

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION)	
OF OLDHAM COUNTY)	
WATER DISTRICT FOR)	CASE NO.
ACCREDITATION AND)	2026-00034
APPROVAL OF)	
COMMISSIONER TRAINING)	

APPLICATION

Oldham County Water District (“Oldham District”) and Stoll Keenon Ogden PLLC (“Joint Applicants”) apply for an Order from the Public Service Commission (“Commission”) accrediting and approving a proposed water district commissioner training program pursuant to KRS 74.020(6) and (7) and 807 KAR 5:070.

In support of its application, the Joint Applicants state:

1. The full name and post office address of Oldham District is: Oldham County Water District, P.O. Box 51, Buckner, Kentucky 40010. Its physical address is 2160 Spencer Court, LaGrange, Kentucky 40031. Its electronic mail address is ocwd@oldhamcountywaterky.gov .

2. Pursuant to 807 KAR 5:001, Section 4(8),¹ copies of all orders, pleadings, and other communications related to this proceeding should be directed to:

Tina C. Frederick
Stoll Keenon Ogden, PLLC
300 West Vine Street, Ste 2100
Lexington, KY 40507-1801
(859) 231-3951
Fax: (859) 259-3517
tina.frederick@skofirm.com

Damon R. Talley
Stoll Keenon Ogden PLLC
112 North Lincoln Boulevard
P.O. Box 150
Hodgenville, Kentucky 42748
Telephone: (270) 358-3187
Fax: (270) 358-9560
damon.talley@skofirm.com

Russell Rose
Oldham County Water District
P.O. Box 51
Buckner, Kentucky
Telephone: (502) 222-1690
ocwd@oldhamcountywaterky.gov

3. Oldham District is not a corporation, limited liability company, or limited partnership. It has no articles of incorporation or partnership agreements.
4. Oldham District is a water district organized pursuant to KRS Chapter 74.
5. Oldham District's territory includes all of Oldham County, Kentucky, except for the city of LaGrange and the far western portion of Oldham County.

6. Stoll Keenon Ogden PLLC is a Kentucky Limited Liability Company that was organized under the laws of the Commonwealth of Kentucky on December 28, 2005 and is currently in good standing. It provides legal services to local, regional, national, and international clients.

7. Stoll Keenon Ogden PLLC's mailing address is: 300 West Vine Street, Suite 2100, Lexington, Kentucky 40507-1801. Its email address for purposes of this Application is: tina.frederick@skofirm.com.

8. Joint Applicants propose to sponsor and conduct a water management training program on March 17, 2026, at Oldham District's office in LaGrange, Kentucky. The program is entitled "Oldham County Water Commissioner Training Seminar." A copy of the proposed agenda is attached to this Application as **Exhibit 1**.

9. As reflected in **Exhibit 1**, the proposed training program will consist of presentations that are designed to enhance the attendees' understanding of relevant legal, financial, and technical issues involved in the management, operation, and maintenance of water systems and calculated to improve the quality of the management, operation and maintenance of the attendees' water systems. The proposed training program includes presentations on the following topics:

a. **Recent Developments in Utility Regulation.** This presentation reviews recent developments in public utility law and regulation. Topics include

actions taken by 2025 General Assembly, actions taken to date and currently under consideration by the 2026 General Assembly, compliance with PSC Orders, PSC Investigations, and maintaining minutes of Board proceedings. The presenter will also examine and discuss recent court and PSC decisions.

b. Tariff Filings: Practical Considerations for Water Utilities.

This presentation provides a review of what a tariff is, what it should contain, and how to update a tariff with the Kentucky Public Service Commission. This presentation will highlight various provisions that a water utility should have as part of its tariff to protect against financial and legal liability and to avoid common customer disputes. The procedure for updating a tariff is discussed as are practical suggestions for improving a water utility's tariff.

c. Everything You Wanted to Know about Certificates of Public Convenience and Necessity and Debt Authorizations but Were Afraid to Ask the PSC. This presentation reviews the statutory law surrounding the construction of utility facilities and the issuance of debt. It will focus on what utility actions require a certificate of public convenience and necessity and the exceptions to the general requirement for a certificate of public convenience and necessity. It will also identify those debt issuances and contractual obligations that require prior Commission authorization and exceptions to the requirement for prior Commission authorization. The presentation will also provide practical suggestions on preparing

applications for such relief to assist Commission review and minimize the time required to obtain Commission approval.

d. PFAS and Other Contaminants Parts 1 & 2: Recent Developments in Utility Law at the Federal Level. This two-part presentation contains a detailed discussion of the political landscape in which regulations governing PFAS are being promulgated, recent activities of the EPA and Congress concerning PFAS, the current timeline for compliance, and financial considerations.

e. Legal Issues in the Operation & Management of Water Systems Panel Discussion. A panel of attorneys will entertain audience questions regarding frequently recurring legal issues faced by water districts. 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. PSC regulatory requirements will also be discussed.

10. The proposed training program consists of six hours of instruction and should be accredited and approved as water management training satisfying the requirements set forth in KRS 74.020(7) to establish a water district commissioner's eligibility for a maximum annual salary of \$6,000. **Joint Applicants are not**

requesting that the proposed training program be accredited as a program of instruction for newly appointed commissioners.

11. A biographical statement containing the name and relevant qualifications and credentials for each presenter, as well as the researcher and developer of the PFAS materials, is attached at **Exhibit 2** of this application.

12. The written materials to be provided to each attendee are attached at **Exhibit 3**. Should any presenter revise or amend his or her presentation prior to the presentation or provide additional written materials to the attendees, Joint Applicants will include a copy of the revised presentation with its sworn statement and report regarding the instruction. Should any presenter revise or amend his or her presentation prior to the presentation or provide additional written materials to the attendees, a copy of the revised presentation will also be submitted.

14. The Joint Applicants will retain a record of all water district commissioners attending the proposed training program.

15. Within 30 days of the proposed training program's completion, the Joint Applicants will file with the Commission a sworn statement:

- a. Attesting that the accredited instruction was performed;
- b. Describing any changes in the presenters or the proposed program curriculum that occurred after certification; and

c. Containing the name of each attending water district commissioner, his or her water district, and the number of hours that he or she attended.

16. The Joint Applicants will include with the sworn statement documentary evidence of the program's certification by certifying authorities and a copy of any written material given to the attendees that has not been previously provided to the Commission.

17. The Joint Applicants will admit the Commission's representatives to the proposed training program at no charge to permit such representatives to assess the quality of the program's instruction, monitor the program's compliance with the Commission directives, regulations, or other requirements, or perform any other supervisory functions that the Public Service Commission deems necessary.

WHEREFORE, the Joint Applicants request that the Public Service Commission approve and accredit the proposed training program entitled "Oldham County Water Commissioner Training Seminar" for **six hours** of water district management training.

Dated: February 11, 2026

Respectfully submitted,

/s/ Tina C. Frederick

Tina C. Frederick
Stoll Keenon Ogden, PLLC
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(859) 231-3951
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damon.talley@skofirm.com

*Counsel for Oldham County
Water District*

CERTIFICATE OF SERVICE

In accordance with the Commission's Order of July 22, 2021 in Case No. 2020-00085 (Electronic Emergency Docket Related to the Novel Coronavirus COVID-19), this is to certify that the electronic filing has been transmitted to the Commission on February 11, 2026; and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.

/s/ Tina C. Frederick
Tina Frederick

EXHIBIT 1

Agenda



Oldham County Water Commissioner Training Seminar

2160 Spencer Court, LaGrange, Kentucky

Presented by
Stoll Keenon Ogden PLLC
March 17, 2026

Morning Agenda

8:00 - 8:25 **Registration and Refreshments**

8:25 - 8:30 **Program Overview and Welcome – Russ Rose**

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

This presentation reviews recent developments in Kentucky public utility law and regulation. Topics include actions taken by 2025 General Assembly, actions taken to date and currently under consideration by the 2026 General Assembly, compliance with PSC Orders, PSC Investigations, and maintaining minutes of Board proceedings. The presenter will also examine and discuss recent court and PSC decisions.

9:40 - 10:40 **Tariff Filings: Practical Considerations for Water Utilities – Tina Frederick**

This session provides a review of what a tariff is, what it should contain, and how to update a tariff with the Kentucky Public Service Commission. This presentation will highlight various provisions that a water utility should have as part of its tariff to protect against financial and legal liability and to avoid common customer disputes. The procedure for updating a tariff is discussed as are practical suggestions for improving a water utility's tariff.

10:50 - 11:50 **Everything You Wanted to Know about Certificates of Public Convenience and Necessity and Debt Authorizations, but Were Afraid to Ask the PSC – Gerald Wuetcher**

This presentation reviews the statutory law surrounding the construction of utility facilities and the issuance of debt. It will focus on what utility actions require a certificate of public convenience and necessity and the exceptions to the general requirement for a certificate of public convenience and necessity. It will also identify those debt issuances and contractual obligations that require prior Commission authorization and exceptions to the requirement for prior Commission authorization. The presentation will also

provide practical suggestions on preparing applications for such relief to assist Commission review and minimize the time required to obtain Commission approval.

11:50 – 12:45 **Lunch (provided)**

Afternoon Agenda

12:45 – 1:45 **PFAS and Other Contaminants – Part 1: Recent Developments in Utility Law at the Federal Level– Damon Talley** (Originally developed by Tom Edge, General Counsel, Northern Kentucky Water District)

This presentation discusses the political landscape in which regulations governing PFAS are being promulgated, recent activities of the EPA and Congress concerning PFAS, the current timeline for compliance, and financial considerations.

1:50 - 2:50 **PFAS and Other Contaminants – Part 2: Recent Developments in Utility Law at the Federal Level- Tina Frederick** (Originally developed by Tom Edge, General Counsel, Northern Kentucky Water District)
A continuation of the previous presentation and discussion

2:55 – 3:55 **Legal Issues in the Operation & Management of Water Systems Panel Discussion – Tina Frederick, Damon Talley & Gerald Wuetcher**
A panel of attorneys will entertain audience questions regarding frequently recurring legal issues faced by water districts. 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. PSC regulatory requirements will also be discussed.

3:55 – 4:00 **Closing Remarks & Administrative Announcements**

EXHIBIT 2

Presenter Information



Damon R. Talley

Direct Phone: 270.358.3187

damon.talley@skofirm.com

BAR & COURT ADMISSIONS

Kentucky

U.S. District Court, Eastern District Of Kentucky

U.S. District Court, Western District Of Kentucky

United States Supreme Court

EDUCATION

University of Kentucky College of Law

1975, J.D.

University of Kentucky College of Engineering

1972, B.S.M.E.

RECOGNITION

Best Lawyers®, Lawyer of the Year (Lexington),
Utilities Law, 2023

Best Lawyers®, Utilities Law, 2021-present

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

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

Outstanding Student, University of Kentucky
College of Engineering

Omicron Delta Kappa, President, University of
Kentucky

Kentucky Association of Future Farmers of
America, President

Outstanding Citizen Award, LaRue County
Chamber of Commerce, 1990

Outstanding Citizen Award, Cave City Chamber of
Commerce, 1981

Outstanding Citizen Award, Horse Cave Chambers
of Commerce, 1979

Damon R. Talley

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

Before his time at SKO, Damon worked for decades in private practice and has provided legal representation to public utilities throughout Kentucky. He has focused primarily on water utilities, and his deep expertise in drinking water has earned him a reputation statewide as a go-to legal resource in this area. Damon is general counsel of the Kentucky Rural Water Association and has served in this capacity since 1979.

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

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

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

Work Highlights

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

Damon serves as General Counsel of the Kentucky Rural Water Finance Corporation and has served in this capacity since 1995.



Gerald E. Wuetcher

Direct Phone: 859.231.3017
gerald.wuetcher@skofirm.com

BAR & COURT ADMISSIONS

Kentucky
U.S. Court Of Appeals For The Armed Forces
U.S. District Court, Eastern District Of Kentucky
U.S. District Court, Western District Of Kentucky

EDUCATION

Emory University
1984, J.D.
Johns Hopkins University
1981, B.A.

RECOGNITION

Best Lawyers®, Utilities Law, 2021-present

Gerald E. Wuetcher

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

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

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

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

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

Utility & Energy: Jerry concentrates on public utility law in Kentucky, but also participates in general and commercial litigation, transactions, employment concerns, securities issues and mergers and acquisitions involving gas, electric and water companies. He handles all facets of regulatory matters, including the negotiation of complex agreements and representation before state agencies and courts.

Work Highlights

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

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

Adjunct Professor of Law, University of Louisville (2011)

TINA FREDERICK

TINA FREDERICK is Counsel to the Firm at Stoll Keenon Ogden PLLC and is a member of the firm's Utility and Energy Practice Group. She recently joined the firm after serving approximately five years with the Kentucky Public Service Commission ("Commission"), first as a Staff Attorney and then as an Assistant General Counsel. In those roles, she advised the Commission on various matters pending before the Commission involving the regulation of public utilities, including applications for rate adjustments, the construction of utility facilities, and the issuance of debt instruments. She represented Commission Staff in administrative hearings involving those issues as well those involving investigations of alleged violations of the Commonwealth's statutes and administrative regulations pertaining to utility service. Prior to her employment with the Commission, she maintained for five years a private practice that principally involved the representation of claimants asserting claims under the Social Security Act and Kentucky's Worker Compensation laws. Ms. Frederick is licensed to practice law in the Commonwealth of Kentucky. She holds a Juris Doctorate from Ohio Northern University College of Law, where she graduated *cum laude*, and a Bachelor of Science Degree in Family and Consumer Science from the University of Kentucky, where she graduated *summa cum laude*.



TOM EDGE

TOM EDGE is General Counsel and Director of Compliance, Communications, 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.



EXHIBIT 3

presentations



OLDHAM COUNTY

Water DISTRICT

WATER COMMISSIONER TRAINING

March 17, 2026



HOT LEGAL TOPICS

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

March 17, 2026



DISCUSSION TOPICS

1. PSC Filings
2. 2026 General Assembly
3. Notable PSC Orders
4. Minutes



DISCUSSION TOPICS

5. Comply with PSC Orders
6. Borrowing Money
7. Cases to Watch





DISCLAIMER



PSA for PSC



2025 General Assembly



SB 89 – Waters of the Commonwealth

- Changes Definition of “Waters of the Commonwealth” to Mean **Navigable Waters** as Defined under Federal Law
- Threatens Water Quality of:
 - Rivers, Streams & Creeks
 - Ground Water
 - Wells



SB 89 – Waters of the Commonwealth

- Sponsored by Ky. Coal Assoc.
- Passed Senate: 30 to 5
- Passed House: 69 to 26
(with House Committee Substitute 1)
- Senate Concurred: 31 to 7
- Governor's Action: Vetoed
- GA: Overrode Veto



**2026
General
Assembly**



Notable Bills – House

- HB 103 Fluoride
- HB 392 Bidding Threshold Increased
- HB 542 Eminent Domain (Condemnation)



Notable Bills – Senate

- SB 133 Audits of SPGE's



HB 103 – Fluoride

- “Local Option”
 - Decision to Have Drinking Water Fluoridation Program Will Be Optional
 - Local Control
 - Decision Made by Governing Board of Water Producer
- Current Program Continues Until Decision Made to Cease



HB 103 – Fluoride

- Immunity Granted to Water Producer
- Passed House: 67 to 29
- Passed Senate: ? ? ?



HB 392 - Bidding Threshold

- Raises Threshold from \$40,000 to \$60,000
- Amends KRS 424.260 & KRS 45A
- Threshold Increases By \$10,000 on 1-1-30 and Every Five Years After



HB 392 - Bidding Threshold

- Status: ? ? ?



HB 542 – Eminent Domain

- Limits Condemnation of Land Subject to Agricultural Conservation District
 - Some Utilities Exempt
 - Water Districts Not Exempt

(continued)



HB 542 – Eminent Domain

- If Land is Subject to Agricultural Conservation District
 - Must File Report with Court
 - Must Prove No Feasible Alternative
 - Judge Decides Whether There is a Feasible Alternative

(continued)



HB 542 – Eminent Domain

- Judge Either:
 - Dismisses Case at Outset or
 - Permits Condemnation Case To Proceed

(continued)



HB 542 – Eminent Domain

- All Condemnation Actions
 - Independent Appraisal Period
 - Utility May Be Required to Pay Landowner's Costs & Attorney Fees
 - Additional Notice Requirements
 - More Hurdles



SB 133 – Audit Requirements

- Applies to All SPGE's
 - Cities
 - Water Districts
 - Sanitation Districts

(continued)



SB 133 – Audit Requirements

- Increases Threshold for Annual Audits from \$500,000 to \$1 Million Per Year
- If “Clean” Audit for 2 Years, Then Audit Required Only Once Every 4 Years



Notable PSC Orders



PSC Case No. 2023-306

Filed: 11-08-2024

Utility: North Nelson WD

Type: Declaratory Order

Issue: Is CPCN Needed?

Decided: 01-28-2025

Answer: NO



North Nelson WD

- Facts: Construct 7.3 Miles Transmission Main
 - Supplemental Source for B-Town
 - Cost: \$16.6 Million
 - Grants: \$17.8 Million
- Problem: Net Utility Plant = \$11.4 Million
- Concern: Depreciation Expense = \$225,000



PSC Case No. 2024-286

Filed: 10-18-2024

Utility: Warren County WD

Type: CPCN – Construct
Headquarters

Decided: 02-18-2025

(continued)



Warren County WD

- Unique Features:
 - Design Build Contract
 - Emergency Operations Center Included in New Building



PSC Case No. 2023 - 252

Filed: 08-18-2023

Utility: Oldham Co. W.D.

Type: ARF Case

Issue: Full Recovery of Cost of
Employee Benefits

Hearing: 04-19-24

Decided: 06-18-24



Oldham Co. W.D. (OCWD)

PSC Order (50 Pages):

- Applied BLS Reduction %
- Disallowed Recovery of \$125,000 in Health Insurance Costs
(OCWD Pays 100%)

(continued . . .)



OCWD (continued)

PSC Order:

- OCWD Failed to Meet Its Burden of Proof
 - Proof Insufficient to Overcome PSC Precedents
 - 43 Cases Align with BLS National Average

(cont . . .)



OCWD (continued)

PSC Order:

- OCWD Has Appealed Decision
 - When? July 18, 2024
 - Where? Franklin Circuit Court
 - Case No: 24-CI-00725



Oldham Co. W.D.
VS
Public Service Commission

What?

Appeal

Where?

Franklin Circuit Court

Case No:

24-CI-00725

(continued . . .)



Oldham Appeal (continued)

Filed:	July 18, 2024
PSC Answer:	Aug. 09, 2024
Briefing Schedule:	Nov. 22, 2024 & Jan. 10, 2025
Oral Arguments:	May 20, 2025
Decided:	Sept. 24, 2025



Oldham (continued)

Issues on Appeal:

- PSC Acted Unlawfully
- BLS Reduction Not Supported by Substantial Evidence
- Denied Due Process
- PSC Violated KRS 13A.100



Oldham (continued)

Decision: PSC Order Reversed

Basis:

- PSC Violated
KRS 13A.100
- BLS Reliance
Was Arbitrary
- PSC Acted Unlawfully

(continued . . .)



Oldham (continued)

Holding:

Oldham Can Include 100% of
Its EE Health Insurance Costs
In Its Rates

➤ \$125,241 Per Year

(continued . . .)



Oldham (continued)

Rationale:

Oldham Demonstrated That:

- Paying 100% of Health Insurance Benefits
 - Fair, Just & Reasonable
 - In the Market That It Served
 - Best Interest of Its Customers

(continued . . .)





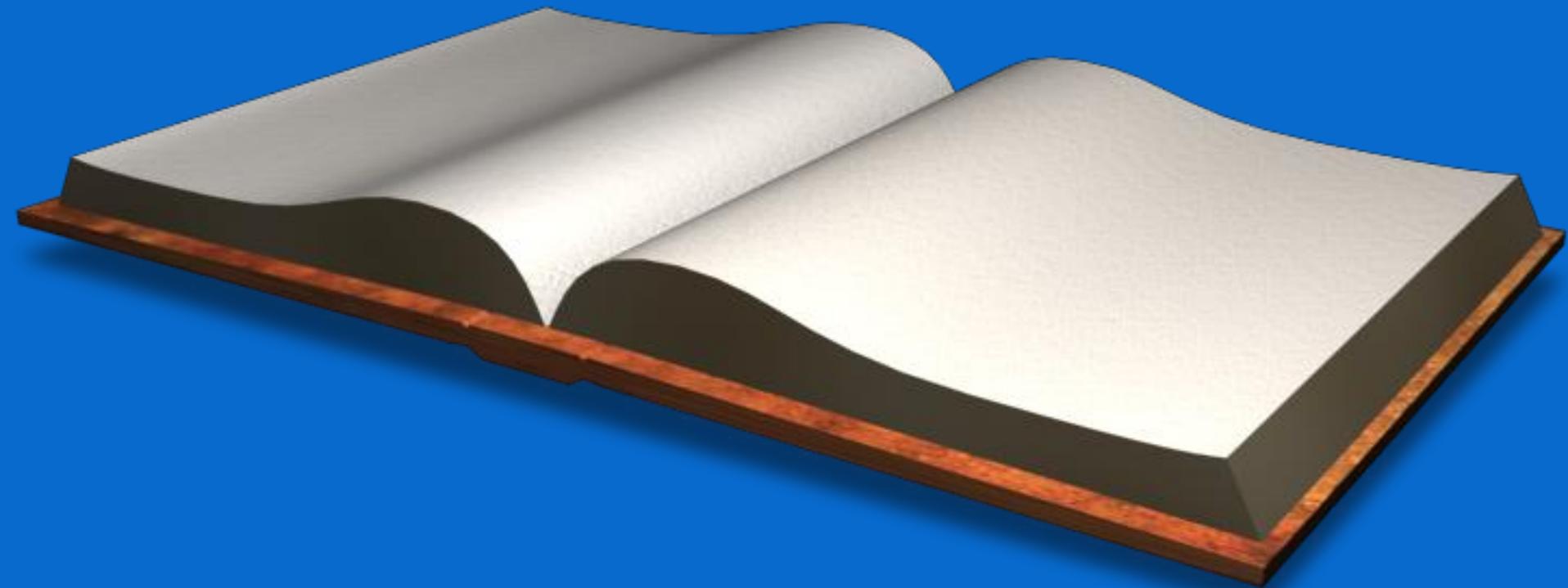
Talley's Tips

Talley's Tips

1. Demonstrate That Total Compensation Package Is Fair, Just & Reasonable
 - Salary
 - Benefits
2. Market Area
3. Recruit & Retain Employees
4. Robust Evidence
 - May Require Consultant



MINUTES



What Are MINUTES?

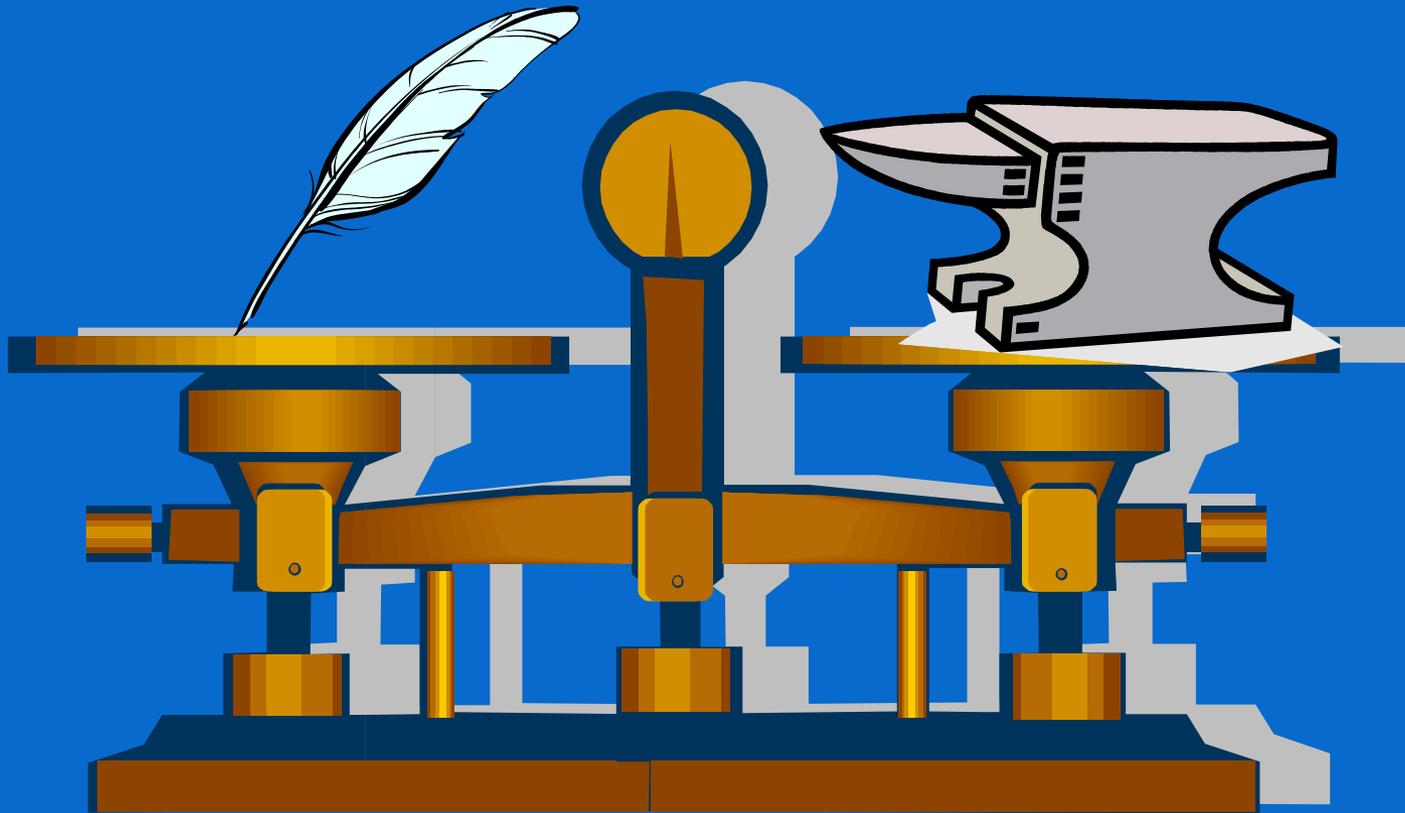
- Official Record
- Much, Much More . . .



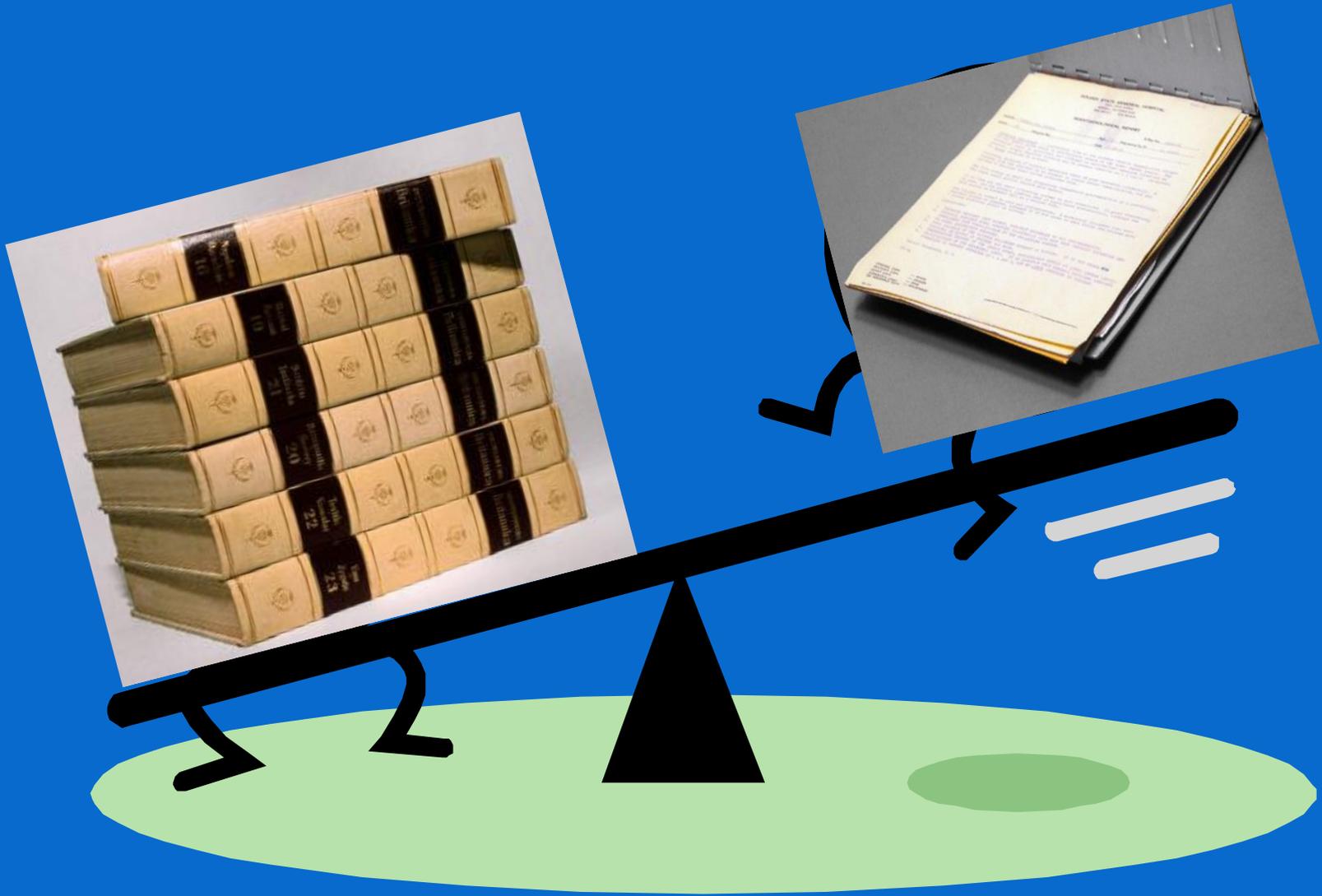
**AN OUNCE
OF
PREVENTION**

=

**A POUND
OF CURE**



How much information **SHOULD** be included in the **MINUTES**?



Minutes

How MUCH is too MUCH?

- No definitive answer
- Art not a science

Cont.



Minutes ...

How MUCH is too MUCH?

- Guidelines . . .
 - Minutes are **NOT** a transcript
 - Minutes are **NOT** the Congressional Record
 - Include rationale for action taken if it might avoid lawsuit



Excerpt From Minutes

“Motion was made by Commissioner X and seconded by Commissioner Y to hire Commissioner Z to perform water line inspections on the Knob Hill Project at an hourly rate of \$20.”



“Conversations are
NOT official actions of
the Board.”

Virginia W. Gregg

Former PSC Staff Attorney



WHY Include Summary of Conversations in Minutes?

- Document Board's Due Diligence (e.g. Water Loss)
- Document Board's Oversight Role (e.g. Compliance with PSC Orders)
- Avoid or Win Litigation





Talley's Tips

Talley's Tips

Prepare Minutes for a Reader...

1. Who did not attend the meeting.
2. Who will not read the Minutes until at least one year later.
3. Who is employed by PSC.
4. Who will access Minutes via www.



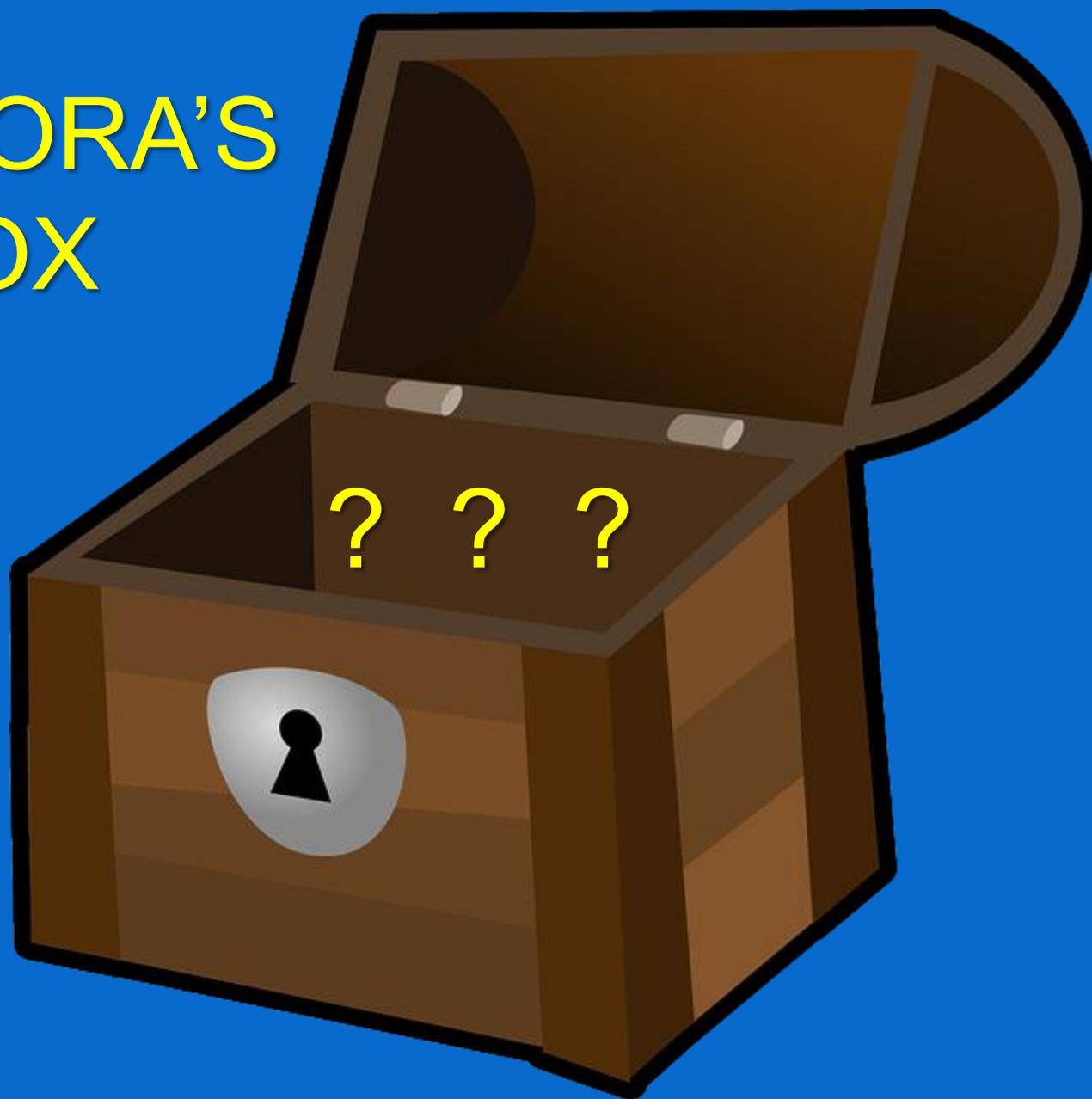
**Comply
With All
PSC
Orders**



“ . . . for allegedly failing to comply with the Commission’s March 10, 2020 Order in Case No. 2019-00458. The willful failure to comply presents prima facie evidence of incompetency, neglect of duty, gross immorality, or nonfeasance, misfeasance, or malfeasance in office sufficient to make [the District’s] officers and manager subject to the penalties of KRS 278.990 or removal pursuant to KRS 74.025. The Commission finds that a public hearing should be held on the merits of the allegations set forth in this Order.”



PANDORA'S BOX



Borrowing

LOANS



Money

KRS 278.300(1)

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



Practical Effect

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





Violation

Show Cause Cases



Show Cause Cases Borrowing Money

First Case: 2022-252



Case # 1

Case No. 2022 - 252

Opened: 02-16-2023

Issue: KRS 278.300
(4 Violations)

Hearing: 08-01-2023

Decided: 10-17-2023



Case # 1

Facts: Leased 4 Trucks
4 & 5 Year Terms

Issue: Is Long Term Lease
An evidence of
Indebtedness ?

Holding: Yes



Case # 1

Outcome:

- GM & Directors (Water Assoc.)
 - Fined \$250 (Waived)
 - 12 Hours of Training
 - 6 More Hours Annually
- Future Directors
 - 6 Hours Training Annually



Cases To Watch



Case No. 2025-226

Opened: 12-13-2025

Type: Investigation

Issue: City Charging Water
District Unapproved
Wholesale Rate

Outcome: Still Pending

(continued . . .)



Case No. 2025-226

Facts:

- City's Wholesale Rate: \$2.10
(Approved by PSC: 09-03-2009)
- Rate Increased to: \$2.92
 - Increased Gradually Since 2018
 - Water District Did Not Notice or Object to Increase

(continued . . .)



Case No. 2025-226

Facts (continued):

- Nothing Filed by City With PSC Since 2009
- PSC Discovered in ARF Case Filed by Water District
- PSC Disallowed Recovery of Unapproved Rate by W.D.

(continued . . .)



Case No. 2025-226

Facts (continued):

- W.D. May Be Entitled to Refund of Approx. \$165,000
- How Could This Happen?
 - City's Bill Not Easy to Understand
 - Turnover in W.D. Staff

(continued . . .)





QUESTIONS?

damon.talley@skofirm.com

270-358-3187



TARIFFS

Practical Considerations for Water Utilities

March 17, 2026

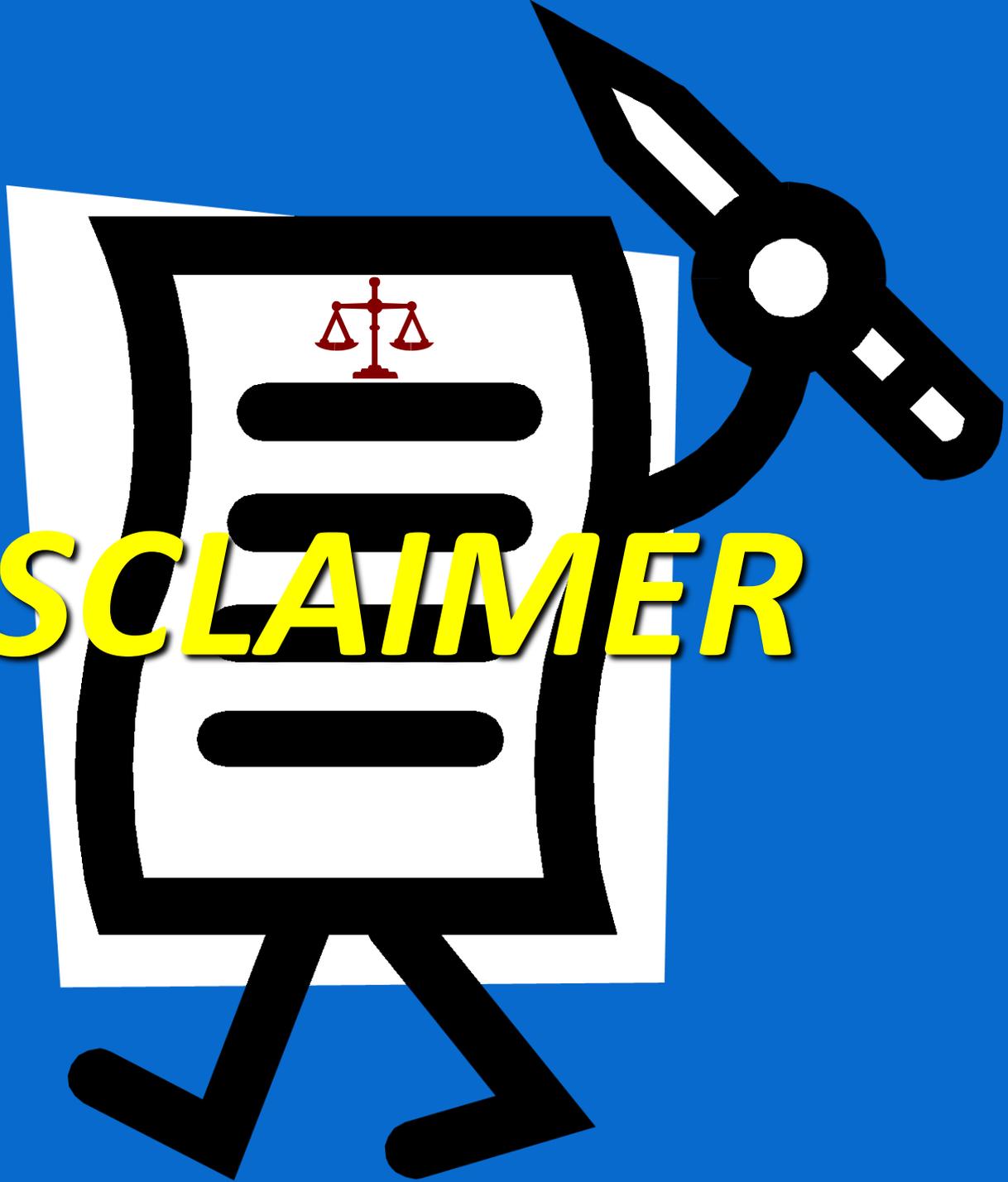
Tina Frederick
Stoll Keenon Ogden PLLC
tina.frederick@skofirm.com

Adapted from a presentation developed by Gerald Wuetcher

Under Discussion

1. Legal Framework
2. Process of Revising Tariff
3. Tariff Provisions to Consider
4. Managing Your Tariff





DISCLAIMER



Legal Framework

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.

Legal Framework

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.

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).

Examples of a “Rate”

- Commodity Charge
- Meter Tap Fee
- Billing Recalculation Policy
- Length of Time to Pay Bill
- Minimum Contract Period
- Rule/Regualtion

What is A Condition of Service?

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

Examples of A “Condition of Service”

- Completing an Application Form
- Providing Evidence of an Inspection
- Deposit Requirement
- Easement Requirement
- Technical Specifications for Connection

Tariff Has The Status of Law

- PSC has adopted a regulation to implement the provisions of KRS 278.160.
- **807 KAR 5:006, Section 6 provides that:**
 - A utility shall not establish a special rule of requirement without obtaining PSC approval;
 - Unless specifically authorized by the PSC a utility shall not deny service to someone who has complied with all conditions of service in the utility's tariff.

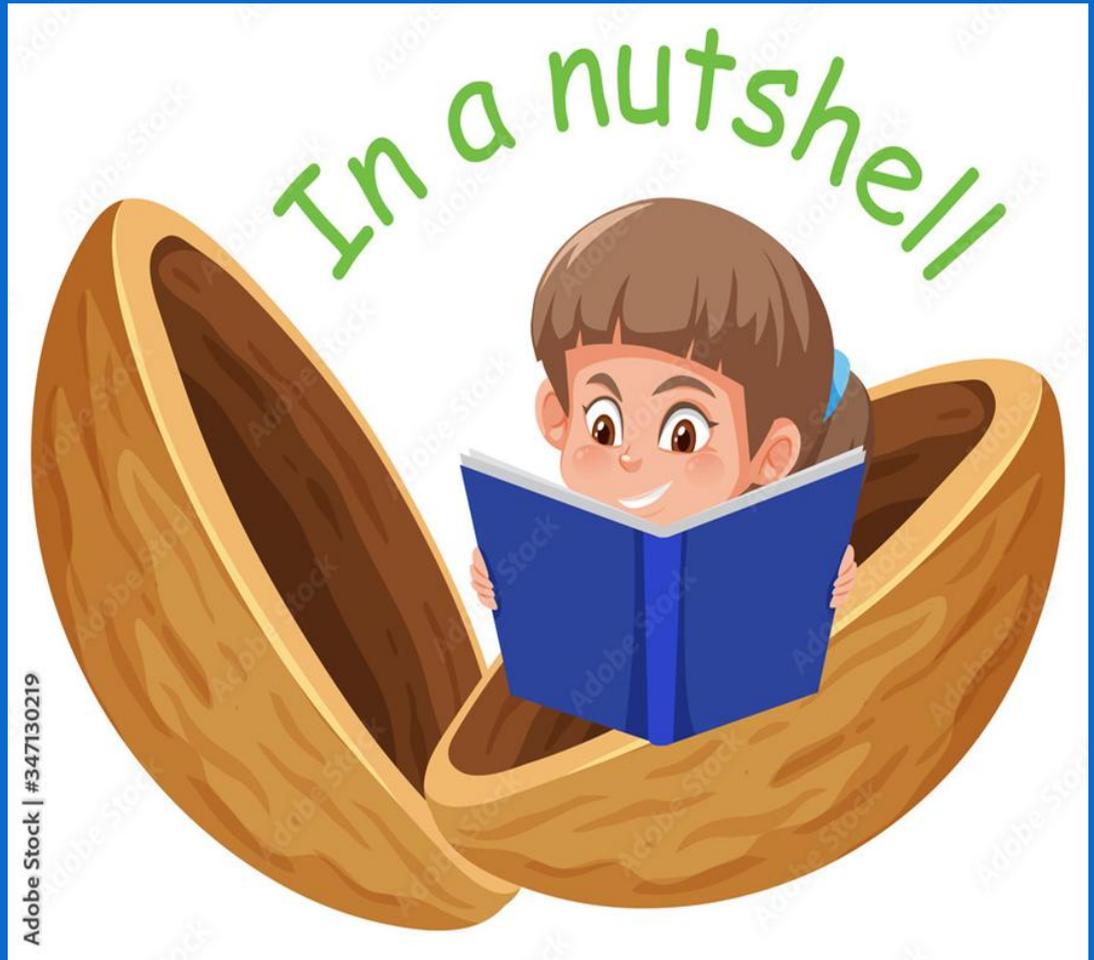
Effect of KRS 278.160 & 807 KAR 5:006

- Only Filed Rates May Be Charged
- Only Filed C of S May Be Imposed
- All Filed Rates and C of S **MUST** be enforced
- Tariff Governs Utility's Relationship With Customer



If its **in** your tariff,
you **MUST** do it!

If its **not in** your
Tariff, you
Can Not do it!



Failure to Comply with KRS 278.160

- Refund/Backbilling
- Assessment of Civil Penalties Against:
 - Utility
 - Manager
 - Water District Commissioners
- Removal of Water District Commissioners



Procedure for Revising Tariffs

- General Procedures:
 - 30 days Notice to PSC
 - “Notice” is filing of New Tariff Sheet
 - Submit Cover Letter & Tariff Sheet
 - Tariff Sheet must comply with PSC Regs
 - PSC provides Tariff Sheet Templates on its website.



Revising Tariffs Continued

- General Procedures:
 - **Tariff Sheet Should State the Effective Date**
 - **Attorney Is Not Required**
 - **Public Notice Must be Provided**

PUBLIC NOTICE

- Three options for providing “Customer” Notice:
 - Mail Notice with customer bills mailed no later than the date the tariff is filed with the PSC
 - Mail written notice to each customer
 - Publish notice one a week for 3 consecutive weeks in local newspaper

Public Notice

- Must Make Public Postings
 - At Utility's Office
 - On The Utility's Website
 - On Any Social Media Page Maintained by the Utility
 - Follow **807 KAR 5:11, Section 8(4)** concerning the Requirements for Notice Content

Possible PSC Responses to Tariff Filings

- Take No Action: Tariff becomes effective 30 days from filing
- Request Minor Modifications
- Suspend and Investigate (now an attorney is required)
- Final Action from PSC: within 10 months of filing



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.



Examples of Nonrecurring Charges

- Connection Fees
- Inspection Fees
- Returned Check Fees
- Turn-off/Turn-on Charges
- Service Call/Investigation Charges



Nonrecurring Charges

Documents That Must be Filed with a Nonrecurring Charge Tariff Filing in Addition to Cover Letter & Tariff Sheet:

- Specific Cost-Justification Sheets & Supporting Documentation
- Income Statement & Balance Sheet for 12-month Period ending no more than 90 days before filing
- Statement about Why Not Filed in a Rate Case



Common Mistakes Tariff Filings

- No Signature On Tariff Sheets
- No Effective Date
- Failure to Use Correct Tariff Format
- Failure To Give Proper Notice
- Failure to Adequately Explain Reasons for Proposed Rule or Rate **AND** to Document Those Reasons **GOAL: AVOID SUSPENSION**



To Avoid Tariff Filing Mistakes

- Download/Use PSC Forms
- Provide Signature/**Effective Date**
- Notice – Timing (Provide at least 30 days Notice)
- Cover Letter Should Provide Lengthy Explanation for Rate/Rule
- Provide Supporting Documents (What Would Staff Want/Need To Know?)



Tariff Provisions To Consider

- **Required Provisions:**
 - **Deposit Requirements**
 - **Budget Payment Plans**
 - **Reconnect Charge**
 - **Requested Meter Test Charge**
 - **All other “special” or nonrecurring charges**
 - **Rules regarding size, design, material & installation of service lines**
 - **Rules regarding service line installation & maintenance**
 - **Customer Usage Monitoring procedures**

Tariff Provisions to Consider

- Provisions Your Utility May Need or Want:
 - Leak Adjustments
 - “Hit Rock” provision in meter tap fee language
 - Turn-on/Turn-off provisions for seasonal residences
 - Billing provision for service to more than one residence from a single meter
 - Line Extension provision that reduces or eliminates refunds to Real Estate Developers

Tariff Provisions to Consider

- Provisions Your Utility May Need or Want:
 - Service Disconnection for waste of water
 - Service Disconnection for tampering or interfering with facilities
 - Imputed Liability to adults at service address
 - Utility Liability Disclaimer for service interruption, failure to provide flows adequate for fire suppression, damage to customer facilities caused by water pressure fluctuation

Managing Your Tariff

- Know the contents of the tariff
- Review at least annually
- Encourage Utility Staff Involvement in Review
- Realize that the tariff is not an internal Management & Practices Manual
- Are there issues you are facing regularly that your tariff does not address?



QUESTIONS?

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EVERYTHING YOU WANTED TO KNOW ABOUT CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND DEBT AUTHORIZATIONS*

*** BUT WERE AFRAID TO ASK THE PSC**

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ORDER OF PRESENTATION

- Certificate Basics
- Applying for A Certificate
- Debt Authorizations: The Basics
- Applying for Authorization to Issue Debt



CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY: THE BASICS



KRS 278.020(1)

No person, partnership, public or private corporation, or combination thereof shall commence providing utility service or . . . begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010 . . . until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.



PURPOSE OF STATUTE

- Counter Incentives in RoR Regulation That Encourage Inefficient Investment
- Avoid Wasteful Duplication
- Prevent Water District Mistakes
- Ensure Project's Technical Feasibility



WHAT REQUIRES A CERTIFICATE?

- Construction of Any Plant, Facility, Equipment, or Property
- Commencing Service



WHAT IS CONSTRUCTION?

- Constructing Building/Structure
- Remodeling or Repurposing Existing Structure
- Construction of Equipment (e.g. Turbine)
- Purchase & Installation of Equipment



DOES **NOT** REQUIRE A CERTIFICATE

- Purchase of Building or Land
- Maintenance Projects
- Demolition/Destruction of Existing Facility
- Preparation of Land for Construction
- **Purchase of Building + Remodeling**



KRS 278.020(1): EXCEPTIONS

- Service Connections to Electric Consuming Facilities By Retail Electric Suppliers
- Water District/Association Exception
- Ordinary Extensions of Existing Systems in the usual course of Business



“WATER DISTRICT EXCEPTION”

- KRS 278.020(1) amended in 2018
- Applies to **Class A & B** Water District & Assn
- Applies to “**water line extension or improvement project**”
- No Certificate required if:
 - Total Cost < \$500,000 **OR**
 - **NO** long-term debt AND **NO** rate increase
- Not applicable to Sewer Projects



“WATER DISTRICT EXCEPTION”

- PSC Initially Limited Applicability To Construction of Water Mains
- Case No. 2016-00255: “[T]he proposed installation of the new metering system is not a ‘waterline extension or improvement project,’ as it **does not extend or improve an existing waterline**”
- Adopts PSC Staff Opinion No. 2012-024



“WATER DISTRICT EXCEPTION”

- PSC Staff Opinion No. 2017-002
- Water Association proposes to construct water booster station, including 300 feet of 2” water line, & install pressure reducing valve
- PSC Staff: “[T]he project improves existing water lines and qualifies as a ‘water line extension or improvement project.’”
- Project involving non-mains may qualify if beneficial effect on existing water mains



“WATER DISTRICT EXCEPTION”

- PSC Case No. 2018-00355
- WD to construct booster station, 31,300 LF of 6” and 8” water line, & 2 ground storage tanks
- Tanks’ cost (\$544,000) = 28% of total project cost
- Project totally financed through AML money
- PSC: Project is “waterline extension or improvement project”
- Exception applies; No certificate required



EXTENSIONS IN THE ORDINARY COURSE

“A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.”

807 KAR 5:001, §16(3)



EXTENSIONS IN THE ORDINARY COURSE: THE FACTORS

- No **Wasteful** Duplication of Plant or Facilities
- **No Conflict** With Existing Certificates or Service of Other Utilities
- Capital Outlay Is Insufficient to **Materially Affect** Existing Financial Condition of Utility
- Will Not Result In **Increased Charges** to Customers



EXTENSIONS IN THE ORDINARY COURSE: WASTEFUL DUPLICATION

- “Excess of Capacity Over Need”
- “Excessive Investment In Relation To Productivity” – Investment’s Cost-effectiveness
- Unnecessary Multiplicity of Physical Properties
- Premature Replacement
- Thorough Review of **ALL ALTERNATIVES**
- **Any Duplication Requires Formal Review**



EXTENSIONS IN THE ORDINARY COURSE: “MATERIALLY AFFECT” - TESTS

- Percentage of Existing Net Utility Plant
- Debt Issued to Finance Project
- Project Cost Borne By Utility



EXTENSIONS IN THE ORDINARY COURSE: PERCENTAGE OF UTILITY PLANT TEST

- Percentage = Total Project Cost ÷ Net Utility Plant (Total Plant – Depreciation)
- Trigger for Certificate
 - 10 Percent Rule (**Abandoned**)
 - 3 Percent Rule – Case No. 2019-00257
 - 1 Percent Rule – Case No. 2014-00171
- Funding Source Not Considered



EXTENSIONS IN THE ORDINARY COURSE: DEBT FINANCED CONSTRUCTION

- Case No. 98-079: Projects financed through Utility Debt have a Material Effect on Utility's Finances
- Case No. 2000-481: "The method used to finance the cost of proposed facilities does not determine whether those facilities require a Certificate of Public Convenience and Necessity"



EXTENSIONS IN THE ORDINARY COURSE: DEBT FINANCED CONSTRUCTION

- Case No. 2022-00284: Notes that how project is financed is a factor; absence of long-term debt suggests no material affect on finances
- **Bottom Line:** Use of debt financing will be factor in whether project has a material affect on utility's finances



EXTENSIONS IN THE ORDINARY COURSE: PROJECT COSTS BORNE BY UTILITY

- Projects Financed With Others' Funds
 - Case No. 2014-00368
 - Case No. 2018-00164
 - Case No. 2017-00195
 - Cases No. 2019-00067/No. 2020-00344
- **No Material Effect** if Customer financed
- **No Effect** on Utility's Financial Condition



PROJECTS FINANCED WITH OTHERS' FUNDS: CASE NO. 2014-00368

- IOU to construct gas line to serve industrial customer
- Gas Line = 55% of Net Utility Plant
- Customer pays cost
- No increase to Utility Plant
- No Rate Increase
- **NO MATERIAL EFFECT – NO CPCN**



PROJECTS FINANCED WITH OTHERS' FUNDS: CASE NO. 2017-00195

- IOU to relocate gas line running through landfill
- Landfill requests, pays most of relocate costs
- IOU's share of cost deemed too small to materially affect its financial condition
- No Rate Increase
- **NO MATERIAL EFFECT – NO CPCN**



**PROJECTS FINANCED WITH
OTHERS' FUNDS:
CASES NO. 2019-00067 & NO. 2020-00344**

- \$16.5 Million Projects at Fort Knox
- Projects = 31.1% of Net Utility Plant
- US Govt funding entire project cost
- No increase to other customers' rates
- No affect on utility's financial condition
- **NO MATERIAL EFFECT – NO CPCN**



PROJECTS FINANCED WITH OTHERS' FUNDS: CASES NO. 2019-00067 & NO. 2020-00344

- \$16.5 Million Projects at Fort Knox
- Projects = 31.1% of Net Utility Plant
- US Govt funding entire project cost
- No increase to other customers' rates
- No affect on utility's financial condition
- **NO MATERIAL EFFECT – NO CPCN**



GOVERNMENT GRANTS AND “MATERIAL EFFECT”

- Case No. 2022-00284
- W&S District to construct sewer main to serve new industry; seeks Declaratory Order
- Cost: \$1,751,352 (14.5% of net utility plant)
- Funding Source: EDA, ARC Grants
- Holding: No debt incurred – No material effect on financial condition – No certificate required



EXTENSIONS IN THE ORDINARY COURSE: MATERIALLY AFFECT

- Implications for projects funded with American Recovery and Reinvestment Act/Bipartisan Infrastructure Law
- Totally Funded: **No Certificate Required**
- Partially Funded: Certificate **Possibly Not Required** – Grant funded portion not considered in percentage of utility plant test?



ALWAYS CONSIDERED NOT IN THE ORDINARY COURSE

- Construction of Office Building
- Purchase and Installation of Advance Metering Infrastructure (AMI)



EXTENSIONS IN THE ORDINARY COURSE: REPAIRS OR REPLACEMENT

- Emergency Amendment to 807 KAR 5:001, §15
- A certificate of public convenience and necessity shall not be required for any water district created pursuant to KRS Chapter 74, water association formed under KRS Chapter 273, or any other utility that provides the services described in KRS Chapter 278.010(3)(b) or KRS Chapter 278.010(3)(f) that intends to **replace in-kind, restore, repair or fix any facility** as a result of weather events occurring on or between July 26, 2022 and July 30, 2022. Any replacement, restoration, repair or fix shall be deemed **extensions in the ordinary course of business.**



ANALYTICAL FRAMEWORK

- Is Construction or Installation of Equipment Involved?
- Does Action Fall Within An Exception?
 - Water District Exception?
 - Water Main Extension or Improvement?
 - Less than \$500,000?
 - No long-term debt or no rate increase?
 - Ordinary Extension In Usual Course?
 - Wasteful Duplication?
 - Interferes with Another Utility's Certificate?
 - Any Material Effect on Utility's Financial Condition?



WHEN IN DOUBT

- CYA: Private Attorney Opinion Letter
 - Thorough Analysis Essential
- Request Declaratory Order
- Avoid Requests for Staff Opinion
- DO **NOT** Request A Deviation - Not Permitted Under Statute
- Apply for a Certificate



CONSTRUCTING WITHOUT CERTIFICATE: CONSEQUENCES

- Assessment of \$2,500 Penalty To:
 - Utility
 - Utility Management
 - Engineering Firm/Contractors
- Injunctive Relief
- Does Not Affect Rate Recovery



ADVANTAGES/DISADVANTAGES OF NO CERTIFICATE

- Advantages:
 - No delay for PSC proceedings
 - No litigation expense
- Disadvantages:
 - No presumption of reasonableness
 - No benefit if Long-Term Debt Required
 - Subject to Future Review & Disallowance



PREPARING AN APPLICATION FOR CERTIFICATE



CONTENTS OF APPLICATION

- Facts to Show Public Convenience & Necessity Require Project
- Franchises/Permits
- Full Description of Proposed Location/Route of Facilities
- Description of Manner of Construction
- Maps/Drawings/Specifications
- Method For Financing the Proposed Project

807 KAR 5:001, § 15



DEMONSTRATING NECESSITY

- Condition of Existing Facilities
- Ability to Meet Existing Demand/Future Demand
 - Adequate Service: Sufficient Capacity to meet the maximum estimated requirements during the year
- Availability of Other Sources
- Technical Feasibility
- Economic Feasibility
 - Least Cost vs. Most Reasonable
 - Duplication of Facilities Not Necessarily Fatal



DEMONSTRATING NECESSITY

- Full and Complete Narrative in Application
- Preliminary/Final Engineering Reports
- Written Testimony
 - Historical Background
 - Opportunity to Address Critical Issues
 - Explain Engineering Aspects of Application
 - Best Opportunity to Present Case for Certificate
- Other Studies (e.g. hydraulic studies)



PERMITS

- List /Provide Evidence of Required Permits
 - Division of Water Approval of Plans & Specifications
 - Discharge Permits
 - Army Corp of Engineer Permits
 - Highway Encroachment Permits
 - Historical/Preservation Permits
- Note Status of Obtaining Easements
- PSC is **Last Stop**: Request Deviation from Filing Requirements if Any Permits Not Yet Obtained



PROCEDURE

- Application
- Discovery
- Interested Parties May Intervene, But Generally No Intervenors
- Hearing on Application Seldom Held
- Final Order: 90 – 120 Days from filing of Application



TIMING

- Obtain PSC Approval Prior to Executing Construction/Materials Contract
- File Application after selecting winning bid if possible
- Alert PSC to Timing Requirements for Final Decision (Remind Frequently)
- If Selecting Contract Prior to Final PSC Order, Make Contract Contingent on Grant of Certificate



OBTAINING PSC APPROVAL



EXPEDITING PSC REVIEW

- Pre-Filing Conference with PSC Staff
- Confer with AG re: Application
- Advise PSC of Critical Dates
- Advise PSC Staff of Willingness to Accept Informal Discovery Procedures
- Post-Filing Conference



EXPEDITING PSC REVIEW

- Use Filing Checklists
- Include Written Testimony with Application
- Ensure Any Document Prepared By Professional Engineer Are Stamped/Signed
- Periodic Inquiries to PSC Staff/Executive Director



RURAL DEVELOPMENT FINANCED CONSTRUCTION PROJECTS



RURAL DEVELOPMENT FUNDING: LIMITED PSC REVIEW

- KRS 278.023 requires expedited review of RD-funded Projects
- Legislature Assumes RD has adequately reviewed project – Two reviews unnecessary
- Project must be part of Financing Agreement between RD or HUD and WD or WA
- Utility Files Limited Documentation



RURAL DEVELOPMENT FUNDING: LIMITED PSC REVIEW

- Once Minimum Filing Requirements Met, PSC must take all actions necessary to implement RD Financing Agreement



RURAL DEVELOPMENT FUNDING: PSC CRITICISMS

- Prevents PSC Review of Utility's financial condition and the technical aspects of project
- RD rates are generally inadequate, fail to allow for recovery of depreciation expense
- Water Utilities use RD-finance agreements to circumvent PSC Review



DEBT AUTHORIZATION: THE BASICS



KRS 278.300

“No utility shall issue any securities or evidences of indebtedness or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person **until it has been authorized so to do by order of the commission.**”



WHAT IS AN EVIDENCE OF INDEBTEDNESS?

- Bonds
- Notes
- KIA Assistance Agreement
- Lease to Purchase Agreement
- Installment Contracts
- Letters of Credit



EXCEPTIONS TO REQUIREMENT

- Notes that are not payable for periods of more than two years
- Limit: Note may not be renewed for an aggregate period to exceed six year



GENERAL CONSIDERATIONS

- Amount of Loan Not Relevant
- Violation Occurs Upon Execution
- Violation No Affected by Satisfying Obligation within 2 Years of Creation
- High Priority In PSC Review



CONSEQUENCE OF NON-COMPLIANCE

- Assessment of \$2,500 Penalty To:
 - Utility
 - Utility Management
 - Board Members
 - Legal Counsel
- Questions re: legality of debt



PREPARING AN APPLICATION FOR DEBT AUTHORIZATION



CONTENTS OF APPLICATION

- Financial Exhibit
- Description of Applicant's Property
- Description of Use of Proceeds
- Detailed description of property to be acquired or constructed or proposed improvement
- Copy of contracts re: acquisition/construction of property, proposed improvement
- Notice to State Local Debt Officer



CONTENTS OF APPLICATION

- Maps/Plans of Property to be Acquired or Constructed
- Estimates of the Cost of Property/Improvements
- Application must be signed under oath by utility officer



APPLICANT MUST SHOW

- Issuance is for lawful object/purpose
- Issuance is necessary & appropriate for performance of utility's service to public
- Issuance will not impair utility's ability to serve public
- Issuance is reasonably & appropriate to perform service to public
- **Utility can meet debt service requirements**



PROCEDURE

- Application
- Discovery
- Generally No Intervenors
- Hearing on Application Seldom Held
- Matter to Go to Front of PSC Docket
- Final Order: 60 Days from filing of Application but application may be continued beyond 60 days



QUESTIONS?

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PFAS & OTHER CONTAMINANTS RECENT DEVELOPMENTS IN UTILITY LAW AT FEDERAL LEVEL

Researched & Developed by Tom Edge, Esq

Presented by Damon Talley & Tina Frederick

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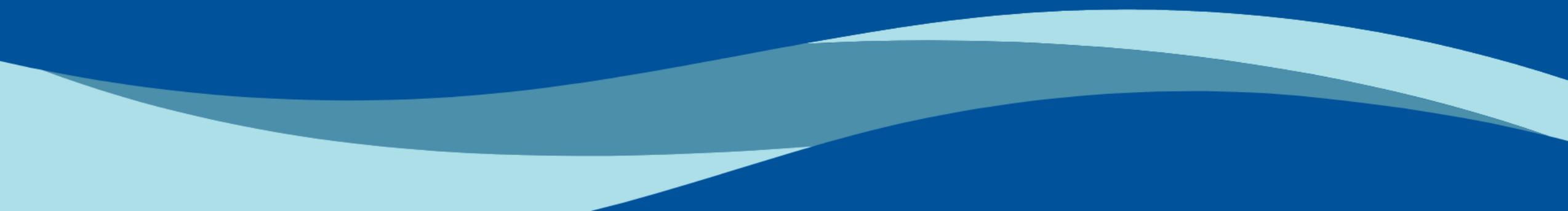


PRESENTATION SUMMARY

- *New Political Landscape, Administration, and EPA*
- *Legislation*
 - *Special District Grant Accessibility Act*
 - *Water System PFAS Liability Protection Act*
 - *CRA Resolution for LCRI Regulation*
- *Regulations*
 - *Regulatory Process Overview*
 - *PFAS – SDWA MCL and CERCLA*
 - *Lead and Copper Rule*
 - *Microbial and Disinfection Byproduct Rule Revisions*
 - *UCMR 6*
- *Judicial Activities*
- *Federal Guidance Documents*



FEDERAL POLITICAL LANDSCAPE, ADMINISTRATION AND EPA

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POLITICAL LANDSCAPE

119th Congress (2025 – 2027)

- Second Session:
- Razor thin margins, again:
 - House: **218** – **213** (4 vacancies)
 - Senate: **53** – **47** (includes 2 Independents)
- Leadership on key committees:
 - Senate Environment and Public Works: Sen. Shelly Moore Capito (R-WV), Sen. Sheldon Whitehouse (D-RI)
 - House Energy and Commerce: Rep. Brett Guthrie (R-KY)

Executive Orders:

EO 14151

Ending Radical and Wasteful Government DEI Programs and Preferencing

EO 14154

Unleashing American Energy

EO 14158

Establishing and Implementing the President's "Department of Government Efficiency"

EO 14192

Unleashing Prosperity Through Deregulation

EO 14210

Implementing the President's "DOGE" Workforce Optimization Initiative

EO 14217

Commencing the Reduction of the Federal Bureaucracy

EO 14219

Ensuring Lawful Governance and Implementing the President's "DOGE" Deregulatory Initiative

EO 14220

Addressing the Threat to National Security From Imports of Copper

EO 14222

Implementing the President's "DOGE" Cost Efficiency Initiative

EO 14238

Continuing the Reduction of the Federal Bureaucracy

EPA ACTIVITIES

- **January 23, 2025** – Climate & Economic Justice Screening Tool decommissioned. Previously used to identify and rank underserved communities in grants and loans, particularly BIL.
- **January 30, 2025** - Lee Zeldin was sworn in at the 17th Administrator of EPA.
- **February 4, 2025** – Administrator Zeldin announces “Powering the Great American Comeback Initiative.” It will guide EPA’s work and consist of 5 pillars:
 1. Clean Air, Land, and Water for Every American;
 2. Restore American Energy Dominance;
 3. Permitting Reform, Cooperative Federalism, and Cross-Agency Partnership;
 4. Make the United States the Artificial Intelligence Capital of the World; and
 5. Protecting and Bringing Back American Auto Jobs.
- **February 14, 2025** – 419 probationary employees terminated; temporarily reinstated on administrative leave pursuant to a District Court temporary restraining order.

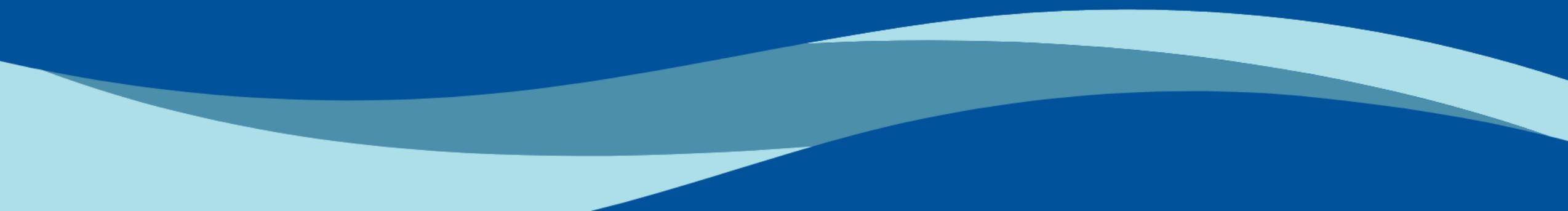
EPA ACTIVITIES

- **February 26, 2025** – President announces EPA will be cutting 65% of EPA spending. EPA explained that the amount would be covered by cutting wasteful grants, reassessing the agency real estate footprint and delivering organizational improvements to the personnel structure.
- **March 10, 2025** – EPA with DOGE announces 4 rounds of cuts totaling more than \$2B.
 - Round 1 - \$20B parked at a financial institution to effort to obligate money without oversight frozen; 10 DEI and environmental justice grants totaling >\$109M; \$500K of media subscriptions
 - Round 2 – 20 grants totaling more than \$60M for DEI and environmental justice programs
 - Round 3 – 21 grants totaling more than \$116M (no detail on grants provided by EPA website)
 - Round 4 – 400 grants across in unnecessary programs totaling \$1.7B
- **March 12, 2025** – Administrator Zeldin announced 31 deregulatory actions as part of Power the Great American Comeback Initiative. Most actions related to power and automotive industries but also included terminating environmental justice and DEI arms of EPA.

EPA ACTIVITIES

- **September 17, 2025** – EPA announced it would retain CERCLA’s hazardous substance designation for PFOA and PFOS, and indicated Congress should pass legislation providing relief from liability for water utilities who received these chemicals but had no role in their manufacture.
- **November 10, 2025** – EPA released a proposal to reduce PFAS reporting by not requiring manufacturers to report PFAS concentrations of 0.1% or lower occurring in mixtures or products.
- **January 22, 2026** – EPA announced it would accelerate its review of the public health risks of fluoride in drinking water.

LEGISLATIVE ACTIONS

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Special District Grant Accessibility Act – HR 7525/S. 4673 (118th Congress)

- Creates a formal definition for “special district” in federal law which would assist in ensuring special districts can receive federal grants.
- In 118th Congress (2023-24), it passed House on May 6th 2024 but no action taken after introduction in Senate.
- Introduced in both House and Senate in first session of 119th Congress. No action.

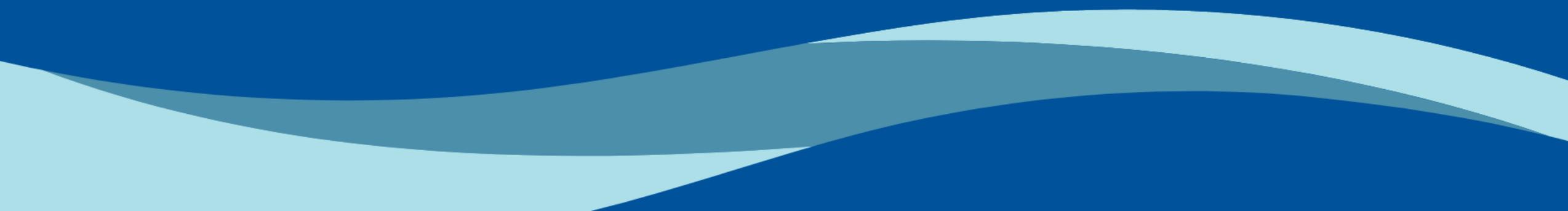
Water Systems PFAS Liability Protection Act – HR 1267 (119th Congress)

- Exempts Water Systems from liability under CERCLA.
- First introduced on April 11, 2024 in House and May 3, 2023 in Senate but no action in either chamber.
- Reintroduced in 119th Congress with bi-partisan support. **Referred to committee- no action**
- The bill provides narrowly tailored liability exemptions for water and wastewater systems to ensure that polluters, not ratepayers, are held financially responsible for PFAS contamination under CERCLA.
- Without explicit liability protections, a water system that removes PFAS from drinking water and disposes of the residuals at a landfill could be treated as a polluter under the law and forced to engage in lengthy litigation and pay for future cleanup of the site.

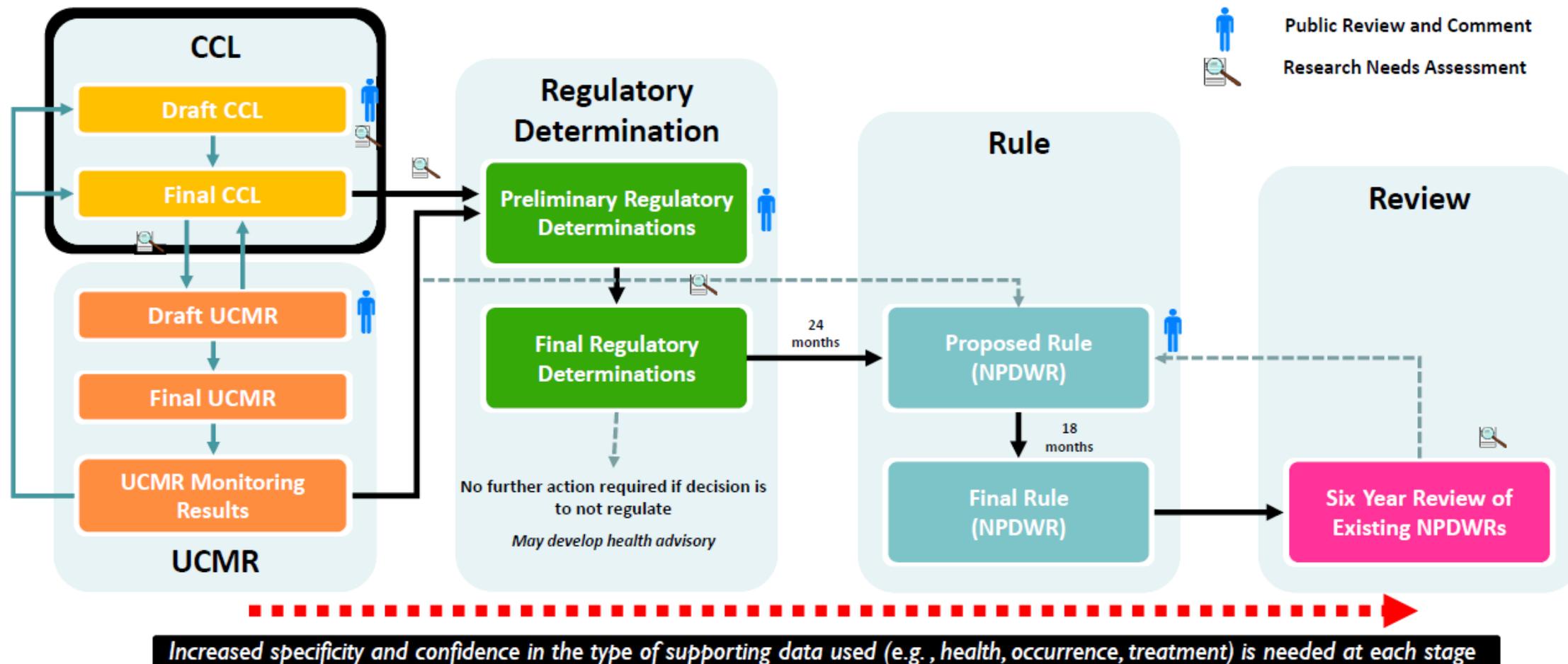
CRA Resolution for LCRI Regulation – HJR 18 (119th Congress)

- Congressional Action under Congressional Review Act (CRA) to void the EPA’s LCRI regulation.
- CRA Resolutions are a legislative maneuver that allows a simple majority of each chamber of Congress to overturn new regulation.
- CRAs only provide for the repeal of an entire regulation. It is not possible to repeal only certain problematic parts of a regulation through a CRA, while leaving other parts intact.
- CRA also bars an agency from ever again promulgating a rule that is “substantially the same” as a repealed rule.
- Referred to House Committee on Energy and Commerce but **no official action taken.**

REGULATIONS

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General Flow of SDWA Regulatory Processes



PFAS

What are Per- and Polyfluorinated Substances (PFAS)?

- Synthetic chemicals used in industry and consumer products since the 1940s.
- Thousands of different PFAS (9,000+), some more widely used and studied than others.
- Used in firefighting foams, coating additives for non-stick cookware (Teflon™), paper and cardboard food packaging (microwave popcorn bags), dental floss, stain-resistant carpets and fabrics, and cleaning products.

PFAS are found in many consumer products due to water- and grease- resistant properties. Examples of its use in products include:



Nonstick Cookware



Takeout Containers



Stain Resistant
Products



Furniture & Textiles



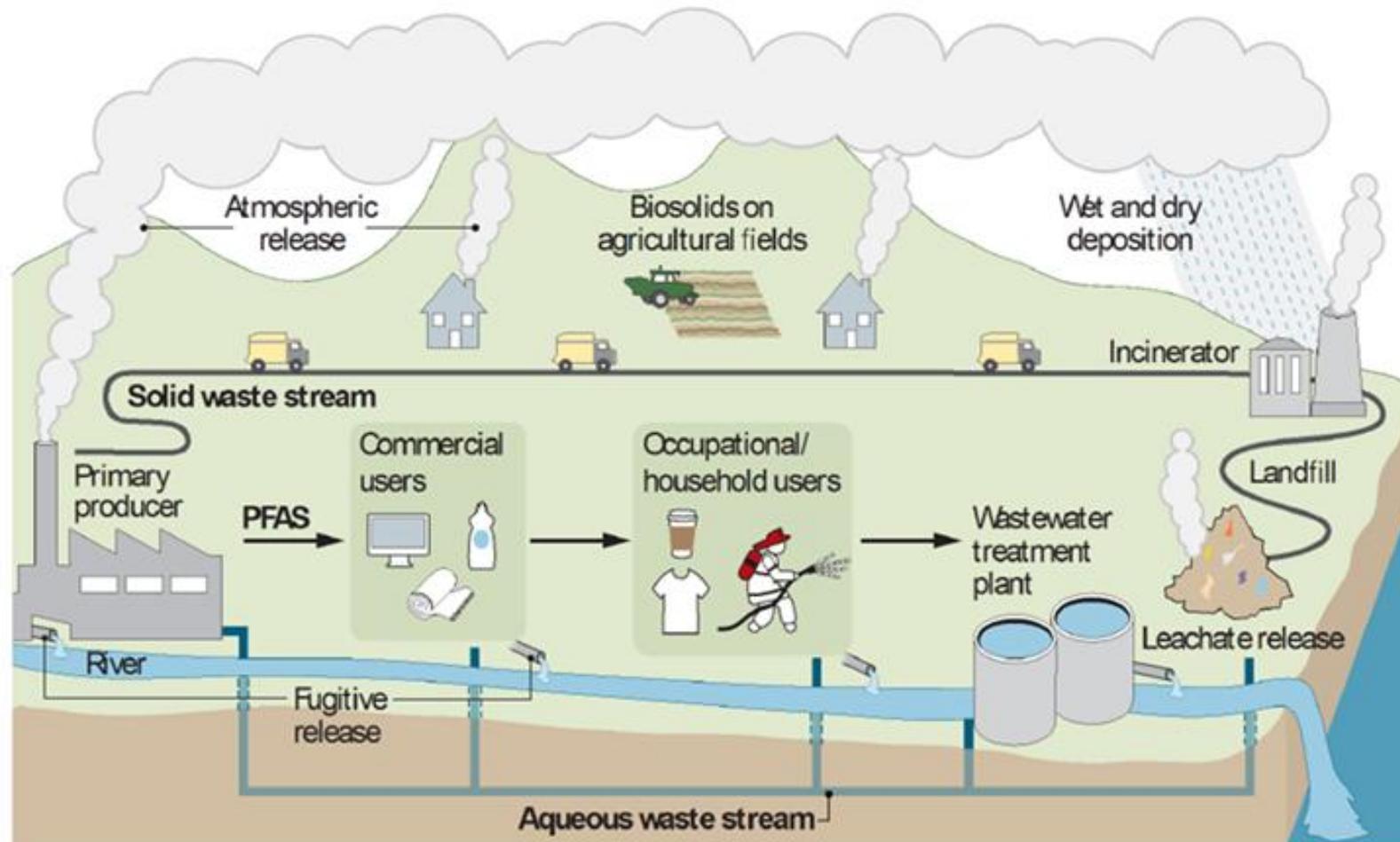
Firefighting Foam



Waterproof Apparel

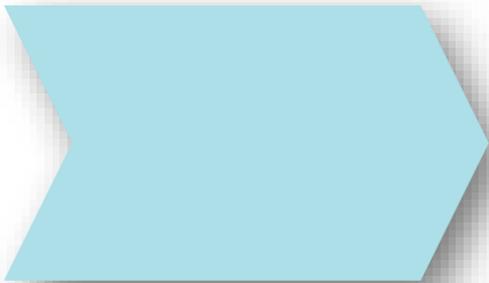
PFAS EXPLAINED

PFAS enter the environment through multiple pathways



REGULATORY HISTORY

May 2, 2012



EPA required collection of finished drinking water samples for 6 PFAS (PFOA, PFOS, PFNA, PFHxS, PFHpA, PFBS) in UCMR3.

May 9, 2016



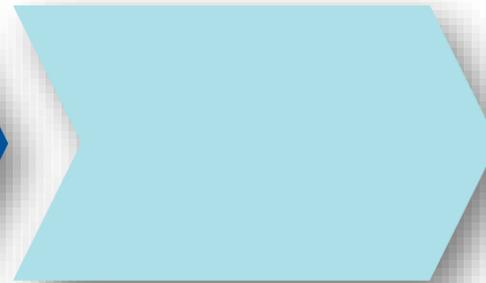
EPA issued Drinking Water Health Advisories for PFOS/PFOA at 70 parts per trillion (ppt).

February 13, 2019



EPA released PFAS Action Plan to address PFAS in drinking water, identify and clean up PFAS contamination, expand monitoring of PFAS in manufacturing, increase scientific research, and exercise effective enforcement tools.

December 27, 2021



EPA published UCMR5 to require sampling of 29 PFAS.

June 15, 2022

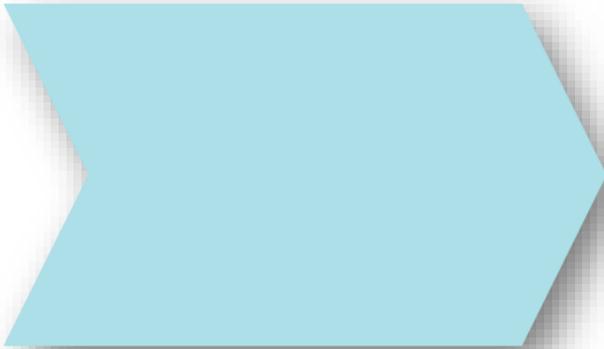


*EPA released health advisory levels (EPA's advised level where no adverse health effects are expected to occur over a lifetime of exposure): PFOA (0.00 ppt), PFOS (0.00 ppt), GenX (10 ppt), PFBS (2,000 ppt)**

*These levels are trace amounts. The ability to test compounds at these minute levels is recent.

REGULATORY HISTORY

August 26, 2022



EPA proposed rule to designate PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

March 14, 2023



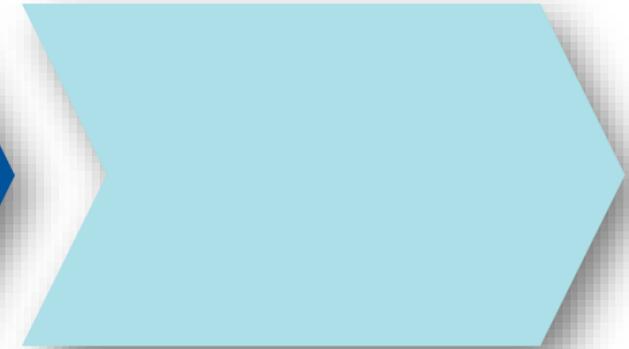
EPA proposed rule to regulate 6 PFAS compounds in drinking water.

April 10, 2024



EPA enacts final rule to regulate 6 PFAS compounds in drinking water.

April 19, 2024



EPA enacts final rule to designate PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA also issued a PFAS Enforcement Discretion and Settlement Policy under CERCLA.

PFAS – NEW RULES

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

- On April 19, 2024, EPA designated perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Safe Drinking Water Act

- On April 10, 2024, EPA enacted a final rule to regulate 6 PFAS compounds in finished drinking water.

PFAS – CERCLA

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

CERCLA stands for the Comprehensive Environmental Response, Compensation, and Liability Act, which is often referred to as Superfund. It's a United States federal law passed in 1980. The main purpose of CERCLA is to address the cleanup of sites contaminated with hazardous substances and pollutants.

What CERCLA entails:



Response Actions



Liability



Cleanup Process



Funding



Community Involvement

PFAS – CERCLA

With hazardous designation of PFOA and PFOS under CERCLA, what relief is there for water utilities that through raw water acquisition have PFOA and PFOS contamination?

- EPA issued PFAS Enforcement Discretion and Settlement Policy Under CERCLA
 - Elaborates that EPA does not intend to pursue water systems.
 - Outlines the basis for the enforcement discretion decision.
- Currently, Congress is considering H.R. 7944, the Water Systems PFAS Liability Protection Act, which will codify protection of water systems from CERCLA liability.

Summary – there are protections, but they are not absolute.

PFAS – SDWA

Regulatory Levels

The regulatory standards apply to producing community & non-transient, non-community water systems.

Compliance is determined by running annual averages at the sampling point at the entry to the distribution system.

Changes from the 2023 proposed rule:

- Individual MCLs set for PFHXS, GenX, & PFNA.
- HI MCL requires presence of two or more PFAS in the mixture.
- Additional flexibility for reduced monitoring based on sample results.

CHEMICAL	MAXIMUM CONTAMINANT LEVEL GOAL (MCLG)	MAXIMUM CONTAMINANT LEVEL (MCL)
PFOA	0	4.0 ppt*
PFOS	0	4.0 ppt
PFHxS	10 ppt	10 ppt
HFPO-DA (GenX Chemicals)	10 ppt	10 ppt
PFNA	10 ppt	10 ppt
Mixture of two or more: PFHXS, HFPO-DA, PFNA, and PFBS.	Hazard Index of 1 (unitless)	Hazard Index of 1 (unitless)

*ppt (parts per trillion) = ng/L



$$\text{Hazard Index (HI)} = \left(\frac{[\text{GenX}_{\text{water}}]}{[10 \text{ ppt}]} \right) + \left(\frac{[\text{PFBS}_{\text{water}}]}{[2000 \text{ ppt}]} \right) + \left(\frac{[\text{PFNA}_{\text{water}}]}{[10 \text{ ppt}]} \right) + \left(\frac{[\text{PFHxS}_{\text{water}}]}{[10 \text{ ppt}]} \right)$$

RUNNING ANNUAL AVERAGE

Equation:

$$\text{Hazard Index (1 unitless)} = \left(\frac{[\text{HFPO - DA}_{\text{ppt}}]}{[10 \text{ ppt}]} \right) + \left(\frac{[\text{PFBS}_{\text{ppt}}]}{[2000 \text{ ppt}]} \right) + \left(\frac{[\text{PFNA}_{\text{ppt}}]}{[10 \text{ ppt}]} \right) + \left(\frac{[\text{PFHxS}_{\text{ppt}}]}{[10 \text{ ppt}]} \right)$$

Chemical	Quarter 1		Quarter 2		Quarter 3		Quarter 4	
	Sample	Q1 Formula	Sample	Q2 Formula	Sample	Q3 Formula	Sample	Q4 Formula
HFPO-DA (ppt)	5 ppt	5 ppt/10 ppt = 0.5	5 ppt	5 ppt/10 ppt = 0.5	Not detected	0 ppt/10 ppt = 0	Not detected	0 ppt/10 ppt = 0
PFBS (ppt)	5 ppt	5 ppt/2000 ppt = 0.0025	5 ppt	5 ppt/2000 ppt = 0.0025	Not detected	0 ppt/2000 ppt = 0	5 ppt	5 ppt/2000 ppt = 0.0025
PFNA (ppt)	Not detected	0 ppt/10 ppt = 0	Not detected	0 ppt/10 ppt = 0	4 ppt	4 ppt /10 ppt = 0.4	Not detected	0 ppt/10 ppt = 0
PFHxS (ppt)	3 ppt	3 ppt/10 ppt = 0.3	Not detected	0 ppt/10 ppt = 0	4 ppt	4 ppt /10 ppt = 0.4	6 ppt	6 ppt/10 ppt = 0.6
Hazard Index (unitless)	0.5 + 0.0025 + 0 + 0.3 = 0.8025		0.5 + 0.0025 + 0 + 0 = 0.5025		0 + 0 + 0.4 + 0.4 = 0.8		0 + 0.0025 + 0 + 0.6 = 0.6025	
<p style="text-align: center;">Running Annual Average = $\left(\frac{0.8025 + 0.5025 + 0.8 + 0.6025}{4} \right) = 0.6769 = 0.7$</p> <p>The Hazard Index Running Annual Average result is 0.7 (rounded to one significant digit). Because this result does not exceed 1, the water system has not exceeded the MCL. Therefore, no violation of the Hazard Index MCL has occurred.</p>								

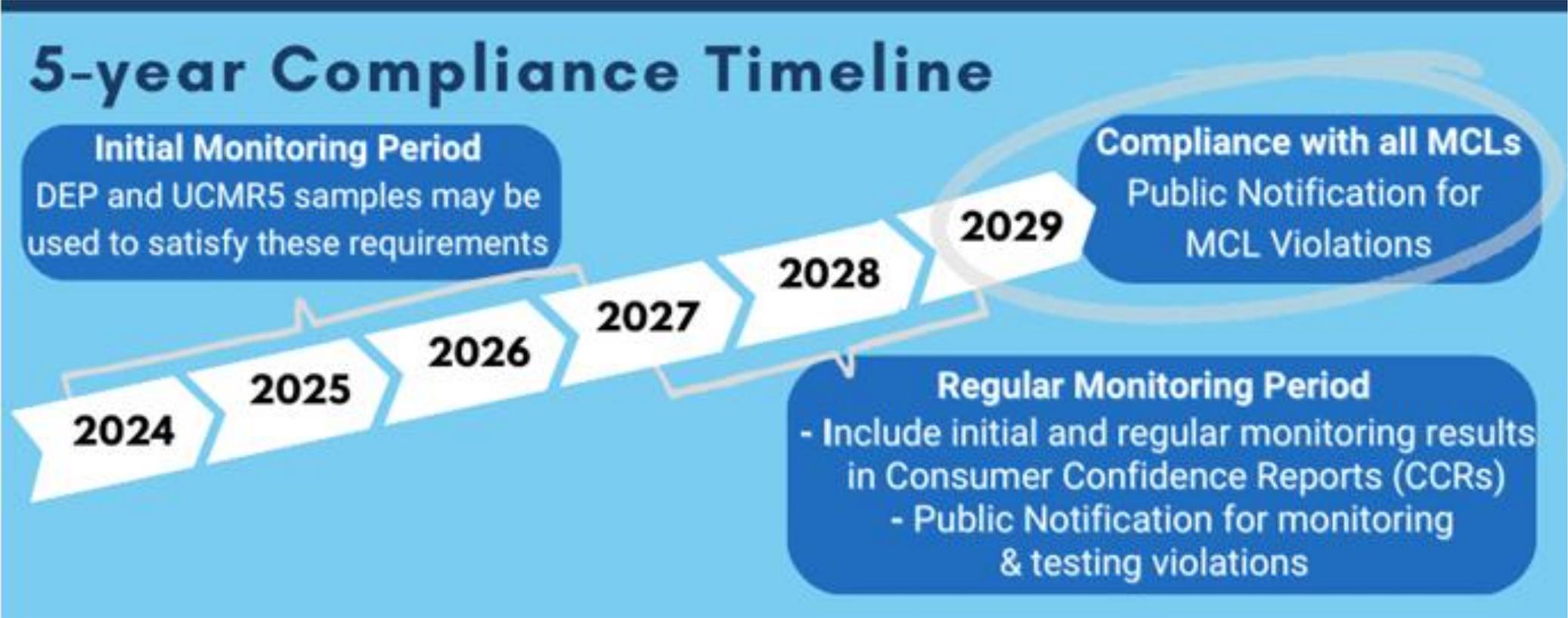
INITIAL MONITORING

- The final rule requires that all community water systems and non-transient, non-community water systems complete initial monitoring within three years after the date of the final rule promulgation. The monitoring must be conducted at all entry points to the distribution system. Based on their system size and source water at an entry point to the distribution system, systems must conduct initial monitoring either twice or quarterly during a 12-month period as follows:
 - **Surface water systems.** All surface water systems are required to initially monitor quarterly within a 12-month period. Samples are required to be collected 2 to 4 months apart.
 - **Groundwater systems serving greater than 10,000 customers.** Initially, these systems are required to monitor quarterly within a 12-month period. Samples are required to be collected 2 to 4 months apart.
 - **Groundwater systems serving 10,000 or fewer customers.** EPA is requiring that these systems initially only monitor twice within a 12-month period, with each sample collected 5 to 7 months apart.
- In order to reduce costs for systems, primacy agencies can allow systems to use previously collected monitoring data to satisfy some or all of the initial monitoring requirements, if the sampling was conducted using EPA Methods 533 or 537.1 as part of UCMR 5 or other state-level or other appropriate monitoring campaigns.

ONGOING COMPLIANCE MONITORING

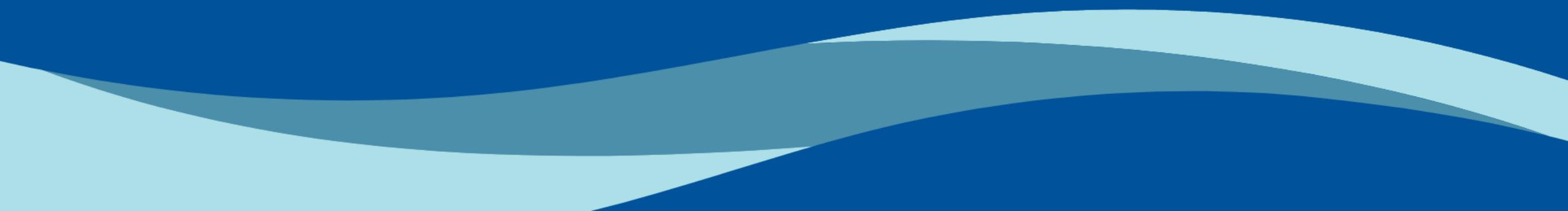
- Three years following the date of rule promulgation, community water systems and non-transient, non-community water systems are required to begin quarterly compliance monitoring at all entry points.
- Based on initial monitoring, primacy agencies have the authority to reduce compliance monitoring frequency at a systems' applicable entry points to once every three years (for all sizes of systems and water source types) if initial monitoring results are below rule trigger levels for all regulated PFAS.
- The trigger levels are used for establishing appropriate monitoring frequency. For certain regulated PFAS, they are set at a defined threshold that shows if these PFAS are present or absent. The trigger levels are set at one-half of the MCLs for regulated PFAS (i.e., 2.0 ppt for PFOA and PFOS, 5 ppt for PFHxS, PFNA, and GenX Chemicals) and one-half of the Hazard Index MCL (0.5 unitless) for mixtures of PFHxS, GenX Chemicals, PFNA, and/or PFBS.
- Systems with multiple entry points to the distribution system may establish different compliance monitoring schedules for each entry point depending on their monitoring results.

PFAS –SDWA TIMELINE



PFAS & OTHER CONTAMINANTS

PART 2

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BACKGROUND –

Lead & Copper Rule

- EPA authorized to establish standards under the *Safe Drinking Water Act*.
- Lead and Copper Rule began in 1991.
- Maximum Contaminant Level Goal (MCLG) for lead: 0 $\mu\text{g}/\text{L}$
- Test water at the tap in homes that have lead service lines or copper with lead solder.
- Action Level for lead: 15 $\mu\text{g}/\text{L}$
 - >AL - Install corrosion control treatment; and
 - Replace lead service lines at a rate of 7%



BACKGROUND –

Lead & Copper Rule Revisions (LCRR)

LCRR promulgated on January 15, 2021 and created new requirements **THAT BECAME EFFECTIVE OCTOBER 16, 2024:**



Lead Service Line
Inventory



Tap Sampling



Trigger Level



Corrosion Control
Treatment



Lead Service Line
Replacement



Schools/Child Care
Facilities

BACKGROUND –

Lead & Copper Rule Improvements (LCRI)

Final Rule October 2024, then 3 years to comply.

Lead and Copper Rule Improvements major areas of change:



Tap Sampling



Communications



Inventory



Lead Service Line
Replacement

PROPOSED LCRI COMPLIANCE



Tap Sampling

- Reduce action level from 15 to 10 ug/L
- Requires use of 100% lead service lines in sample pool
- Use higher of 1st and 5th liter samples

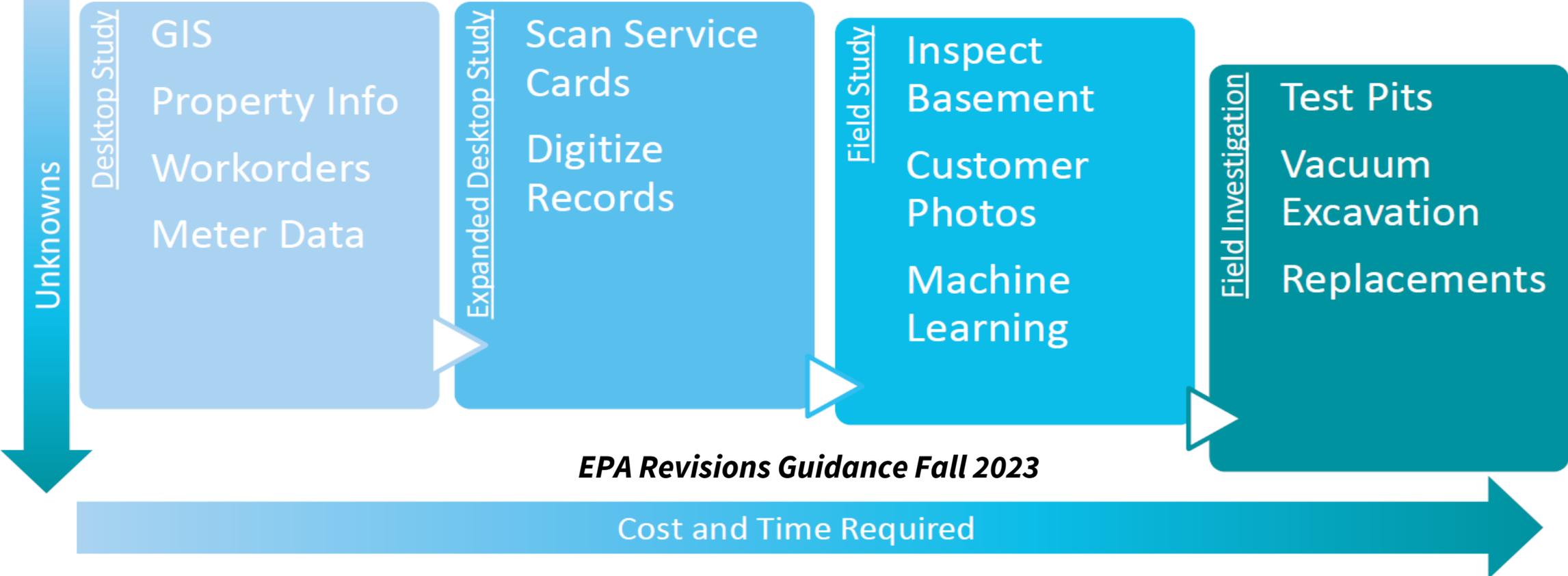


Communications

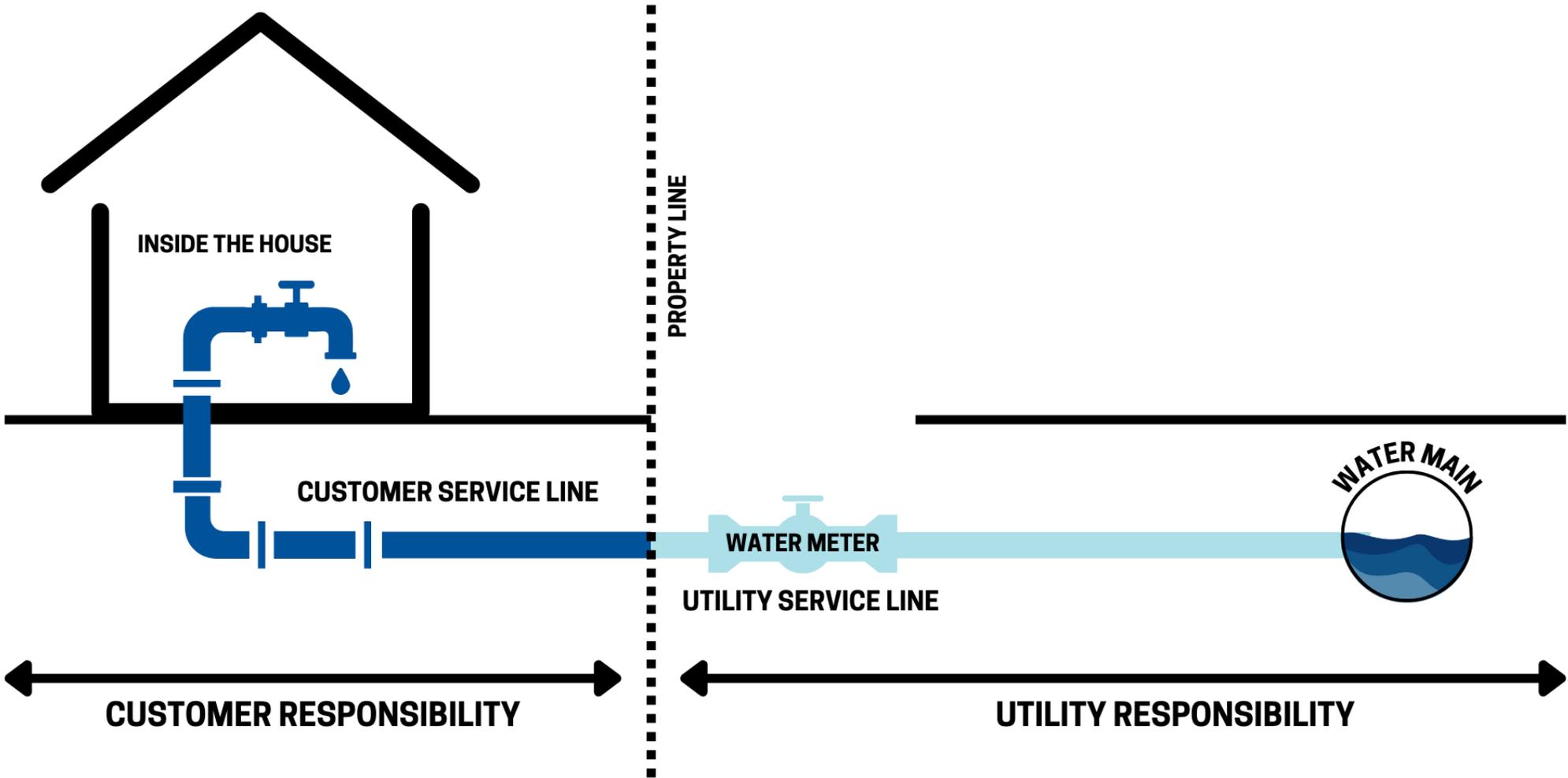
- Requires several new communications and outreach efforts for various compliance levels
 - *Example: 3-calender day notification of lead testing results.*

INVENTORY DEVELOPMENT PROCESS

Inventory Submitted October 16, 2024



TYPICAL SERVICE LINE CONFIGURATION - EXTERIOR METERS



LCRI RULE COMPLIANCE OUTLOOK

Lead Service Line Removal

- Remove all lead service lines within 10 years *in control of utility*;
- Must fully replace 10% annually on three-year rolling average.

Outlook: Water Districts are not “in control” of private service lines

*Kentucky Administrative Regulation, 807 KAR 5:066 Section 12 lays **ownership of service lines past the meter and meter box with the customer**. After the point where NKWD’s ownership ends, **NKWD**, as a special purpose government entity whose statutory purpose under Kentucky Revised Statute 74.012 **is limited to furnishing public water supply**, is prohibited from seizing ownership of the service line beyond that point in accordance with Kentucky Constitution Sections 10, 13 and 242.*

In limited circumstances, NKWD may arguably replace private lead service lines with consent as an implied power when reasonably incidental and indispensable to its power of furnishing a public water supply (i.e., as part of water main replacement project). See e.g., Commonwealth v. Fayette County, 39 S.W.2d 962 (Ky. 1931); OAG 84-148 (water district could probably require hook up in interest of public health, safety and welfare).

Consent only applicable in limited circumstances, but in any case, funding is open question . . .

FUNDING OPTIONS

- **State or Local** – No additional monies currently expected from grants by Legislature.
- **Customer Funded Directly** – Customer either pays:
 - (1) lump sum of costs for replacement at or before time of replacement; or
 - (2) through a surcharge program similar to NKWD's subdistricts (if PSC would approve such a program).
- **Utility Through Rates** – Utility pays and recoups through rates.
Legal Opinion: PSC would approve for utility owned portion but may not approve recovery of rates for private side.

278.170 *Discrimination as to rates or service -- Free or reduced rate services.*

- (1) *No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.*

278.030 *Rates, classifications and service of utilities to be just and reasonable -- Service to be adequate -- Utilities prohibited from energizing power to electrical service where seal is not present.*

- (1) *Every utility may demand, collect and receive fair, just and reasonable rates for the services rendered or to be rendered by it to any person.*

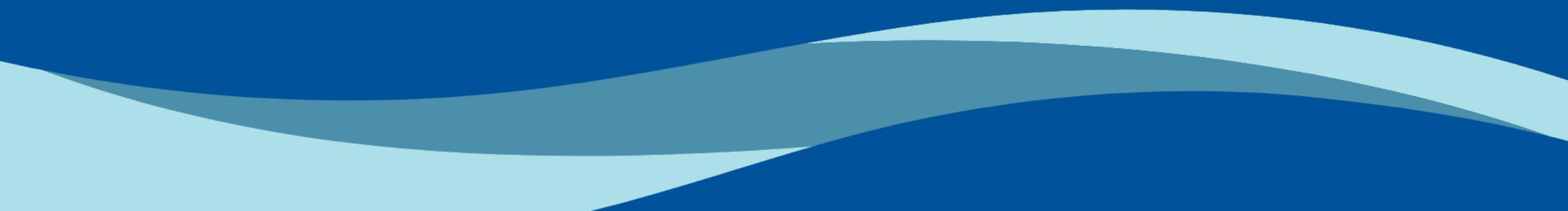
Microbial and Disinfection Byproduct Rule Revisions

- Creates a formal definition for “special district” in federal law which would assist in ensuring special districts can receive federal grants.
- In 118th Congress (2023-24), it passed House on May 6th 2024 but no action taken after introduction in Senate.
- First Session of 119th Congress, bill was introduced April 9, 2025 but no action taken.

UCMR 6

- EPA uses the Unregulated Contaminant Monitoring Rule (UCMR) to collect data for contaminants that are suspected to be present in drinking water and do not have health-based standards set under the Safe Drinking Water Act (SDWA).
- Occurrence data are collected through UCMR to support the EPA's determination of whether to regulate particular contaminants in the interest of protecting public health.
- EPA pays for the analysis of all samples from public water systems serving 10,000 or fewer people that it selects for sampling.
- Current multistate petition to include “microplastics.”

JUDICIAL ACTIVITIES

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PFAS LITIGATION - STATUS

AWWA v. EPA, U.S. Court of Appeals, D.C. Cir., Case 24-1188

- On June 7, 2024 AWWA and AMWA filed a petition for a judicial review of the EPA's PFAS Drinking Water Rule on the basis the Hazard Index was arbitrary and capricious, the rulemaking process violated the Administrative Procedures Act and the rule cost analysis was arbitrary.
- Briefing began in October 2024 and originally scheduled to be concluded in March 2025.
- However, in May 2025, EPA announced anticipated changes to the PFAS Drinking Water Rule. EPA stated its intent to retain the MCLs for PFOA and PFOS but rescind the regulations and reconsider regulatory determinations for PFHxS, PFNA, HFPO-DA, and the Hazard Index standard for mixtures of these three PFAS and PFBS. As part of this action, EPA described extending the PFOA and PFOS MCL compliance deadlines an additional two years, from 2029 to 2031. The agency also announced its intent to apply SDWA exemptions to PFAS rule
- On September 11, 2025, EPA filed a motion to partial vacatour of the rule. Responses were filed on September 26, 2025.
- On October 3, 2025, the Court put the matter into abeyance due to government shutdown.

PFAS LITIGATION - STATUS

Chamber of Commerce of the U.S.A. v. EPA, U.S. Court of Appeals, D.C. Cir., Case 24-1193

- This litigation is the regulatory challenge to designating PFOA and PFOS as CERCLA Hazardous Substances.
- EPA issued a press release saying legislative action was needed to hold polluters accountable, but provide “passive receivers” (water utilities) liability protections.
- Petitioner Joint Reply Briefs were due November 14, 2025.
- Final Briefs were due December 5, 2025.

LEAD AND COPPER CURRENT STATUS

AWWA v. EPA, U.S. Court of Appeals, D.C. Cir., Case 24-1376

- On December 13, 2024, AWWA filed a petition for judicial review of the EPA's LCRI on the basis that:
 - the replacement of service lines on private property not owned by the water system violated the SDWA,
 - the 10-year replacement time frame was arbitrary and capricious, and
 - the rule costs analysis was arbitrary and capricious.
- NKWD provided an affidavit to support AWWA's standing to bring legal challenge.
- Briefing was scheduled to conclude in January 2026.

WV Rivers Coalition, Inc. v. The Chemours Company FC, LLC, U.S. South Dist of WV, Case 24-CV-00701

- On December 5, 2024, West Virginia Rivers Coalition, a nonprofit organized to promote the overall health of WV waters filed a citizen suit against Chemours for violation of the Clean Water Act NPDES permit, and 2023 Consent Order.
- On August 22, 2025, the Court granted a stay in the proceedings pending an appeal of a similar matter that Chemours is defending in the fourth Circuit. It is unclear when that appeal will resolve but it could easily take a year.

PFAS MULTIDISTRICT LITIGATION SUMMARY

- The PFAS Multidistrict Litigation (a special type of proceeding used for judicial efficiency or MDL for short) started in December 2018 and is currently home to over 15,000 cases.
- Cases that involve PFAS-containing aqueous film-forming foam (AFFF) are primarily litigated on the consolidated docket although many claimants, such as NKWD, have expanded to all PFAS related claims, directly and indirectly.

There are four categories of cases that are currently on the MDL:

- (1) Water Utilities seeking costs of necessary testing and remediation technology for PFAS;
- (2) States, for environmental PFAS pollution (broadly, not limited to only drinking water issues) within state borders seeking monetary relief for necessary testing, natural resource damages, and remediation;
- (3) Individual Persons for personal injury claims and medical monitoring brought alleging that PFAS in the AFFF products used by the fire fighters led to an injury; and
- (4) Property damage claims of individuals, governmental entities and others for PFAS impacts to real property, including but not limited to, private wells, airports, wastewater systems, and fire training locations.

PFAS problem is bigger than Defendants and what can be recovered from the litigation. This is only one piece to the solution of PFAS problem which will likely also include funding from various government entities and our rate payers.

MULTIDISTRICT LITIGATION PROCESS

1

Civil lawsuits with common questions of fact are filed in at least two federal district courts in different judicial districts.

2

An involved party or the US Judicial Panel on Multidistrict Litigation (JPML) moves to centralize cases into a multidistrict litigation (MDL) proceeding.

3

The panel votes to approve or disapprove the creation of an MDL.

4

Venue and judge of the multidistrict litigation selected by JPML.

5

The panel transfers cases to the MDL or cases are filed directly. Cases can be continually added during the MDL's lifecycle.

6

Consolidated pretrial procedures such as discovery, motions, and hearings take place.

OPTIONS



The MDL judge dismisses the cases because of a legal problem (Such as preemption or failure to state a claim).

Settlement talks occur and can lead to global resolutions.

9

JPML closes MDL once all cases are settled or remanded to the originating courts.

8

Occasionally cases are returned to their originating court for trial.

7

One or more lawsuits are chosen as bellwether cases and proceed to trial.

PFAS LITIGATION



PFAS MANUFACTURERS

Defendants include:

**3M Company (F/K/A
Minnesota Mining
and Manufacturing,
Co.)**

AGC Chemicals
Americas Inc.

Archroma U.S. Inc.

Arkema Inc.

Buckeye Fire
Equipment Company

Chemguard, Inc.

Corteva Inc.

**DuPont De Nemours,
Inc.**

Dynax Corporation

**EIDP, Inc. (F/K/A Du
Pont De Nemours
and Company)**

Kidde-Fenwell (F/K/A
National Foam, Inc.)

**The Chemours
Company L.L.C.
(F/K/A The
Chemours Company)**

Tyco Fire Products LP
(successor-in-interest
to the Ansul Co.)

And other unknown defendants TBD.

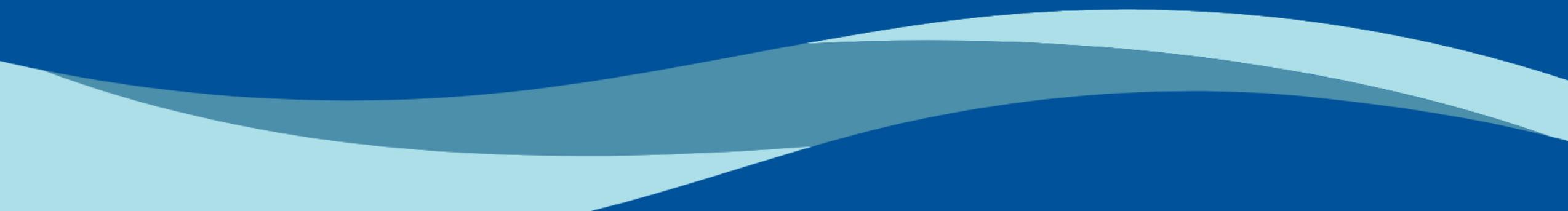
CURRENT STATUS

- Global Settlements Claims forms for 3M and Dupont/Chemours currently being processed.
 - OCWD has received an installment of its PFAS Settlement from this litigation.

SETTLEMENT AMOUNT DETERMINATION

- Proceeds to each utility determined by the participating utility's score as a percentage of total of all participating utilities scores.
- **Scores arrived at through complex formula** primarily based on flow rates, prior PFAS test results, and EPA estimated capital/O&M costs.
- Each utility may also be eligible for the following enhancement adjustments:
 - Litigation Bump – for those who filed litigation before the Settlement Dates
 - Bellwether Bump – for the utilities who served as Bellwether Plaintiffs
 - Regulatory Bump – for those whose PFAS contamination exceeds certain state or proposed federal maximum contaminant levels.
- Exact numbers cannot be determined until actual claim forms are submitted and reviewed.

FEDERAL GUIDANCE MATERIALS

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NEW FEDERAL GUIDANCE DOCUMENTS

Links below to material that may assist:

- EPA released an update to its SRF Portal in hopes of better communicating the impact of federal water infrastructure funding to Congress and public at large. It can be found at: https://sdwis.epa.gov/ords/sfdw_pub/r/sfdw/owsrf_public/home.
- EPA released two geographic information system (GIS) interfaces that present water system area boundaries and link the visual presentation to community water system compliance information. Some boundaries are based on boundary data submitted to state agencies, while others are algorithmic predictions. The interfaces include the [Community Water System Service Area Boundaries](#) and the [EJScreen tool](#).
- The EPA's long-standing Effective Utility Management (EUM) collaborative program with several water associations released an updated primer reflecting concepts that may have changed since the last update 8 years ago. It can be found at: <https://www.epa.gov/system/files/documents/2024-08/eum-primer.pdf>.
- The Cybersecurity and Infrastructure Security Agency (CISA) published a joint report titled "Modern Approaches to Network Access Security" which provides best practices for organizations to move towards more robust security solutions for greater visibility on network access. It can be found at: <https://www.cisa.gov/resources-tools/resources/modern-approaches-network-access-security>.
- CISA released a new resource entitled, Resources for Onboarding and Employment Screening. This resource, designed for critical infrastructure organizational leaders, provides a simple checklist that organizations can utilize as part of their background check processes for new hires. It can be found at: <https://www.cisa.gov/resources-tools/resources/resources-onboarding-and-employment-screening-fact-sheet>.
- FEMA updated the Hazard Mitigation Assistance Guide to make it more user-friendly. The update consolidates information and eligibility requirements for projects addressing air quality, drought, extreme temperatures, wildfire and wind. It also reflects recent policy changes to simplify program delivery. It can be found at: <https://www.fema.gov/grants/mitigation/hazard-mitigation-assistance-guidance>.



QUESTIONS?