based; ineffective
- Proceeds to prohibit on a case-by-case basis

41



**LATE PAYMENT FEES:
KRS 278.154**

- Enacted in response to PSC's action
- Permits WD/WA to assess a 10% late payment fee
- PSC may not interfere with WD/WA
- No late payment fees on WD/WA bills receiving 3rd party billing assistance

42



LEAK ADJUSTMENTS

- No Duty to Make Adjustment
- Tariff Provision Necessary
- Uniform Application of Provision
- Utility Must Recover At Least The Variable Cost of Water

43



COMPONENTS OF LEAK ADJUSTMENT CLAUSE

- Average Use @ Regular Rate + Excess @ Leak Adjustment Rate
- Written Request From Customer
- Evidence of Leak/Repairs
- Use Limited: Number/Time Period
- Board Oversight

44



REFUSING SERVICE: PSC GROUNDS

- Violation of PSC or Utility Rules*
- Dangerous Conditions**
- Refusal of Access*
- Outstanding Indebtedness
- Noncompliance with Gov't Codes*
- Nonpayment of Bills*
- Illegal Use/Theft of Service**

45



REFUSING SERVICE: ADDITIONAL GROUNDS

- Waste of Water
- Tampering/Interfering W/Facilities
- Misrepresentation
- Obtaining Service By Fraud

46



REFUSING SERVICE FOR NONPAYMENT

- May **Refuse** Service for **Any Debt for Service or Tariff Charges**
- May **Discontinue** Service Only for **Debt Incurred at Present Location**
- 5 Days Notice Prior to Termination
- No Termination Before 20 days After Mailing Date of Original Unpaid Bill

47



IMPUTED LIABILITY

- Family/Household Member Requests Service After Termination
- No Prior Contract With Utility
- PSC Regs Requires Utility to Provide Service To New Applicant

UNLESS

48



IMPUTED LIABILITY

- Tariff Provides That Liability for Unpaid Bills Is Imputed to Each Adult Member of Household
- Uses Benefit of Service Theory
- Not Sufficient to Obtain Judgment
- Adequate Basis to Deny Service

49



IMPUTED LIABILITY: PSC RESPONSE

- Does Not Recognize Benefit of Service Theory
- Accepts Agency Theory but Utility must demonstrate agency
- Will permit imputation of debt only for purpose of denying service

50



TAMPERING FEE

- Fee Imposed on Customer Tampering or Damaging Equipment
- Penalty intended to deter misconduct
- Case No. 2019-00271: Duke Kentucky proposes

51



TAMPERING FEE

- Duke: Penalty permissible as PSC has plenary ratemaking power
- PSC finds Fee is NRC and must be cost-based
- PSC rejects Fee as not cost-based

52



BILLING FOR SEWER SERVICE

- Utility Provides Both Services - Follow PSC Regs
- City/Water District Provides Service - Follow KRS 96.930-.943
- Sanitation Dist - Follow KRS 220.510
- Private Sewer Utility – PSC Approval Required

53



BILLING FOR GARBAGE COLLECTION

- Cities May Discontinue H2O Service For Failure to Garbage Collection Bill
- PSC Utilities: Not Permitted Unless PSC expressly approves
- OAG 17-30: City May Delegate Its Authority to Water District

54



BILLING FOR OTHER SERVICES

- 911 Fees
- Service Line Warranty Programs
- Establish **Priority of Payment** in Tariff
- Bill Format Must Reflect All Other Billed Services

55



FIRE PROTECTION SERVICES

- Free H2O To Fire Depts Permitted
- Fire Protection/Fire Training Only
- Fire Dept Must Keep Usage Estimates & Report Quarterly
- Penalty If Reports Not Timely Filed
- Tariff Provision Required

56



FIRE PROTECTION SERVICES

- Free Service Without Tariff Provision Violates KRS 278.170(3)
- Allowing Fire Dept to Withdraw H2O Without Reports Violates KRS 278.160
- Failure to assess penalty against Fire Dept violates KRS 278.160

57



FIRE PROTECTION SERVICES

- Limit Amount Of “Free H2O” Per Fire Event
- Example: No More Than 4 Hours – Then Property Owner Responsible
- Avoids Potential Financial Hardship For Water Utility

58



LIMITING TORT LIABILITY

- Disclaimer of Liability
- Low H2O Pressure – Damage to Customer Equipment/Facilities
- Lack of Adequate Fire Flows
- Interruptions in Water Supply
- Hydrant Usage

59



MISCELLANEOUS

- Water Main Extension Policies
- Incentive/Discount Tap-on Fees
- Water Priority/Water Shortage Response Plans
- Special Contracts
- Forms

60



61



62



63



MANAGING YOUR TARIFF: FILINGS WITH PSC

- Explain In Detail Purpose/Reasons For Filing In Cover Letter
- Provide Supporting Evidence
- Research/Anticipate Expected Questions/Issues
- Address Those Issues In Advance

64



QUESTIONS?

65



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66



67

Employment Law in the Workplace

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May 10, 2023

1



Agenda

- Overview of Employment Laws
- Supervisor's Role
- Documentation
- Avoiding Common Pitfalls
- Hypotheticals

2



GENERAL OVERVIEW OF EMPLOYMENT LAW

3



Employment At Will

- ❖ **Employment at Will**
 - *General Rule: In the United States, 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:**
 - *The discharge may not violate a State's public policy.*
 - *The discharge may not violate an implied contract of employment, if established.*
 - *The discharge may not violate employment protection laws.*

4



Employment Protection Laws

- ❖ **Title VII of the Civil Rights Act of 1964**
 - *Prohibits discrimination because of race, color, national origin, religion, or sex.*
- ❖ **Pregnancy Discrimination Act (PDA)**
 - *Requires employers to treat pregnancy just like any other medical condition with regard to benefits and leave policies.*

5



Employment Protection Laws

- ❖ **Americans with Disabilities Act (ADA)**
 - *Prohibits discrimination in terms or conditions of employment against individuals with disabilities who, with or without reasonable accommodation, can perform the essential functions of the job.*
- ❖ **Age Discrimination in Employment Act (ADEA)**
 - *Prohibits age discrimination in employment for employees age 40 and over.*
- ❖ **Family and Medical Leave Act (FMLA)**
 - *Provides eligible employees with up to 12 weeks of job protected leave annually for certain family and medical reasons.*

6



Employment Protection Laws

- ❖ **Unemployment Insurance**
 - Temporary benefits intended to help workers who lose jobs through no fault of their own.
- ❖ **Workers' Compensation**
 - Provides compensation to an employee for a work-related injury.
- ❖ **Retaliation**
 - Prohibits taking adverse action against an employee for exercising a protected activity. No employee should be retaliated against for reporting harassment or any other violation of the law.

7



Unlawful Discrimination

- Unlawful discrimination occurs when an employee is treated less favorably because of his or her protected class(es).
- Persons may be members of multiple protected classes.

8



Unlawful Discrimination

Reminders

- Do not allow members of one protected class to be treated different from members of another.
- Do not permit comments based on a person's protected class.
- Do not permit comments that might be offensive to a protected class.

9



Report Unlawful Discrimination

- Employees should be required to report all instances of unlawful discrimination.
- Anti-retaliation laws protect persons who make good faith complaints of discrimination, as well as persons who participate in an internal investigation of a discrimination complaint. All entities should have a non-retaliation policy.

10



Suggestions for Avoiding Retaliation Claims

- Do not engage in informal “watercooler” conversation about an employee’s protected activity
- After an employee has engaged in “protected activity,” consider the personal effects of any subsequent employer actions on that employee
- Establish an independent review procedure for all managerial decisions or actions that might adversely affect an employee who has engaged in protected activity

11



- Keep information of an employee’s protected conduct on a strict “need to know” basis
- Follow written company policies and procedures!
- Document, document, document
- Be consistent with your personnel decisions: treat all similarly situated employees the same! DO NOT PLAY FAVORITES!

12



- Encourage employees who have engaged in protected conduct to immediately report any conduct they believe is discriminatory. Provide several channels for reporting such conduct
- Have one or two witnesses present for any important conference with a “protected employee”

13



SUPERVISOR’S ROLE IN THE ORGANIZATION

14



Supervisor’s Role In the Organization

- Anything you know + No matter how you learned it = Organizational Knowledge
- Any reasonable promise you make = Accountability of the Organization
- Anything you request = An Order from the Organization



15



DOCUMENTATION

16



Characteristics of Proper Documentation

Document – Document – Document
If it's not in writing ... **it didn't happen**



17



Common Pitfalls

- ❑ Supervisor Not Equipped to Assess Whether Absence is Protected by Law
 - When learning of the reasons for absences, the supervisor may also learn of an employee's need for FMLA leave, need for an accommodation, need for military leave, etc.
 - If the supervisor is not familiar with employment protection laws, the supervisor may not realize that the organization must act in response to the information it has received

18



Common Pitfalls

- ❑ **Communication Breakdown**
 - Supervisor collects information and does not pass some or all of the information on to the person who needs to know
 - What the supervisor knows is organizational knowledge
 - If the supervisor learns the employee is absent for an FMLA qualifying event, the organization must provide the employee with FMLA paperwork, or risk violating the FMLA

19



Common Pitfalls

- ❑ **Inconsistent Documentation**
 - What one supervisor considers “excused” another may consider “unexcused”
 - One supervisor may characterize an absence as “sick” when it is “FMLA leave”, etc.

20



Best Practices When Documenting Absences

- Persons receiving information should be trained to identify basic HR issues
 - Ex. Does the organization need to provide the employee with FMLA paperwork?
 - Ex. Does the organization need to engage in an interactive ADA dialogue with the employee?
- Persons receiving information should make sure all information is communicated to the appropriate person(s)
- Persons receiving information should make sure they are complying with organization’s attendance policies

21



FOSA System of Documentation

- Facts
- Objectives
- Solutions
- Actions

22



Facts

- What happened?
- When did it happen?
- Where did it happen?
- Who was involved?

23



Objectives

- What are the performance expectations and when were they communicated to the employee?
- Key phrase: **“This job requires X.”**

24



Solutions

What forms of assistance or coaching were offered to help him/her solve the performance problem?

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Actions

What are the consequences for the employee if he/she does not improve performance?

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Common Pitfalls When Documenting

- Stating opinions and conclusions instead of facts
- Overcoming fear of confronting unpleasant situations
- Failing to make positive comments

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Effective Use of Emails

- Email has become the default tool for many businesses
- Tips for Using Email Effectively
 - Know your audience
 - Proofread your emails
 - Stop and think before pressing “send”
 - Know when to pick up the phone

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Effective Use of Emails

- Reply All Emails
 - Hurt Productivity
- Privileged Emails
 - Know when emails are privileged and when they are not
 - Avoid forwarding privileged emails (may destroy privilege)
 - Save certain communications for privileged emails or for the phone

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Hypotheticals



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Whenever there is an employee issue, follow these steps:

1. Identify the problem – what is the performance impact when “X” is not getting done?
2. Identify potential legal rights.
3. Identify your role as supervisor – do you need help from HR or it is a matter of addressing performance?
4. Document

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Hypothetical #1

You see an employee at a local restaurant while you and your family are out to dinner — not during working hours. The employee pulls you aside and says that she wanted to tell you, confidentially, about another supervisor who has been telling sexual jokes and otherwise offending her with his actions. You listen to her and ask her what she would like you to do. She says, “I don’t want you to report it—I’ll handle it.” What do you do?



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Hypothetical #2



Ron is consistently late for work. It’s either his broken alarm clock or his car. You’ve listed the dates and times on your calendar, but Ron is over 40 and you’re afraid he’ll sue the company if you say anything to him. What do you do?

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Hypothetical #3

Clare and Mark work together. They are often teamed together on special projects and spend a considerable amount of time together. Mark is attracted to Clare and has asked her out on several occasions. Clare repeatedly rejects his offer, but Mark believes in the theory that persistence will win out. Clare is in your office describing the events. What do you do?



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Hypothetical #4

An employee looks at the new work schedule and sees that his hours have been increased to meet production deadlines, and that he is assigned to work Saturdays. He tells you that his religion prevents him from working on Saturdays. What do you do?



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Hypothetical #5

An employee, who's a good friend, loses his temper at work and tells you that he's ready to pull out his gun and "take out" a few people who keep messing up. You've noticed some recent behavior changes, but he's usually under control. You've also noticed he's been talking about guns more often recently. What do you do?



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QUESTIONS?

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IN THE DOCK: SHOW CAUSE PROCEEDINGS BEFORE THE PUBLIC SERVICE COMMISSION

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PREFACE

“We have also **emphasized the hearing of** rural water district rate and **investigative cases** in light of what appears to have been a systemic failure of local county governments to manage water utility finances, replace deteriorating infrastructure and to reliably provide safe and clean water for their residents. The Commission is working to develop in coordination with other state agencies a comprehensive plan to address these deficiencies and **to hold individual water district officials accountable for their malfeasance and misfeasance in office.**”

Michael J. Schmitt, Chair, KY PSC



ORDER OF PRESENTATION

- Statutory Authority
- Enforcement Methods
- Show Cause Procedure
- Mitigating Violations/Sanctions
- Avoiding Violations



STATUTORY AUTHORITY



STATUTORY AUTHORITY

- KRS 278.040(1): PSC shall regulate **utilities** and shall have the power to enforce provisions of KRS Chapter 278
- KRS 278.040(2):
 - PSC's jurisdiction extends to all **utilities** in state
 - PSC shall have exclusive jurisdiction over utility rates and service



STATUTORY AUTHORITY

- KRS 278.040(3): “PSC may investigate the methods and practices of **utilities** to require **them to conform** to the laws of the state and to all reasonable rules, regulations and orders of the commission”
- KRS 278.250: PSC may investigate condition of utility



STATUTORY AUTHORITY

- KRS 278.260(1): PSC may initiate investigations into rates & service on its own motion
- KRS 278.270: PSC has power to order changes in rates after hearing upon reasonable notice to utility
- KRS 278.280(1): PSC has power to require changes in rules, methods, practices, equipment after hearing upon reasonable notice



STATUTORY AUTHORITY

- KRS 278.310: PSC may establish rules for hearings and investigations
- PSC KRS 278.320: PSC may issue subpoenas, subpoenas duces tecum, & necessary process
- KRS 278.330: PSC may take sworn testimony & may compel obedience to orders to give testimony & subpoenas through application to Circuit Court



STATUTORY AUTHORITY

- KRS 278.390: PSC may compel obedience to its orders by proceedings in Franklin Circuit Ct
- KRS 278.990: PSC may assess civil penalties



ENFORCEMENT METHODS



ENFORCEMENT METHODS

- PSC Order Directing Action or Non-Action
- Injunctive Relief from Circuit Court
- Referral for Criminal Prosecution
- Assessment of Civil Penalties
- Removal of WD Commissioners



PSC ORDER

- Has force of law
- Order remains in effect until:
 - Expires
 - PSC revokes or modifies
 - Court suspends or vacates



PSC ORDER

- May prohibit action temporarily without holding hearing
- After hearing may require utility to act or refrain from acting permanently
- May require compliance with statute or regulation without hearing



INJUNCTIVE RELIEF

- KRS 278.390: PSC may request injunctive relief from Court to enforce its Orders
- Court orders utility to comply with PSC Order
- Contempt of court proceedings available if utility or its officers do not comply with court's order



CRIMINAL REFERRAL

- KRS 278.990(1): **ANY PERSON** who violates KRS Ch. 278, PSC Reg or Order may be subject to **CRIMINAL PENALTY**
- Maximum: Six Months Imprisonment
- Misdemeanor Offense
- Must be prosecuted within one year
- District Court has jurisdiction/County Attorney prosecutes



CIVIL PENALTY

- KRS 278.990(1) authorizes PSC to assess civil penalties
- **WILLFUL VIOLATION** required
- Minimum: \$25/Maximum: \$2,500
- Penalty may be assessed for **each offense**
- Action may constitute multiple offenses



WHAT IS A WILLFUL VIOLATION?

- “[A]n act that is committed intentionally, not accidentally nor involuntarily.”
- “[A] willful violation has been explained as one which is intentional, knowing, voluntary, deliberate or obstinate, although it may be neither malevolent nor with the purpose to violate the law.”



WHAT IS A WILLFUL VIOLATION?

- Does not require bad faith
- Lack of knowledge/ignorance of law is no excuse
- Good faith reliance on opinion of legal counsel re: legality of act – **NO DEFENSE**
- Reliance on lending institution or PSC Staff – **NO DEFENSE**



AGAINST WHOM CAN A PENALTY BE ASSESSED?

Any **Utility** that **WILLFULLY**:

- Violates KRS Chapter 278
- Violates PSC Regulation
- Fails to Obey any PSC Order
- Does any act prohibited or fails to perform duty imposed by those statute or regulation



AGAINST WHOM CAN A PENALTY BE ASSESSED?

- Employee's act may be imputed to utility
- KRS 278.990(1): “Each act, omission, or failure by an officer, agent, or other person acting for or employed by a utility and acting within the scope of his employment **shall be deemed to be the act, omission, or failure of the utility.**”



AGAINST WHOM CAN A PENALTY BE ASSESSED?

Any Utility Officer/Employee/Agent or Any Other Person that **WILLFULLY** violates

- KRS Chapter 278
- PSC Regulation/PSC Order

OR

WILLFULLY procures, aids, or abets a violation by a **Utility**



“AIDING AND ABETTING”

“**Help, assist, or facilitate** the commission of a crime, promote the accomplishment thereof, help in advancing or bringing it about, or **encourage, counsel, or incite** as to its commission. . . . It **comprehends all assistance** rendered by words, acts, encouragement, support, or presence, actual or constructive to render assistance if necessary.”

Black’s Law Dictionary (5th ed.) 63



EXAMPLES: “AIDING AND ABETTING”

- Commissioners vote to issue a note with 4-year term without PSC authorization
- Commissioners sign a loan agreement with KIA without prior PSC authorization
- Commissioners OK start of construction of a building without obtaining a CPCN



WHO CAN AID & ABET A VIOLATION?

- Water District Commissioners
- Water Association Directors
- General Managers
- Legal Counsel
- Fiscal Agents
- Lending Institutions



PSC WARNING

“Water District Commissioners should be advised that fines and penalties may be assessed against them individually for any such violations, as the Commission does not believe that . . . [water district’s] customers should bear the cost of civil penalties in their rates for the negligence or malfeasance of the Water District Commissioners.”

Case No. 2016-00400, Order of 1/5/2018 at 5-6.



PSC FINAL WARNING

“To date the Commission has assessed, but not sought, to collect civil penalties against individual water district commissioners for essentially two reasons. 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.”



PSC FINAL WARNING

“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.”

Case No. 2017-00469, Order of 9/17/2018 at 7-8.



REMOVAL OF WATER DISTRICT COMMISSIONERS

- KRS 74.025 authorizes PSC to remove a water district commissioner
- A grounds for removal: failure to comply with rules, regulations, and orders issued by the Public Service Commission



REMOVAL OF WATER DISTRICT COMMISSIONERS

- Other grounds
 - Incompetency
 - Neglect of Duty
 - Gross immorality
 - Nonfeasance - Misfeasance -
Malfeasance in Office



PROCEDURE



SHOW CAUSE PROCEEDING: PHASES

- Preliminary Investigation
- Order To Show Cause
- Respondents' Response
- Discovery
- Hearing
- Final Order
- Appeal/Enforcement of Order



PRELIMINARY INVESTIGATION

- Initiated upon suspicion of unlawful conduct
- No formal proceeding required
- May be part of unrelated formal proceeding
- No notice required
- PSC may examine utility records without providing cause
- PSC may require submission of reports or information



ORDER TO SHOW CAUSE

- Describes Alleged Violation
- Identifies Statute or Regulation Violated/Source of Allegations
- Notice of Penalty
- Directs Response
- Establishes Hearing Date
- Sets Time to Request Staff Conference
- Orders Publication of Notice of Hearing



LEGAL REPRESENTATION REQUIRED

- Quasi-judicial proceeding
- Adversarial Proceeding
- Potential Adverse Consequences
 - Civil Penalties
 - **CRIMINAL PENALTIES**
 - Restrictions/requirements placed on utility
 - Adverse effect on reputation



LEGAL REPRESENTATION: ISSUES

- Separate v. Joint Representation
 - Who does the water utility's attorney represent?
 - Potential Conflicts of Interest with Utility
 - Potential Conflicts with Other Utility Officers
 - Benefits/Disadvantages
- Who pays the legal fees?



RESPONSE TO ORDER

- Written Response
 - Should I Respond?
 - Jt. vs. Individual Response
 - Potential Defenses
 - Mitigating Factors
- Waiver of Hearing
- Offer of Settlement/Conference with Staff



HEARING

- PSC Staff – Prosecutor
- Burden of Proof
- Order of Presentation of Evidence
- Compelling Respondents to Testify
- Witnesses
- Scope of Hearing/Relevancy of Inquiries
- Video Record/Streamed Live



FINAL ORDER

- No required deadline for decision
- Must contain factual findings
- If violation or failure to comply found, order may impose sanctions
- Publicizing the Order



SANCTIONS PREVIOUSLY IMPOSED

- Assessment of Civil Penalty
- Additional Proceedings re: Removal from Office
- Mandatory Attendance at PSC Water Management Training Programs
- Changes in Utility Practices and Procedures



SANCTIONS PREVIOUSLY IMPOSED

- Suspended/Vacated Penalties
 - Conditions Imposed
 - Finding of Violation is usually not vacated



REQUEST FOR REHEARING

- Affected Party may request rehearing from PSC within 23 days of Order
- Must show legal or factual error
- Offer additional evidence not available at time of hearing
- PSC has 20 days to rule on request



ACTION FOR REVIEW

- May file action in Franklin Circuit Ct
- No request for rehearing required
- File within 33 days of Order (or 23 days after denial of rehearing)
- Must demonstrate Order is unlawful or unreasonable



MITIGATING VIOLATIONS/SANCTIONS



ACTIONS UPON RECEIPT OF SHOW CAUSE ORDER

- Investigate the alleged violation
- Identify:
 - Mitigating factors
 - Failures in processes/procedures
 - Actions to correct/prevent failures
 - Any **UNEXPLODED TIME BOMBS!**



ACTIONS UPON RECEIPT OF SHOW CAUSE ORDER

- Take corrective/preventive actions:
 - Develop and implement written policies and procedures
 - Provide additional training
 - Hire/retain resources or professionals necessary to prevent recurrence



WITNESS PREPARATION

- Prepare each witness for hearing
- Utility officials should:
 - Review incident
 - Be able to explain what happen
 - Identify mitigating factors
 - Describe and explain all corrective actions



WITNESS PREPARATION

- Utility officials should:
 - Be familiar with major aspects of utility's operation
 - Be familiar with utility's finances
 - Be familiar with laws governing utility's operations



POINTS TO EMPHASIZE

- Acknowledge any errors or mistakes
- Corrective Actions
- Preventive Measures
- Lack of previous violations



LEGAL DEFENSES

- Statute of Limitations
- Immunity granted due to prior testimony
- Violation not willful
- Violation occurred prior to appointment to governing board



AVOIDING VIOLATIONS



AVOIDING VIOLATIONS

- Know the Law
 - Maintain/improve your knowledge of legal requirements
 - Attend training programs
 - Encourage your employees to attend relevant training programs



AVOIDING VIOLATIONS

- Retain Attorney on recurring basis to review Board actions
 - Ensure legal review of major actions
 - Have attorney attend board meetings
 - Legal review of board meeting agenda & minutes



AVOIDING VIOLATIONS

- Review other utilities' violations - develop & implement procedures to avoid
- Have attorney review any application prior to filing for evidence of possible violations
- Audit your records
- When in doubt – seek legal opinion or apply to PSC for Declaratory Order



OTHER ACTIONS TO CONSIDER

- Develop policy re: representation of Bd members and payment of legal costs
- Consider purchase of directors and officers liability insurance
- Document board meetings and discussions re: critical decisions
- Develop policy re: role of attorney in your utility



QUESTIONS



74.025 Removal of district water commissioner -- Causes.

- (1) From and after the creation and establishment of a water district and the appointment of water commissioners to manage the affairs of the district, and following the acquisition or construction by any duly created and established water district of a public water system, and the consequent establishment of regulatory jurisdiction over such water district by the Public Service Commission of Kentucky, the Public Service Commission may remove any water commissioner from his office for good cause, including, inter alia, incompetency, neglect of duty, gross immorality, or nonfeasance, misfeasance, or malfeasance in office, including without limiting the generality of the foregoing, failure to comply with rules, regulations, and orders issued by the Public Service Commission.
- (2) No such order of removal with respect to any water commissioner shall be entered by the Public Service Commission until a public hearing on the merits with reference to such matter has been held by the commission, at which hearing the water commissioner proposed to be removed from office shall be afforded the opportunity to appear, either pro se, or by counsel and file briefs, memoranda and motions, cross-examine witnesses, examine exhibits, and present evidence, both orally and in writing. All such orders of removal entered by the Public Service Commission shall be final and shall not be subject to appeal. Any water commissioner may waive such public hearing, in which case an order on removal may be forthwith entered by the commission.
- (3) Using procedures of this section the Public Service Commission may also request the removal of directors, trustees or other governing persons of water associations in like manner.

History: Created 1972 Ky. Acts ch. 310, sec. 3.

Formerly codified as KRS 74.455.

278.990 Penalties.

- (1) Any officer, agent, or employee of a utility, as defined in KRS 278.010, and any other person who willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or fails to obey any order of the commission from which all rights of appeal have been exhausted, or who procures, aids, or abets a violation by any utility, shall be subject to either a civil penalty to be assessed by the commission not to exceed two thousand five hundred dollars (\$2,500) for each offense or a criminal penalty of imprisonment for not more than six (6) months, or both. If any utility willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or does any act therein prohibited, or fails to perform any duty imposed upon it under those sections for which no penalty has been provided by law, or fails to obey any order of the commission from which all rights of appeal have been exhausted, the utility shall be subject to a civil penalty to be assessed by the commission for each offense not less than twenty-five dollars (\$25) nor more than two thousand five hundred dollars (\$2,500). Each act, omission, or failure by an officer, agent, or other person acting for or employed by a utility and acting within the scope of his employment shall be deemed to be the act, omission, or failure of the utility.
- (2) Actions to recover the principal amount due and penalties under this chapter shall be brought in the name of the Commonwealth in the Franklin Circuit Court. Whenever any utility is subject to a penalty under this chapter, the commission shall certify the facts to its counsel, who shall bring an action for recovery of the principal amount due and the penalty. The commission may compromise and dismiss the action on terms approved by the court. The principal amount due shall be paid into the State Treasury and credited to the account of the commission, and all penalties recovered in such actions shall be paid into the State Treasury and credited to the general fund.
- (3) Any utility that fails to pay an assessment as provided for by KRS 278.130 to 278.150 shall forfeit and pay to the state one thousand dollars (\$1,000), and twenty-five dollars (\$25) for each day it fails to pay the assessment, and shall not be released thereby from its liability for the assessment.
- (4) Any utility that issues any securities or evidences of indebtedness, or assumes any obligation or liability in respect to the securities or evidences of indebtedness of any other person, or makes any sale or other disposition of securities or evidences of indebtedness, or the proceeds thereof, for purposes other than the purposes specified in the order of the commission made with respect thereto under KRS 278.300, shall be fined not more than ten thousand dollars (\$10,000).
- (5) Any utility that violates any of the provisions of KRS 278.460 shall be fined not less than one hundred dollars (\$100) for each offense.
- (6) Any company that willfully fails to receive, transport, and deliver oil or gas as required by KRS 278.490 shall, in addition to being liable in damages to the injured person, be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), and each day of willful failure shall constitute a separate offense.

- (7) Any telephone company that refuses to make a connection with the exchange or lines of another company for a period of thirty (30) days after being ordered to do so by the commission under subsection (2) of KRS 278.530 shall be fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), to be recovered by indictment in the Franklin Circuit Court or in the Circuit Court of the county where the company requesting the connection resides or has its chief office in this state. If the company desiring the connection proceeds to make the connection, as permitted by subsection (2) of KRS 278.530, and the company so connected with refuses to receive and transmit the toll messages offered to it by the company making the connection, or refuses to deliver messages from its own lines or exchanges to the lines or exchanges of the company making the connection, the company so refusing shall be fined one hundred dollars (\$100) for each day it refuses, to be recovered by indictment in the courts mentioned in the first sentence of this subsection; if it continues so to refuse for a period of six (6) months it shall forfeit its right to do business in this state, and any of its officers, agents, or employees who does or attempts to do any business in this state for it after the expiration of the six (6) months' period shall be fined fifty dollars (\$50) for each day he does or attempts to do such business.

Effective: July 13, 1990

History: Amended 1990 Ky. Acts ch. 354, sec. 1, effective July 13, 1990. -- Amended 1986 Ky. Acts ch. 300, sec. 4, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 50, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 54, effective April 1, 1979. -- Amended 1974 Ky. Acts ch. 308, sec. 47. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 786, 842b-2, 2223-2, 3766b-1e, 3952-24, 3952-59, 3952-61, 4679f-2, 4679f-4.

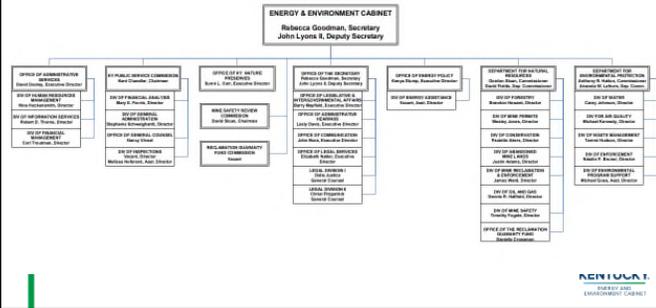
Kentucky Division of Water (DOW) – Update

Alicia Jacobs, Drinking Water Branch Manager
Alicia.Jacobs@ky.gov
502-782-6987
Kentucky Division of Water



1

Energy and Environment



2

DOW - Authority

- [Safe Drinking Water Act – Title XIV of The Public Health Service Act: Safety of Public Water Systems](#)
- [Kentucky Revised Statutes](#) – Title XVIII Public Health
 - Chapter 223; 224
- [Kentucky Administrative Regulations](#) – Title 401
 - Chapters 4, 5, 8, 10, 11
- [DOW Website](#)



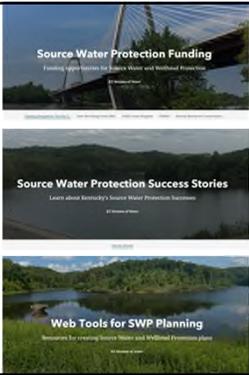
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Source Water Protection Planning: *Tools for Education & Outreach*



Kentucky Source Water Protection Viewer

Division of Water: <https://eec.ky.gov/Environmental-Protection/Water/Protection/Pages/SWP.aspx>



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DOW - Organizational Chart

- Watershed Management Branch
- **Water Infrastructure Branch**
- Drinking Water Branch
- Field Operations Branch



2012 Edition
Recommended Standards for Water Works

TEAM KENTUCKY
ENERGY AND ENVIRONMENTAL COUNCIL

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DOW - Organizational Chart

- Watershed Management Branch
- Water Infrastructure Branch
- Drinking Water Branch
- **Field Operations Branch**



REGIONAL OFFICES
DIVISION OF WATER

Regional Field Offices

TEAM KENTUCKY
ENERGY AND ENVIRONMENTAL COUNCIL

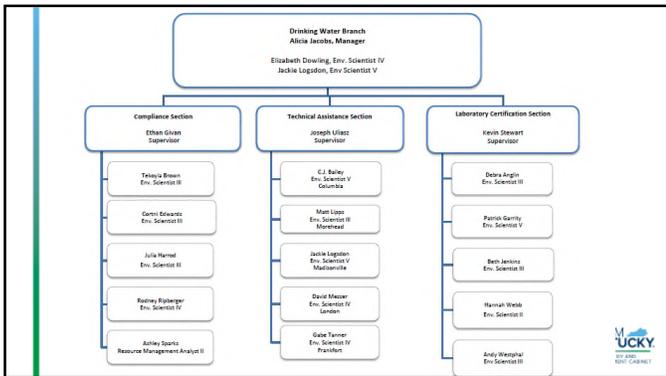
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DOW - Organizational Chart

- Watershed Management Branch
- Water Infrastructure Branch
- **Drinking Water Branch**
- Field Operations Branch



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DOW Technical Assistance Team

- [Technical Assistance Webpage](#)

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What is AWOP?

- Area-Wide Optimization Program
- Established and implemented by USEPA
- State and/or a multi-state effort that the Division of Water has participated in since 1997
- Provides tools and approaches for drinking water systems to meet water quality optimization goals and provide an increased – and sustainable – level of public health protection to their consumers
- A systematic process to identify and correct performance problems
- Teaches problem-solving skills, putting knowledge into the hands of the operators
- A tool for water systems to use to find areas to improve and make those improvements
- Proactive approach for achieving regulatory compliance
- A path for data based decision making



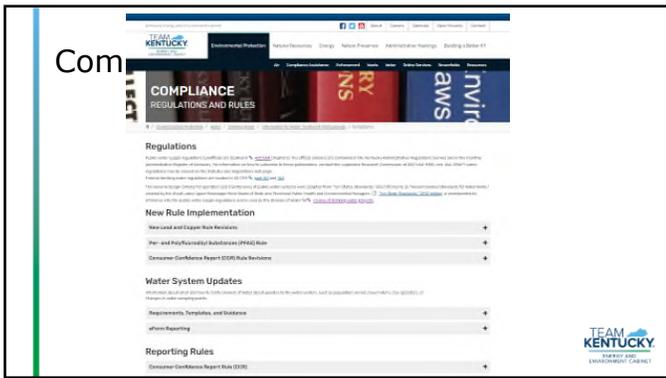
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Compliance Resources

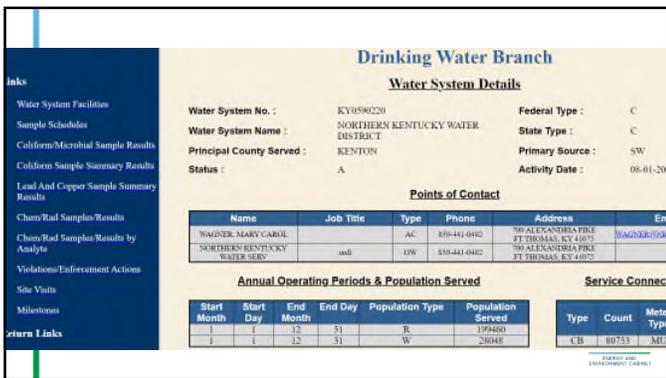
- [Information for Drinking Water Professionals](#)
- [Drinking Water Watch](#)
- [eSearch](#)



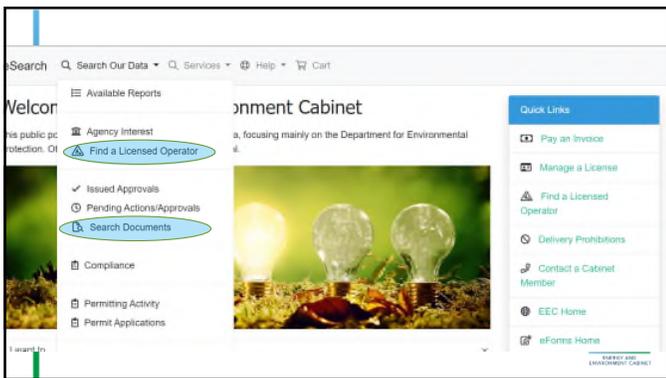
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Stay up to date

Drinking Water Wednesday

Email drinkingwatercompliance@ky.gov to sign up!



Drinking Water Wednesday – Gratitude for Clean, Safe Drinking Water

Last month, the United Nations published the [World Water Development Report](#), which highlighted that more than 2 billion people worldwide do not have access to clean, safe drinking water. This information underscores the benefit Kentucky citizens receive from drinking water systems across the Commonwealth. The number of Kentuckians without access to safe drinking water is much lower than the global average due to the hard work of drinking water operators, staff, and engineers. At least 95% of Kentucky's population is currently served by water systems, which is higher than the U.S. national average of 90% and much higher than the global average of 66%.

Americans may take safe drinking water for granted, but until relatively recently there were many issues related to drinking water and no longer problems for most people.

- With the advent of water treatment and distribution in the 1920s and 1930s, U.S. life expectancy rose from 48 years in 1900 to 78 years today. Diseases that were once common, like cholera and typhoid, are now virtually eliminated from distributed drinking water. This is considered one of the 10 greatest health advancements of the 20th century.
- Since the Safe Drinking Water Act (SDWA) was enacted in 1974, waterborne disease outbreaks and chemical contamination in drinking water have declined. The SDWA ensures that Americans are not exposed to harmful bacterial, viral, protozoan, or fungal microbes in their drinking water, and it protects us from over 50 chemical contaminants.

The Division of Water appreciates the hard work of drinking water staff, managers, and operators put into protecting the citizens of the Commonwealth. We encourage you to share this information with your family, friends, and neighbors to help them understand the importance of clean, safe drinking water.



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EPA Rule updates

- **Addressing PWS Cybersecurity in Sanitary Surveys Memo – March 3, 2023**
- Lead and Copper Rule Revisions and Improvements
- PFAS Proposed Rule
- Proposed Consumer Confidence Rule Revisions

Upcoming:

- Microbial and Disinfectant Byproduct Rule Updates



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Addressing Cybersecurity in Sanitary Surveys

- [Link to Memo](#)
- EPA found cybersecurity must be included in the Sanitary Survey based on the existing rule
- Missouri, Arkansas, Iowa [petition](#)



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Addressing Cybersecurity in Sanitary Surveys

- Gives states 4 approaches
 - Self assessment or 3rd Party assessment
 - State evaluation of cybersecurity practices during the sanitary survey
 - Alternative state program for water system cybersecurity
 - EPA assessment of cybersecurity for PWS



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Addressing Cybersecurity in Sanitary Surveys

- [Guidance Link](#)
 - Appendix A – checklist for PWS Sanitary Surveys
 - Appendix B – checklist fact sheets
- [EPA Cybersecurity for the Water Sector](#)
- [Cybersecurity & Infrastructure Security Agency Incident Reporting System](#)



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Addressing Cybersecurity in Sanitary Surveys

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EPA Rule updates

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- PFAS Proposed Rule
- Proposed Consumer Confidence Rule Revisions

Upcoming:

- Microbial and Disinfectant Byproduct Rule Updates



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Lead and Copper Rule Revisions (LCRR) - Background

1991 – initial Lead and Copper Rule

- Several minor revisions since then

2021 – Lead and Copper Rule Revisions (LCRR)

- Major overhaul of 1991 rule
- First compliance deadline: **October 16, 2024**

2024? – Lead and Copper Rule Improvements (LCRI)

- Revision of LCRR
- First draft expected Fall, 2023
- May overturn aspects of LCRR



Image credit: Know Your H2O knowyourh2o.com



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Lead and Copper Rule Revisions (LCRR) - Overview

Main Provisions of LCRR:

- **Service line inventory**
DUE OCT 16, 2024
- New tap sampling procedures
- Replacement *planning*
- More customer communication
- Lead testing at schools and day care centers



Image credit: Know Your H2O knowyourh2o.com



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Bipartisan Infrastructure Law Funding

Additional Drinking Water State Revolving Fund (DWSRF) allocation for lead pipe removal. Projects can include:

- Service line inventories
- Lead service line replacements
- Lead gooseneck/connector replacements

49% loan forgiveness for disadvantaged communities
 FY2024: over 55 lead projects requested funding



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Lead in Drinking Water Workgroup

Opportunity for stakeholders to partner in LCRR Implementation

- Template for Service Line Inventory
- Guidance documents
- List of funding resources
- Individualized support for water systems
- Workshops
- Various templates for other rule requirements




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SL Inventory Template

| PWSID: 0 | | PWS Name: 0 | | | Date completed: | | | | | |
|---|--|--|------------------------------|---|----------------------------------|----------------------------|--------------------------------|---|--------------------------------|---|
| Required section | | | | | | | | | | |
| Spatial coordinates | | | | | System-owned Service Line | | | Customer-owned Service Line | | |
| Service line ID (SLID) | Street address | Location Identifier (if using, see instructions) | City | ZIP code | Latitude (decimal format) | Longitude (decimal format) | Service line material (choose) | SL material verification method (final) | Service line material (choose) | SL material verification method (final) |
| <ul style="list-style-type: none"> • Location information • Material of every service line • Verification method | | | | | | | | | | |
| ArcGIS Online version | | | | | | | | | | |
| Building type (choose) | Gooseneck/connector material verified? (y/n) | Gooseneck/connector material | Lead solder in service line? | Tap sampling results (list highest lead level detected) | Lead solder in premise plumbing? | | | | | |
| <ul style="list-style-type: none"> • Tap sampling data | | | | | | | | | | |



30

Division of Water Lead and Copper Outreach – 2022-23

American Water Works Association
Kentucky/Tennessee Section

Communication and Training

- 18 outreach events and trainings
 - At least 600 operators and decision-makers reached
 - Workshops, CEU trainings, meetings
- Drinking Water Wednesday
 - 9 editions dedicated to LCRR so far in 2023
- Providing individualized review and feedback of SL Inventory process
 - Pre-review survey, meetings with individual water systems
- 11 Area Development District Water Management Council meetings






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Service Line Inventory and Replacement

DOW has met with Area Development District Water Management Councils

- Pennyriple
- KIPDA
- Buffalo Trace
- Bluegrass
- FIVCO
- Barren River
- Lake Cumberland
- Cumberland Valley
- Purchase
- Kentucky River (May 10)
- Gateway (May 18)




USEPA photo

Seth Weng, AP Photo, DC Water



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eec.ky.gov/Environmental-Protection/Water/Drinking/DWP/Professionals/Pages/Compliance.aspx

New Rule Implementation

- New Lead and Copper Rule Revisions**
- Per- and Polyfluoroalkyl Substances (PFAS) Rule**
- Consumer Confidence Report (CCR) Rule Revisions**

- Links to EPA guidance documents
- Start-up guidance
- Excel template
- Using GPS
- Funding resources
- Predictive modeling resources
- Tap sampling resource
- Customer communications templates and guidance



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Lead in Schools
 Voluntary School and Child Care Lead Testing and Reduction Grant Program (WIIN 2107)

- DOW will sample for lead in schools
- Priority:
 - disadvantaged, low-income communities
 - elementary schools and childcare centers built before 1986
- Schools can sign up now to volunteer for lead testing
- Can help water systems prepare for 2025 LCRR requirements



Contact Gabe Tanner: Gabriel.Tanner@ky.gov, (502) 782-7088

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Ongoing Collaborative Efforts

- Collaboration:
 - Partners (KRWA, ADDs, RCAP, et al.) – ArcGIS solutions
 - Division of Plumbing – inspectors assist with data collection on LSL locations
 - Kentucky Infrastructure Authority – WRIS and DWSRF
- In process (BIL set-asides):
 - Data management solution for DOW to compile data received from water systems
 - New term-limited DOW staff
 - Communications assistance for water systems



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Lead and Copper Rule Revisions (LCRR)
 – Take home message

- **Service line inventory**
DUE OCT 16, 2024




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EPA Rule updates

- Addressing PWS Cybersecurity in Sanitary Surveys Memo – March 3, 2023
- Lead and Copper Rule Revisions and Improvements
- **PFAS Proposed Rule**
- Proposed Consumer Confidence Rule Revisions

Upcoming:

- Microbial and Disinfectant Byproduct Rule Updates



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PFAS Proposed Rule

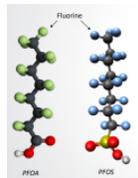
- [Kentucky PFAS Page](#)
- [EPA PFAS Page](#)



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What are PFAS?

- Per- and polyfluoroalkyl substances (PFAS)
 - Carbon chain surrounded with fluorine atoms
 - C-F bond—(one of the strongest single bonds)
 - Resists heat, oils, stains, and water
 - Do not occur naturally in the environment
 - Thousands of PFAS



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Perfluoroalkyl and Polyfluoroalkyl Substances

- Durable chemicals: oil, water, temperature, chemical and fire resistance
- Insulating properties

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PFAS Background

- Used since 1940s
- Useful in a variety of products:
 - nonstick cookware
 - waterproof clothing
 - firefighting foam
- Break down extremely slowly
- Build up in humans, animals, and the environment
- Some PFAS have been phased out of production

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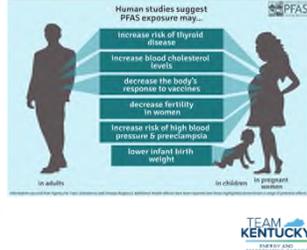
PFAS Background

- What are PFAS used for?
 - Manufacturing
 - Fire fighting foam (AFFF)
 - Carpet protectant
 - Non-stick cookware
 - Waterproof clothing
 - Cell phones & other electronics with semi-conductor
 - Commercial aircraft
 - Low-emission vehicles
 - Some make up, sunscreen, shampoos, shaving creams
 - Food packaging (fast food)

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PFAS Background

- Over time PFAS may:
 - Cause negative health effects during pregnancy
 - Decrease immunity
 - Increase risk of liver and kidney cancers
 - Elevate cholesterol levels
- Drinking water is one of several exposure routes.
- Different PFAS are often found occurring together.



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Proposed PFAS Rule

- Announced March 14, 2023
- EPA has proposed a National Primary Drinking Water Regulation (NPDWR) to establish legally enforceable levels, called Maximum Contaminant Levels (MCLs) for six PFAS in drinking water.
 - PFOA and PFOS as individual contaminants, and
 - PFHxS, PFNA, PFBS, HFDO-DA (GenX) as a PFAS mixture



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Proposed PFAS Rule

- EPA has proposed health-based, non-enforceable Maximum Contaminant Level Goals (MCLGs) for these six PFAS chemicals.
 - MCLG is the maximum level of a contaminant in drinking water at which no known or anticipated adverse effect on the health of persons would occur, allowing an adequate margin of safety.



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Proposed MCLs and MCLGs

| Compound | Proposed MCLG | Proposed MCL (enforceable levels) |
|----------------|--------------------------------|-----------------------------------|
| PFOA | 0 ppt* | 4.0 ppt* |
| PFOS | 0 ppt* | 4.0 ppt* |
| HFPO-DA (GenX) | 1.0 (unitless) Hazard Index | 1.0 (unitless) Hazard Index |
| PFBS | | |
| PFHxS | | |
| PFNA | | |

*ppt = parts per trillion (ng/L)



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Hazard Index (HI)

- A tool to evaluate the potential increased health risk from mixtures of PFAS that may be found together in contaminated water
- Sum of fractions that compares the actual level of PFAS in the water to the Health-Based Water Concentration (HBWC)
 - HBWC are levels protective of health effects over a lifetime of exposure, including sensitive populations and life stages.



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Hazard Index (HI)

| | | | | |
|-------------|-------------|--------------|-------------|-------------------------|
| GenX Result | PFBS Result | PFHxS Result | PFNA Result | Hazard Index (HI) Value |
| 10 ppt | 2000 ppt | 9.0 ppt | 10 ppt | |

+ + + + =

| Compound | Proposed HBWC (ppt) |
|----------|---------------------|
| GenX | 10 |
| PFBS | 2000 |
| PFHxS | 9.0 |
| PFNA | 10 |

All ppt cancel out, leaving HI unitless

HBWC=Health-Based Water Concentrations



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Hazard Index (HI) Example

- Quarter 1: GenX non-detect; PFBS=10 ppt; PFNA=2 ppt; PFHxS=6 ppt

| | | | | |
|-----------|------------|------------|-----------|--------------------------|
| GenX 0 | PFBS 10 | PFHxS 2 | PFNA 6 | =0+0.005+0.2+0.67=0.9 HI |
| 10 | 2000 | 9.0 | 10 | |

Quarter 1 Result



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Proposed PFAS Rule

The proposed rule would require public systems to:

1. Monitor for these PFAS;
2. Notify the public of the levels of these PFAS; and
3. Reduce the levels of these PFAS in drinking water if they exceed the proposed standards.



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Monitor for PFAS

- Monitoring based on the Standard Monitoring Framework for Synthetic Organic Chemicals (SOCs)
 - Applies only to producing systems
- Initial Monitoring
 - Previously acquired data may be accepted
 - Fifth Unregulated Contaminant Monitoring Rule (UCMR5) data (additional monitoring may be needed in some cases)
 - If you do your own monitoring check lab certification
 - Methods 533 & 537.1
 - Make sure they are certified for ALL SIX analytes



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Initial Monitoring

| Type of System | Minimum Monitoring Frequency | Sample Location |
|--|--|-----------------|
| GW CWS & NTNC >10,000 & All Surface CWS & NTNC | Four consecutive quarters taken at least 90 days apart | EPTDS |
| GW CWS & NTNC <10,000 | In a consecutive 12-month period, two samples taken at least 90 days apart | EPTDS |



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Compliance Monitoring

- Once initial monitoring is complete, the compliance monitoring schedule will be determined.
 - Initial monitoring results will be averaged.
 - If a PFOA or PFOS quarterly sample result is less than the Practical Quantitation Limit (PQL), zero will be used for that quarter in the calculation.



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Compliance Monitoring

Practical Quantitation Limit (PQL)

| Contaminant | PQL (ppt) |
|----------------|-----------|
| PFOA | 4.0 |
| PFOS | 4.0 |
| HFPO-DA (GenX) | 5.0 |
| PFBS | 3.0 |
| PFHxS | 3.0 |
| PFNA | 4.0 |

Example

PFOA (or PFOS) Results
 Quarter 1: 2.0 ppt (below PQL)
 Quarter 2: 1.5 ppt (below PQL)
 Quarter 3: 5.0 ppt
 Quarter 4: 1.5 ppt (below PQL)
 $(0+0+5.0+0)/4=1.3$ ppt



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Compliance Monitoring

- Quarter 1: GenX non-detect; PFBS=10 ppt; PFNA=2 ppt; PFHxS=6 ppt

| | | | | |
|-----------|------------|------------|-----------|---|
| GenX 0 | PFBS 10 | PFHxS 2 | PFNA 6 | Quarter 1 Result |
| 10 | 2000 | 9.0 | 10 | $= 0 + 0.005 + 0.2 + 0.67 = 0.9 \text{ HI}$ |

Repeat HI calculation each quarter

Quarter 1 = 0.9 HI
 Quarter 2 = 0.6 HI
 Quarter 3 = 1.1 HI
 Quarter 4 = 0.9 HI

$(0.9 + 0.6 + 1.1 + 0.9) / 4 = 0.9 \text{ HI}$



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Compliance Monitoring

- Compliance monitoring will consist of quarterly monitoring or reduced monitoring depending on monitoring results.
- Compliance for quarterly monitoring based on running annual average (RAA)



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Trigger Level

- Eligibility for reduced monitoring based on "Trigger Level"
 - Trigger Level
 - One-third of the MCL
 - 1.3 ppt for PFOA and PFOS
 - 0.33 Hazard Index (mixture of PFNA, PFHxS, PFBS, and GenX)



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Reduced Monitoring

| If you are a... | You may reduce monitoring if your... | To this level |
|---|---|--|
| Surface and Groundwater CWS or NTNC serving a population more than 3,300 | Averages from initial or compliance monitoring RAA for PFOA and PFOS are each <1.3 ppt and HI <0.33 | In a 12-month period, two quarterly samples per each EPTDS during each three-year compliance period taken at least 90 days apart |
| Surface and Groundwater CWS or NTNC serving a population of 3,300 or less | Averages from initial or compliance monitoring RAA for PFOA and PFOS are each <1.3 ppt and HI <0.33 | One sample at each EPTDS during each three-year compliance period |

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Compliance Monitoring

- If the initial monitoring averages or compliance monitoring RAAs equal or exceed the Trigger Level the system is required to conduct quarterly compliance monitoring.
- If a system is on reduced monitoring and meets or exceeds a Trigger Level, the system must begin quarterly monitoring the following quarter.
 - System may return to reduced monitoring after four consecutive quarters, if all RAAs are below the Trigger Level.



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Notify the Public

- Consumer Confidence Report (CCR)
 - Report detected PFAS
 - PFOA, PFOS, GenX, PFHxS, PFNA and PFBS
 - Hazard Index for the mixtures of GenX, PFHxS, PFNA and PFBS
- Tier 2 notification
 - Must notify public of an MCL violation no later than 30 days after learning of the violation



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Reduce PFAS

- Best available technologies for removal
 - Granular Activated Carbon (GAC)
 - Anion exchange (AIX)
 - High pressure membranes
 - Reverse Osmosis (RO)
 - Nanofiltration (NF)
- Other options
 - Replace a PFAS-contaminated drinking water source with a new uncontaminated source
 - Purchase compliant water from another system
- Required if PFAS standards are exceeded



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Proposed PFAS Rule

- This action is not final.
- No action is required until after EPA finalizes the regulation.
 - Expected late 2023/early 2024
- Compliance required 3 years after promulgation



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Public Comment Period and Docket

- EPA is seeking public comment.
- The public comment period opened on March 29 and will close on May 30 (if no extension is granted).
- Public comments can be provided at that time at www.regulations.gov under Docket ID: EPA-HQ-OW-2022-0114.



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Bipartisan Infrastructure Law Funding for PFAS

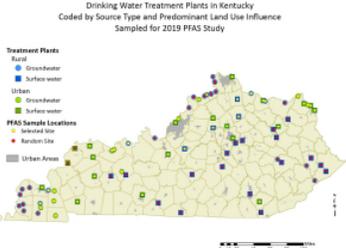
- \$12 million allotted to KY through Drinking Water State Revolving Fund (DWSRF)
 - DWSRF for PFAS is a forgivable loan
- \$22 million to invest in KY through EPA’s Emerging Contaminants in Small or Disadvantaged Communities Grant Program



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2019 KY DRINKING WATER STUDY

- Sampled finished drinking water at 81 community public drinking water treatment plants (WTPs)
- Groundwater and surface water sources
- Urban and rural land use
- Reported on 8 PFAS:
 - PFBS
 - PFHpA
 - PFOS
 - PFNA
 - PFHxS
 - PFOA
 - ADONA
 - HFPO-DA (Gen-X)



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Impacts to KY Drinking Water Systems

- One time sampling event (not RAA)
- 81 systems sampled

| | >4.0 ppt | 1.3 – 4.0 ppt | >0-1.3 ppt | Non Detect |
|------|----------|---------------|------------|------------|
| PFOA | 9 | 10 | 5 | 57 |
| PFOS | 4 | 20 | 9 | 48 |

| | >1.0 | 0.33-1.0 | ≤0.33 |
|--------------|------|----------|-------|
| Health Index | 6 | 7 | 68 |

- 16% would exceed at least one MCL
- 16% would exceed at least one trigger level



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2023 KY Drinking Water Study

- 113 public community drinking water treatment plants not included in the 2019 study
- 31 PFAS analytes
- Began February 2023
- Plan to complete ~June 2023



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2023 KY Drinking Water Study

- Based on results for 37 facilities as of May 1, 2023:

| | >4.0 ppt | 1.3 – 4.0 ppt | >0-1.3 ppt | Non Detect |
|------|----------|---------------|------------|------------|
| PFOA | 1 | 1 | 0 | 35 |
| PFOS | 0 | 2 | 4 | 31 |

| | >1.0 | 0.33-1.0 | ≤0.33 |
|--------------|------|----------|-------|
| Health Index | 0 | 0 | 37 |



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Proposed PFAS Rule

- Potential financial impacts
 - Monitoring costs: ~\$1000 per sample for UCMR5 PFAS
 - All producers will need to sample
 - Treatment plant modifications
 - Source water changes
 - Regionalization
 - Solids disposal
 - Communication with customers



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Fifth Unregulated Contaminant Monitoring Rule (UCMR5)

- Expand PFAS testing nationwide to monitor for 29 PFAS
- Sampling period 2023-2025
 - Some systems began in January 2023
- Required for all systems >3300 and a representative sample <3300
 - Surface water-4 times in 12 month period; 3 months apart
 - Groundwater-2 times in 12 month period; 5-7 months apart



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Fifth Unregulated Contaminant Monitoring Rule (UCMR5)

- Required to be reported in the Consumer Confidence Report (CCR)
 - Recommended to report to customers sooner if results exceed the proposed MCL or EPA lifetime health advisory (HA) level
- Based on results for 14 facilities as of May 1, 2023:

| | HA (ppt) | # > HA | Proposed MCL | # > Proposed MCL |
|------|-----------------|--------|------------------|------------------|
| PFOA | 0.004 (interim) | 0 | PFOA 4.0 ppt | 0 |
| PFOS | 0.02 (interim) | 0 | PFOS 4.0 ppt | 0 |
| GenX | 10 | 0 | Health 1.0 | 0 |
| PFBS | 2000 | 0 | Index (unitless) | 0 |



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EPA Rule updates

- Addressing PWS Cybersecurity in Sanitary Surveys Memo – March 3, 2023
- Lead and Copper Rule Revisions and Improvements
- PFAS Proposed Rule
- **Proposed Consumer Confidence Rule Revisions**

Upcoming:

- Microbial and Disinfectant Byproduct Rule Updates



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Proposed Consumer Confidence Rule Revisions

- [EPA Consumer Confidence Report Rule Revisions Page Link](#)

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Proposed Consumer Confidence Rule Revisions

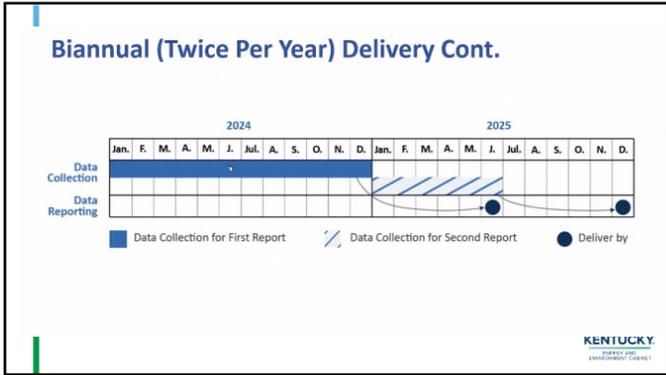
- Summary at beginning of report: water quality violations
- Translation assistance requirement
- Some new definitions (pesticide, herbicide, corrosion control)
- Lead prevention strategies (corrosion control efforts)
- Explanation of any lead detections and what the system plans to do to address them
- Updated language (including for nitrate and arsenic)

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Proposed Consumer Confidence Rule Revisions

- Systems serving greater than 10,000 CCR delivery TWICE per year
 - By July 1 for previous calendar year Jan-Dec data report
 - Second report due by December 31
 - Second report will be identical to July 1 report IF: No NPDWR violations and No Lead detections
- Social media advertisement and text messaging alerts will be allowed as Good Faith Efforts to reach non-bill paying customers

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Public Comment Period and Docket

- EPA is seeking public comment
- The public comment period will close on May 22
- Public comments can be provided at that time at www.regulations.gov under Docket ID: EPA-HQ-OW-2022-0260

TEAM KENTUCKY
ENERGY AND ENVIRONMENT CABINET

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Proposed Consumer Confidence Rule Revisions

- This action is not final
- No action is required until after EPA finalizes the regulation.
 - Final Rule expected late 2023
 - Expectation is CCRs will need to meet new requirements in 2025

TEAM KENTUCKY
ENERGY AND ENVIRONMENT CABINET

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EPA Rule updates

- Addressing PWS Cybersecurity in Sanitary Surveys Memo – March 3, 2023
- Lead and Copper Rule Revisions and Improvements
- PFAS Proposed Rule
- Proposed Consumer Confidence Rule Revisions

Upcoming:

- **Microbial and Disinfectant Byproduct Rule Updates**



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Microbial and Disinfectant Byproduct Rule Updates

- Six Year Review of National Drinking Water Primary Water Regulations – 8 NPDR are candidates for revision
 - Chlorite
 - *Cryptosporidium*
 - Haloacetic acids
 - Heterotrophic bacteria
 - *Giardia lamblia*
 - *Legionella*
 - Total Trihalomethanes
 - viruses



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Microbial and Disinfectant Byproduct Rule Updates

- [Stage 1 and Stage 2 Disinfectants and Disinfection Byproduct Rules \(DBPR\)](#)
- [Surface Water Treatment Rule \(SWTR\)](#)
- [Interim Enhanced Surface Water Treatment Rule \(IESWTR\)](#)
- [Long Term 1 Enhanced Surface Water Treatment Rule \(LT1\)](#)



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Questions

Alicia Jacobs, Drinking Water Branch Manager
Alicia.Jacobs@ky.gov
502-782-6987
Kentucky Division of Water



DIGITAL LIBRARY CONTENTS

Agenda
Speaker Bios

Presentations – 10 May 2023

Recent Developments in Utility Regulation
Water Utility Tariffs: Practical Considerations
Employment Law in the Workplace
In the Dock: PSC Show Cause Proceedings
Kentucky Division of Water Law Update

Recent Developments in Utility Regulation – Reference Materials

Corinth Water District, Case No. 2022-00061 (Ky. PSC Nov. 14, 2022)
Kirksville Water Association, Case No. 2022-00197 (Ky. PSC Aug. 11, 2022)
House Bill 522
House Bill 360
Senate Bill 263
Letter to All Water Districts Re: Implementation of House Bill 201 (Aug. 19, 2010)
Department of Revenue Form 51A380: Declaration of Domicile for Purchase of Residential Utilities
Department of Revenue Form 51A382: Multi-Unit Declaration of Domicile for an Owner or Operator of a Multi-Unit Residential Rental Facility or Mobile Home and Recreational Vehicle Park

Division of Water Law Update – Reference Materials

Presentation (PDF format – all referenced material in presentation is hyperlinked)

Tariffs – Reference Materials

KRS 278.0154 (Late Payment Fees for Water Districts/Water Associations)
Boone County Sand and Gravel Company v. Owen County Rural Electric Cooperative Corp., 779 S.W.2d 224 (Ky. Ct. App. 1989)
Bracken County Water District, Case No. 2022-00313 (Ky. PSC Feb. 10, 2023) (Leak Adjustment Policy)
Duke Energy Kentucky, Case No.2019-00271 (Ky. PSC Apr. 27, 2020) (Tamper Fee)
Emergency Docket Related to the Novel Coronavirus COVID-19, Case No. 2020-00085 (Ky. PSC Sep. 21, 2021)
Hyden-Leslie County Water District, Case No. 2020-00141 (Ky. PSC Nov. 6, 2021) (Non-recurring Charges/Late Payment Fees)
Hyden-Leslie County Water District, Case No. 2021-00071 (Ky. PSC Feb. 22, 2022) (Imputed Debt/Identification Requirements)
Hyden-Leslie County Water District, Case No. 2020-00141 (Ky. PSC Nov. 6, 2021) (Non-recurring Charges/Late Payment Fees)

LaRue County Water District, Case No. 2023-00055 (Ky. PSC Feb. 10, 2023) (Leak Adjustment Policy)

U.S. Dept. of Justice, [Refusal to Provide Social Security Number Improper Grounds For Denial of Service](#), Overview of the Privacy Act of 1974 (2012 ed.) (hyperlink only)

Landlord Liability for Tenant Bills (Subfolder of Tariffs- Reference Materials)

August Properties, LLC v. City of Burgin, No. 2015-CA-001570-DG (Ky. Ct of Appeals Oct. 27, 2017)

Cassidy v. City of Bowling Green, 368 S.W.2d 318 (Ky. 1963)

Hardin County Water District No. 1, Case No. 9383 (Ky. PSC Aug. 26, 1985)

Jessamine-South Elkhorn Water District, Case No. 2003-00168 (Ky. PSC Feb. 18, 2004)

OAG Opinion 73-520 (July 6, 1973)

Plunkett v. City of Muldraugh, 403 S.W.2d 252 (Ky. 1966)

General Reference

Commission on Rural Water, Guide for the Support of Rural Water-Wastewater Systems (1974)

Institute of Public Utilities Regulatory Research & Education - Glossary of Terms Used in Water Regulation

Institute of Public Utilities Regulatory Research & Education – Primer on Water Pricing

Kentucky Division of Water, Acronym Directory

Kentucky Division of Water, Organization Chart (As of April 4, 2023)

Kentucky Division of Water, Water Referral Directory (As of May 1, 2023)

National Association of Regulatory Utility Commissioners, Depreciation Practices for Small Water Utilities (1979) Public Service Commission Organization Chart (As of April 17, 2023)

Public Service Commission Staff Directory (As of May 8, 2023)

Health Insurance and Other Employee Fringe Benefits (Subfolder of General Reference)

Bureau of Labor Statistics, Employee Benefits In The United States – March 2022 (September 22, 2022)

Jackson Purchase Energy Corp., Case No. 2019-00053 (Ky. PSC June 20, 2019)

Northern Kentucky Water District, Case No. 2022-00161 (Ky. PSC Mar. 16, 2023)

Willis North America, Inc., The Willis Benefits Benchmarking Survey – Survey Report 2015

TAB 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: April 10, 2023

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: Northern Kentucky Water Training 2023
Format: Live - a program at a specific date and time - On site
Location: erlanger, kentucky
Date: 05/10/2023

Activity No. 251896 Sponsor No. 8660

TOTAL CREDITS: 6 ETHICS CREDITS 0

Ethics credits are INCLUDED in the TOTAL number of credits.

TAB 6



Andy Beshear
GOVERNOR

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

300 Sower Boulevard
Frankfort, Kentucky 40601
Phone: (502) 564-2150
Fax: 502-564-4245

Rebecca W. Goodman
SECRETARY

Anthony R. Hatton
COMMISSIONER

May 9, 2023

Stoll Keenon Ogden PLLC
Attn: Gerald Wuetcher
300 W Vine St Ste 2100
Lexington, Kentucky 40507

Agency Interest Number: 175355
RE: Operator Certification Training Approval for Continuing Education Hours

To Whom It May Concern:

Your training request has been received by the Department of Environmental Protection, 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 list can be located on our website, <http://bit.ly/KY-OCP-trainingproviderinfo>.

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 |
|---------------------------------------|------------|-------------------------|---------------|-------------------|
| Northern Kentucky Water Training 2023 | 05/10/2023 | DW - 6.0 Hours approved | 28202 | One time Approval |

Upon completion of the approved training, the provider shall submit the continuing education hours to the cabinet through our Kentucky Online Gateway website at <https://dep.gateway.ky.gov/eForms/Account/Home.aspx>. You may also report training hours by submitting the Continuing Education Activity Report form and \$50 fee to the cabinet. This form can be located on the program's website at <http://bit.ly/KY-OCP-dcaforms>. 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 Enforcement, Certification and Licensing Branch at (502) 782-6189.

Sincerely,

Veronica Roland
Certification and Licensing Branch

RECEIPT

Commonwealth of Kentucky
Department of Environmental Protection

Received From: Gerald E. Wuetcher
Address: 110 Old Hickory Lane Versailles, KY, 40383-1131
Receipt No.: 287464-0-1
Check Amt: \$50.00
Check Number: 129018
Total Paid: \$50.00



TAB 7

Gerald Wuetcher

From: Thompson, Wendy (DLG) <wendy.thompson@ky.gov>
Sent: Wednesday, April 12, 2023 9:24 AM
To: Gerald Wuetcher
Subject: RE: Request for Approval of Proposed Training Program

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

We are good on this end, hope all is well on your end as well.

You have been approved for up to 6 hours of training for fiscal court members.

Thanks!

From: Gerald Wuetcher <Gerald.Wuetcher@skofirm.com>
Sent: Tuesday, April 11, 2023 9:17 AM
To: Thompson, Wendy (DLG) <wendy.thompson@ky.gov>
Subject: Request for Approval of Proposed Training Program

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

Wendy:

Good morning. I hope that all is well with you and your family.

Attached is an application for approval of Northern Kentucky Water Training 2023 as a qualified training program of the Local County Officials Training Program. Please contact me if additional information is required or if there are any questions regarding the training program.

Sincerely,

Jerry



Gerald Wuetcher

Attorney

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