

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF AIRVIEW
ESTATES, INC.

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) CASE NO. 98-129
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)

ALLEGED FAILURE TO COMPLY WITH
COMMISSION REGULATION 807 KAR
5:071, SECTION 7(1)

O R D E R

A Commission utility investigator inspected Airview Estates, Inc. ("Airview") for compliance with Commission statutes and regulations on January 14, 1997 and found eight deficiencies relating to the sewer system. The findings of that inspection were reduced to a report and sent to Airview on January 23, 1997. Airview was directed to respond to the deficiencies noted in the report no later than February 24, 1997. Despite the directive to respond, no response was received by the Commission. Airview was reinspected on January 13, 1998, with that inspection revealing that only two of the original eight deficiencies had been corrected.

The Commission, on its own motion, instituted show cause proceedings by Order dated March 16, 1998 directing Fred Schlatter to appear on behalf of Airview. A hearing was scheduled, and so held, on May 27, 1998 at 9:00 a.m. Mr. Schlatter, president of Airview, and Lawrence Smither appeared to testify on behalf of Airview and Larry Updike, a Staff utility investigator, appeared to testify for the Commission.

Mr. Updike testified that he inspected Airview on January 14, 1997 and on January 13, 1998 and prepared written reports for each inspection. He testified that during his first inspection several deficiencies were identified relating to plant maintenance.¹ He testified that while he noted some corrections on his second inspection, some repeat violations were found.²

Mr. Schlatter took the stand but stated that he was unable to testify as to why the utility had not responded to the Commission as directed and likewise unable to testify as to whether the utility had made the corrections. He stated that he would prefer to have the questions answered by Lawrence Smither.³ Mr. Smither testified that while he does not act as operator at the site, he does some managing of the utility.⁴ Mr. Smither testified that he keeps abreast of the day-to-day operation of the plant by communicating with the operator and that it is his duty to respond to the Public Service Commission inspection reports when Mr. Schlatter makes such request of him.⁵ Mr. Smither went on to testify that he was made aware of the inspection report dated January 23, 1997, having received it from Mr. Schlatter, but believed there was simply a

¹ A complete listing of the plant's deficiencies is contained in Mr. Updike's Inspection Report. Staff Exhibit 1.

² Transcript ("Tr."), May 27, 1998, at 12-14.

³ Tr. at 17-22.

⁴ Tr. at 28.

⁵ Tr. at 30.

misunderstanding as to who would respond to the Commission. He stated that he believed an accountant for the utility would respond.⁶

Mr. Smither then proceeded to address each deficiency found by the Commission investigator. He testified that he believed that two of the violations, cutting the grass and checking for muskrat damage, were taken care of by Mr. Schlatter, but he did not testify as to when they were corrected. As to the remaining deficiencies, he testified that he did not know the exact dates all the corrections were made, but believed all deficiencies cited in the January 23, 1997 report had been corrected with one exception, dredging the lagoon. He stated that removing the solids from the lagoon would cost thousands of dollars, and Airview simply did not have the resources.⁷

The issue before the Commission is whether Airview should be penalized pursuant to KRS 278.990 for failing to ensure that the plant was operated in accordance with 807 KAR 5:071, Section 7, which requires that sewage treatment facilities be "operated in accordance with accepted good engineering practices."

KRS 278.990(1) provides in pertinent part as follows:

Any officer, agent, or employee of a utility, as defined by KRS 278.010, and any other person who willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, . . . shall be subject to either a civil penalty to be assessed by the commission not to exceed two thousand five hundred dollars (\$2,500) for each offense or a criminal penalty of imprisonment for not more than six (6) months, or both. If any utility willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, . . . the utility shall be subject to a civil penalty to be assessed by the commission for each

⁶ Tr. at 31.

⁷ Tr. at 34-38.

offense not less than twenty-five dollars (\$25.00) nor more than two thousand five hundred dollars (\$2,500). Each act, omission, or failure by an officer, agent, or other person acting for or employed by a utility and acting within the scope of his employment shall be deemed to be the act, omission, or failure of the utility.

After examining the evidence of record and being advised, the Commission finds that:

1. Fred Schlatter is the owner of Airview, a facility which treats sewage for the public for compensation. The Commission has jurisdiction over Airview pursuant to the provisions of KRS 278.010 and 278.040.

2. Airview received the inspection report dated January 23, 1997.

3. The inspection report dated January 23, 1997 cited improvements and corrections necessary to bring the utility's facilities into compliance with KRS Chapter 278 and Commission regulations.

4. By the utility's own admission it was October, eight or nine months after the inspection report was mailed to the utility, before the leak in the No. 2 air drop valve was repaired and the No. 10 and No. 11 diffusers were pulled and cleaned.⁸ Airview's failure to correct the deficiencies in a timely fashion clearly shows that Airview has not been maintained and operated in accordance with accepted good engineering practices. Poor maintenance adversely affects the quality of service provided by Airview and affects public health and safety.

5. The inspection report of January 23, 1997 required that the lagoon be closely monitored and dredged before any overloading occurred. To date Airview has

⁸ Tr. at 35.

not dredged the lagoon and, therefore, must continue to closely monitor it. Airview appears to be meeting the requirements of the Natural Resources and Environmental Protection Cabinet.⁹

6. Airview's failure to correct the above deficiencies in a timely manner and maintain and operate the utility in accordance with accepted engineering practices is a violation of Commission Regulation 807 KAR 5:071. Airview has willfully violated Commission regulations and the above-mentioned provisions of KRS Chapter 278.

7. Pursuant to KRS 278.990 a penalty of not less than \$25, nor more than \$2,500, is required to be assessed against Airview.

IT IS THEREFORE ORDERED that:

1. Airview is ordered to closely monitor the lagoon for overloading conditions. Before overloading occurs, the lagoon shall be dredged.

2. Airview is assessed a penalty of \$500.00 for the willful failure to operate the sewage treatment plant in accordance with accepted good engineering practices as required by 807 KAR 5:071, Section 7.

3. Airview shall pay the assessed penalty within 20 days of the date of this Order. Payment shall be made by certified check or money order made payable to "Treasurer, Commonwealth of Kentucky" and shall be mailed or delivered to Office of General Counsel, Public Service Commission of Kentucky, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602.

⁹ Tr. at 23.

Done at Frankfort, Kentucky, this 21st day of December, 1998.

PUBLIC SERVICE COMMISSION

B. J. Helton
Chairman

[Signature]
Vice Chairman

[Signature]
Commissioner

ATTEST:

[Signature]
Executive Director