

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

GARY K. FAIRCHILD, APPALACHIAN WASTE CONTROL, INC., LANCE BOWLING D/B/A EAST KENTUCKY WASTE CONTROL)	
_____)	CASE NO.
)	2002-00396
ALLEGED FAILURE TO COMPLY WITH 807 KAR 5:071, SECTION 7(1), KRS 278.020(4) AND (5), AND KRS 278.150(2))	

O R D E R

On January 13, 2003, the Commission issued an Order requiring the parties herein to show cause why they should not be penalized for apparent violations of KRS 278.020(4) and (5) by failing to obtain prior Commission approval to transfer ownership and control of Appalachian Waste Control, Inc. ("AWC") to Lance Bowling and/or East Kentucky Waste Control. The parties also appear to have violated KRS 278.150(2) by failing to pay the statutorily mandated annual assessment fee. In addition, a utility investigator inspected the facilities, which are composed of five wastewater treatment systems [packaged sewer plants] each serving a separate subdivision, and observed and cited 24 violations concerning operation and maintenance of the facilities pursuant to 807 KAR 5:071, Section 7(1). The parties failed to respond in writing to the allegations as provided in the Order.

On October 28, 2003, the Commission ordered the parties to show cause why they should not be found in violation of KRS 278.160(1) and (2) for charging and

collecting rates that are in excess of those in their filed rate schedules. The parties failed to respond in writing to the allegations as provided by the Order.

On May 21, 2004, an inspection report was mailed to the parties at their last known addresses by certified mail, return receipt requested. This report included an inspection of each of the five facilities, with particular focus on the Preston Estates facility. This report has been made a part of the record herein.

The parties are given until June 21, 2004 to respond in writing to the 19 violations of 807 KAR 5:071, Section 7(1), cited in the report. In addition, the parties shall file, on or before June 30, 2004, a written response to the original show cause Order issued on January 13, 2003, and written response to the second show cause Order issued on October 28, 2003. The written responses shall address specifically the statutory and regulatory violations at issue, giving the manner in which the violations will be abated and a reasonable time frame for complete abatement. Finally, and in addition to the written responses, a party or the parties shall request a public hearing on the merits contained in the original show cause Order and the second show cause Order, if a public hearing is desired. If the parties fail to request in writing a public hearing, then the issues, matters and merits of the show cause Orders shall be submitted to the Commission on the record for disposition.

AWC is a Kentucky corporation. There is no evidence in the record to rebut the presumption that AWC was sold and/or transferred to Lance Bowling as a corporate entity. A corporation must be represented by an attorney before a state administrative agency, Kentucky State Bar Assn. v. Henry Vogt Machine Co., 416 S.W.2d 727 (Ky. 1967) and Administrative Case No. 249, Practice Before the Commission by Attorneys

Non-Licensed in the Commonwealth of Kentucky (Ky. P.S.C. June 15, 1981) at 2, and the parties hereto are so advised.

Being otherwise sufficiently advised, the Commission HEREBY ORDERS that:

1. The parties shall file, on or before June 21, 2004, a written response to the inspection report dated and mailed to the parties on May 21, 2004 and made a part of the record herein.

2. The parties shall file, on or before June 30, 2004, written responses to the Commission's Orders of January 13, 2003 and October 28, 2003. The written responses shall address specifically the statutory and regulatory violations at issue, giving the manner in which the violations will be abated and a reasonable time frame for complete abatement.

3. A party desiring a hearing on the matters described herein shall request in writing, on or before June 30, 2004, that a public hearing be conducted by the Commission on the matters herein. If a public hearing is not requested, the matter shall be submitted to the Commission for a decision based on the record.

4. The corporate parties herein shall be represented by an attorney in any further pleadings and proceedings.

Done at Frankfort, Kentucky, this 14th day of June, 2004.

By the Commission

ATTEST:



DEPUTY Executive Director

Case No. 2002-00396