

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF APPALACHIAN WASTE)	
CONTROL, INC., FOR AUTHORITY TO ACQUIRE)	
AND OPERATE THE SEWAGE TREATMENT PLANT)	CASE NO.
LOCATED AT THE RICHMOND HILLS ESTATE)	10141
SUBDIVISION, JOHNSON COUNTY, KENTUCKY)	
AND FOR APPROVAL OF RATES THEREFOR)	

O R D E R

On January 25, 1988, Appalachian Waste Control, Inc. ("Appalachian") applied for a Certificate of Public Convenience and Necessity to operate the Richmond Hills Estate Subdivision Sewage Treatment Plant ("Richmond Hills Sewage Plant"), for approval of the transfer of ownership of that plant from First Commonwealth Bank of Prestonsburg, and for approval of initial rates for service.

After reviewing the evidence of record and being otherwise sufficiently advised, the Commission finds that Richmond Hills Sewage Plant is a facility used in connection with the treatment of sewage for the public for compensation and is located in the Richmond Hills Estate Subdivision of Johnson County, Kentucky. Approximately 16 residential lots are currently contained in the Richmond Hills Estates Subdivision. On 12 of these lots, residential units have been built and are currently occupied. Richmond Hills Sewage Plant has a design capacity of 20,000

gallons and is a Class I Wastewater System. 401 KAR 5:010, Section 9.

Eastern Kentucky Homes, Inc. and/or F. Ray Payne built Richmond Hills Sewage Plant prior to 1984. Neither a Certificate of Public Convenience and Necessity nor a Kentucky Pollutant Discharge Elimination System ("KPDES") permit was obtained for Richmond Hills Sewage Plant prior to its construction or operation. Richmond Hills Sewage Plant was operated briefly prior to 1984. It then ceased operations and fell into disrepair. On June 11, 1984, First Commonwealth Bank obtained legal title to the Richmond Hills Sewage Plant and the land upon which it is located through a forced sale to satisfy a judgment against Eastern Kentucky Homes, Inc. Prior to this filing of Appalachian, First Commonwealth Bank made no effort to maintain, operate, or repair the Richmond Hills Sewage Plant.

On June 6, 1988, First Commonwealth Bank filed a motion to intervene in this proceeding and an application proposing to transfer legal title of the Richmond Hills Sewage Plant to Appalachian. First Commonwealth Bank was granted leave to intervene by Commission Order dated June 16, 1988. After extensive discovery, First Commonwealth Bank, Appalachian, and Commission Staff entered into an agreement filed with the Commission on February 1, 1989. This agreement, among other things, states that First Commonwealth Bank, Appalachian, and the Natural Resources and Environmental Protection Cabinet have entered into an agreement whereby First Commonwealth Bank agreed

to expend the monies necessary to restore the sewage treatment facility, its lift stations, and collection lines to operating condition and to compliance with applicable laws and regulations of the Commonwealth of Kentucky. This agreement also states that Appalachian has conditioned its acceptance of ownership of the sewage treatment facility upon Commission approval of a proposed surcharge and that Commission Staff's intentions were to recommend to the Commission denial of the proposed surcharge. Paragraph 2 of the agreement specifically states:

2. When the sewage treatment facility has been restored to operating condition and to compliance with the provisions of KRS Chapter 224 and the regulations promulgated thereto, the Commission Staff shall advise the Commission that Appalachian Waste Control has the requisite abilities to provide reasonable utility service and shall recommend to the Commission that the transfer of ownership of the facility should be approved.

On June 21, 1990, Commission Staff inspected the sewage treatment plant located in Richmond Hills Estates and found that there were no violations of Commission regulations. On August 28, 1990, the Natural Resources and Environmental Protection Cabinet reported that an inspection of the sewage treatment plant at Richmond Hills Estates determined that the plant is well maintained and in compliance with Cabinet regulations. Commission Staff has complied with the agreement and recommended to the Commission that the transfer of ownership be approved. The Commission disagrees with Staff's recommendation for the following reasons.

Appalachian is a corporation incorporated under the laws of Kentucky. Its sole stockholders and corporate officers are Gary Keith Fairchild and David Bowling. On November 10, 1989, the corporate charter of Appalachian was administratively dissolved by the Kentucky Secretary of State for failing to file its annual report. Additionally, Appalachian currently owns and operates Paradise Valley Sewage Treatment Plant, a sewage treatment facility located in Hager Hill, Kentucky. This plant was inspected by Commission Staff on July 30, 1990 and December 12, 1990 and found to be out of compliance with Commission regulations. The Commission currently has a pending show cause proceeding against Appalachian as a result of this noncompliance.¹ The Commission therefore finds that Appalachian does not have the managerial ability to provide reasonable service at this time. Additionally, the dissolution of the corporate charter makes the transfer to the corporation impossible.

IT IS THEREFORE ORDERED that:

1. The application of Appalachian for authority to acquire and operate the sewage treatment plant located at Richmond Hills Estate Subdivision and for approval of rates is hereby denied without prejudice.

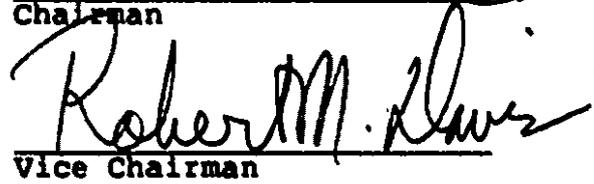
2. The application of First Commonwealth Bank to transfer legal title of the Richmond Hills Sewage Plant to Appalachian is hereby denied without prejudice.

¹ Case No. 90-392, Investigation of Appalachian Waste Control, Inc.; Keith Fairchild: Alleged Violation of KRS Chapter 278.

Done at Frankfort, Kentucky, this 2nd day of January, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director