

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE CONDITION AND )  
MANAGEMENT OF BIG VALLEY SANITATION, ) CASE NO. 2009-00378  
INC. AND WOODLAND ACRES SANITATION, INC. )  
SEWAGE TREATMENT FACILITIES )

ORDER

The Energy and Environment Cabinet ("Cabinet") has applied to the Commission for a determination that Big Valley Sanitation, Inc. ("Big Valley Sanitation") has abandoned certain sewage collection and treatment facilities in Bullitt County, Kentucky. Finding that such abandonment has occurred, we direct the Commission's General Counsel to initiate proceedings for the appointment of a receiver to operate these facilities.<sup>1</sup>

On September 18, 2009, the Cabinet submitted a written request<sup>2</sup> to the Commission to initiate a proceeding pursuant to KRS 278.021 to consider the appointment of a receiver to operate the facilities of Big Valley Sanitation and Woodland Acres Sanitation, Inc. In response to this request, the Commission on November 6,

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<sup>1</sup> In this Order, we do not address the Cabinet's allegations that the sewage treatment and collections facilities of Woodland Acres Sanitation, Inc. have been abandoned. The Commission has addressed issues related to that utility's ownership and operation in a separate proceeding. See Case No. 2010-00191, *Application of Woodland Acres Utilities, LLC for Approval of the Transfer of Wastewater Treatment Plant to Woodland Acres Utilities, LLC* (Ky. PSC Sept. 1, 2010). The Cabinet has acknowledged that their allegations regarding the facilities of Woodland Acres Sanitation, Inc. are moot. Energy and Environmental Cabinet's Post-Hearing Brief at 1 (filed Jun. 10, 2010).

<sup>2</sup> Letter from Sandy Gruzesky, Director, Division of Water, to Jeff R. Derouen, Executive Director, Public Service Commission (Sep. 17, 2009).

2009, initiated this proceeding and ordered that Big Valley Sanitation, Inc.; Woodland Acres Sanitation, Inc.; Charles V. Gibbons, executor of the estate of John L. Ford; the Cabinet; and the Attorney General be made parties to this proceeding. Joseph Murphy subsequently moved for and was granted intervention in this matter.

On June 4, 2010, the Commission held a hearing in this matter. Testifying at this hearing were: Mr. Gibbons; Brad Travitt, Kentucky Division of Water field inspector; Joseph Murphy; and Jerry Kennedy, Manager, Bullitt County Sanitation District. Following this hearing, the Cabinet and Mr. Murphy submitted written briefs.

Having reviewed the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. On July 28, 1999, Big Valley Sanitation was organized as a Kentucky corporation pursuant to KRS Chapter 271A.<sup>3</sup>
2. The Kentucky Secretary of State administratively dissolved Big Valley Sanitation on November 1, 2000 for failure to file its annual report.<sup>4</sup>
3. John Ford is Big Valley Sanitation's sole shareholder.<sup>5</sup>
4. Big Valley Sanitation owns sewage collection and treatment facilities that are located in Bullitt County, Kentucky and that serve the Big Valley Mobile Home Park.

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<sup>3</sup> See <https://app.sos.ky.gov/corpscans/59/0477859-09-99999-19990728-ART-1844431-PU.pdf> (last visited July 15, 2011).

<sup>4</sup> See <https://app.sos.ky.gov/corpscans/59/0477859-09-99999-20001101-ADS-1224439-PU.pdf> (last visited July 15, 2011).

<sup>5</sup> Letter from John L. Ford to Kentucky Public Service Commission (July 27, 1999) (filed July 28, 1999 in Case No. 99-319, *Big Valley Mobile Home Park*) at 4; Articles of Incorporation of Big Valley Sanitation, Inc., *supra* note 2, at 2.

5. Big Valley Sanitation's facilities are located at latitude 38.032948 degrees and longitude -85.731258.<sup>6</sup>

6. Big Valley Sanitation serves approximately 54 households.

7. The Commission authorized Big Valley Sanitation's acquisition of the sewage collection and treatment facilities serving the Big Valley Mobile Home Park on February 21, 2000.<sup>7</sup>

8. On February 27, 2001, Eugene and Marilyn McGruder conveyed to Big Valley Sanitation the property upon which is located the treatment facilities that serve the Big Valley Mobile Home Park.<sup>8</sup>

9. From its initial application for authority to acquire and operate the sewage collection and treatment facilities serving the Big Valley Mobile Home Park in 2000 until 2008, Mr. Ford represented Big Valley Sanitation in its dealings with the Commission.<sup>9</sup>

10. On January 11, 2008, Mr. Ford, as president of Big Valley Sanitation, filed rate schedules with the Commission setting forth the rate for Big Valley Sanitation's service.

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<sup>6</sup> See [http://oaspub.epa.gov/enviro/fii\\_query\\_detail.disp\\_program\\_facility?p\\_registry\\_id=110009937355](http://oaspub.epa.gov/enviro/fii_query_detail.disp_program_facility?p_registry_id=110009937355) (last visited July 15, 2011).

<sup>7</sup> Case No. 99-319, *Big Valley Mobile Home Park* (Ky. PSC Feb. 21, 2000).

<sup>8</sup> Hearing Exhibit No. 1.

<sup>9</sup> See, e.g., Memorandum of Larry N. Updike, Utility Inspector (on file with the Commission) (Oct. 11, 2001) (identifying John Ford as the facilities' owner/operator). Commission Staff conducted regular inspections of Big Valley Sanitation's facilities between 2001 and 2008. All identified Mr. Ford as the utility's representative.

11. At the time of his death, Mr. Ford was the holder of the Kentucky Pollutant Discharge Elimination System permit for the sewage collection and treatment facilities serving the Big Valley Mobile Home Park.<sup>10</sup>

12. Mr. Ford represented to representatives of the Kentucky Division of Water that he owned the sewage collection and treatment facilities serving the Big Valley Mobile Home Park.<sup>11</sup>

13. Mr. Ford represented to his business associates that he owned the sewage collection and treatment facilities serving the Big Valley Mobile Home Park.<sup>12</sup>

14. Mr. Ford died on October 19, 2008.

15. On November 7, 2008, Bullitt District Court appointed Charles V. Gibbons as Executor of Mr. Ford's Estate.<sup>13</sup>

16. Mr. Ford's estate disclaims any ownership interest in the sewage collection and treatment facilities serving the Big Valley Mobile Home Park and contends that he merely had authority to operate the facilities and had minimal, if any, ownership interest in the facilities.<sup>14</sup>

17. Mr. Ford's estate has not undertaken any effort to operate or manage the sewage collection and treatment facilities serving the Big Valley Mobile Home Park.<sup>15</sup>

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<sup>10</sup> See [http://oaspub.epa.gov/enviro/fii\\_query\\_dtl.disp\\_program\\_facility?p\\_registry\\_id=110009937355](http://oaspub.epa.gov/enviro/fii_query_dtl.disp_program_facility?p_registry_id=110009937355) (last visited July 15, 2011).

<sup>11</sup> VR 10:40:55-10:40:56; 10:41:04-10:41:13. See also Hearing Exhibit 2.

<sup>12</sup> VR 11:17:03-11:17:24.

<sup>13</sup> *In Re Estate of John L. Ford*, No. 08-P-00362 (Bullitt District Ct. Ky. Nov. 7, 2008).

<sup>14</sup> Estate of John L Ford's Statement of Issues at 1 (filed Jan. 12, 2009); VR 10:00:35-10:00:51.

<sup>15</sup> VR 10:16:13-16:42.

18. Neither Big Valley Sanitation nor Mr. Ford's estate have paid the suppliers of electric power and water that is used to operate the sewage collection and treatment facilities serving the Big Valley Mobile Home Park.<sup>16</sup>

19. At the request of the Bullitt County Judge Executive, Bullitt County Sanitation District has ensured continued electric and water service to operate the sewage collection and treatment facilities serving the Big Valley Mobile Home Park. Its actions are solely discretionary and were not the result of any legal obligation. Bullitt County Sanitation District has advised the Commission of its intent to cease providing such support.<sup>17</sup>

Based upon the above findings of facts, the Commission makes the following conclusions of law:

1. Big Valley Sanitation is a utility subject to the Commission's regulation.
2. KRS 278.020(2)(a) provides that a utility shall be considered abandoned if it "[d]isclaims, renounces, relinquishes, or surrenders all property interests or all rights to utility property, real or personal, necessary to provide service."
3. KRS 278.020(2)(b) provides that a utility shall be considered abandoned if it "[f]ails to meet its financial obligations to its suppliers and is unable or unwilling to take necessary actions to correct the failure after receiving reasonable notice from the commission, and the failure poses an imminent threat to the continued availability of gas, water, electric, or sewer utility service to its customers."

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<sup>16</sup> *Id.*

<sup>17</sup> Emily Hagedorn, *State Complaint Details Years of Problems at Sewage Plants*, Courier-Journal, Sept. 30, 2009, at H5. VR 11:39:00-11:39:50. Letter from Walter A. Scholar, Legal Counsel, Bullitt County Sanitation District, to Jeff Derouen, Executive Director, Public Service Commission (Feb. 16, 2011).

4. Mr. Ford's ownership interest in Big Valley Sanitation transferred to his estate upon his death. As Mr. Ford was the sole shareholder of Big Valley Sanitation, legal ownership of the sewage collection and treatment facilities serving the Big Valley Mobile Home Park currently rests with his estate.<sup>18</sup>

5. The disclaimer of the Estate of Mr. Ford as to any legal right of ownership of the sewage collection and treatment facilities serving the Big Valley Mobile Home Park and the failure of the Estate to meet its financial obligations to the suppliers of water and electric power to those facilities constitute abandonment of those facilities.

IT IS THEREFORE ORDERED that:

1. The sewage collection and treatment facilities that Big Valley Sanitation owns are declared abandoned.

2. The Commission's Executive Director shall take all actions necessary to locate persons who are qualified and willing to serve as receiver of these facilities.


3. The Commission's General Counsel shall take all actions necessary to obtain, pursuant to KRS 278.021(1), an order from Franklin Circuit Court attaching the assets of Big Valley Sanitation and placing them under the sole control and responsibility of a receiver.

4. The Executive Director shall serve by mail a copy of this Order on all parties of record and shall cause notice of the issuance of this Order to be published in a newspaper of general circulation in the area in which Big Valley Sanitation provides sewage collection and treatment services.

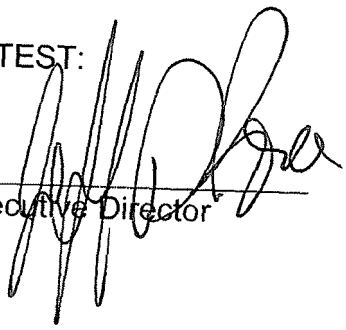
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<sup>18</sup> The administrative dissolution of Big Valley Sanitation does not disturb this conclusion. See KRS 271B.14-050.

By the Commission

ENTERED   
JUL 18 2011  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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