

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CEDARBROOK WASTEWATER TREATMENT ) CASE NO.  
PLANT REQUEST TO CEASE OPERATIONS ) 2014-00091

ORDER

On March 3, 2014, R. A. Williams Construction Co., Inc. d/b/a Cedarbrook Treatment Plant (“Cedarbrook”) tendered a letter to the Commission requesting approval to abandon and cease operations at the Cedarbrook Water Treatment Plant, of its utility services and facilities pursuant to KRS 278.021(2)(b). A copy of the letter is attached as Appendix A to this Order. Cedarbrook asserts that it has continued to operate the treatment plant consequent to the Commission’s denial of its request to transfer ownership of the facilities.<sup>1</sup> Cedarbrook, however, continues to dispute its actual ownership of the plant facilities, and contends that residents of the subdivision were to form a homeowners’ association and take over the plant.<sup>2</sup> The residents did not form a homeowners’ association. Cedarbrook states that the treatment plant currently owes over \$216,000 to R. A. Williams Construction Co., and overdue customer bills

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<sup>1</sup> Letter from Ron Osborne, Cedarbrook Wastewater Treatment Plant Representative to George Wakim, Manager, Water & Sewer Branch, Kentucky Public Service Commission (Mar. 3, 2014); Case No. 2008-00040, *Joint Application of R. A. Williams Construction Company, Inc. and Cedarbrook Utilities, LLC for Approval of the Transfer of Wastewater Treatment Plant to Cedarbrook, Utilities, LLC* (Ky. PSC June 13, 2008).

<sup>2</sup> Letter from Ron Osborne, Cedarbrook Wastewater Treatment Representative to Phillip Broomall, Environmental Enforcement Specialist, Energy and Environment Cabinet, Division of Enforcement (Feb. 14, 2014).

currently amount to another \$46,000. Cedarbrook notes that the needed plant replacement is estimated to cost in excess of \$300,000.<sup>3</sup>

Cedarbrook is a for-profit sewer utility that provides sanitary sewer services to 52 customers in Harrison County, Kentucky.<sup>4</sup> It is a utility subject to the Commission's jurisdiction and regulation.<sup>5</sup>

KRS 278.020(5) provides that "[n]o utility shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission."

We find that an investigation in this matter should be conducted to examine Cedarbrook's request to abandon its facilities. We further find that the Attorney General should be served with a copy of this Order.

IT IS THEREFORE ORDERED that:

1. This case is initiated to investigate the request by R. A. Williams Construction Co., Inc. d/b/a Cedarbrook Treatment Plant to abandon its utility services and facilities.
2. The Executive Director shall serve a copy of this Order upon the Attorney General.

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<sup>3</sup> Letter from Ron Osborne to George Wakim (Mar. 3, 2014).

<sup>4</sup> Annual Report of R. A. Williams Construction Co., Inc. d/b/a Cedarbrook Treatment Plant to the Public Service Commission of Kentucky for the Calendar Year Ended December 31, 2012 at 8.

<sup>5</sup> KRS 278.010(3)(f); KRS 278.040.

3. Within 14 days of the date of this Order, Cedarbrook shall file an original and ten copies of the information requested in Appendix B to this Order. Responses to requests for information shall be appropriately bound, tabbed, and indexed.

a. Each response shall include the name of the witness responsible for responding to the questions related to the information provided.

b. Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

c. Cedarbrook shall make timely amendment to any prior response if it obtains information which indicates that the response was incorrect when made or, though correct when made, is now incorrect in any material respect.

d. For any request to which Cedarbrook fails or refuses to furnish all or part of the requested information, Cedarbrook shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

e. Careful attention should be given to copied material to ensure that it is legible. When the requested information has been previously provided in this proceeding in the requested format, reference may be made to the specific location of that information in responding to this request.

By the Commission

ENTERED  
**MAR 31 2014**  
KENTUCKY PUBLIC  
SERVICE COMMISSION

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2014-00091 DATED **MAR 3 1 2014**

RECEIVED

MAR -6 2014

PUBLIC SERVICE  
COMMISSION

Cedarbrook WWTP  
P. O. Box 54441  
Lexington, KY 40505

March 3, 2014

*Case No. 2014-00091*

Mr. George Wakim  
Branch Manager, Division of Engineering  
Water and Sewer Branch  
Commonwealth of Kentucky  
Public Service Commission  
P O Box 615  
Frankfort, KY 40602-0615

Re: Cedarbrook Waste Water Treatment Plant  
Cynthiana, KY

Dear Mr. Wakim:

On May 17, 2013, the Kentucky Energy and Environment Cabinet – Division of Enforcement (EEC-DOE) issued a notice of violation (NOV) to the Cedarbrook Waste Water Treatment Plant. The NOV states that plant is not in compliance with the regulations on a number of matters. Although we have remedied some issues, we are simply unable to address other items required by the EEC-DOE which mainly involve replacement of the entire sewer collection system for the subdivision and upgrading the treatment plant itself.

RAW has operated the treatment plant because no other party has stepped forward to do so. No formal or Public Service Commission (PSC) approved transfer was ever made to RAW. The EEC-DOE has required that RAW maintain a permit for the plant without regard to this ownership issue or face fines of up to \$25,000 per day. As such, permits were renewed yet ownership has always been disputed. This issue has been addressed with the EEC-DOE, the PSC and the Attorney General's office previously. At one point a well qualified firm was found to take over the operation of the treatment plant however the PSC subsequently denied that transfer.

The treatment plant currently owes RAW over \$216,000 for subsidizing operations over the years. Only 24 of the 52 households in the subdivision are current on their bills. Some are in arrears by several thousand dollars. The total currently owed to RAW by residents who are delinquent is over \$46,000.00. The replacement of the collection system is estimated to cost \$300,000, which does not include the mandated improvements to the treatment plant itself. It is obvious that operations simply cannot continue given the current financial state of the treatment plant.

Mr. George Wakim  
March 3, 2014  
Page Two

Therefore, please consider this letter as a request to cease operations of the treatment plant. After much consideration and meetings with officials from the City of Cynthiana, Harrison County, residents of the subdivision and other state / public agencies, we feel no other alternative is available.

Your prompt attention to this matter is appreciated.

Thank you for your time and consideration,

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Osborne". The signature is written in a cursive style with a long, sweeping underline.

Ron Osborne

Encl - Letter to DOW (EEC-DOE)

Cedarbrook WWTP  
P. O. Box 54441  
Lexington, Kentucky 40505

February 14, 2014

Mr. Phillip A. Broomall  
Environmental Enforcement Specialist  
Energy and Environment Cabinet  
Division of Enforcement  
300 Fair Oaks Lane  
Frankfort, Kentucky 40601

COPY

Re: Case No. DOW 130158  
AI No. 1754  
AI Name Cedarbrook Subdivision WWTP  
HWY 27 South  
Lair, Kentucky  
Activity ID WWERF20130001  
Facility ID KPDES KY0076635  
Harrison County, Kentucky

Dear Mr. Broomall,

Please accept this letter as a response to your letter of December 19, 2013 regarding a Notice of Violation dated May 17, 2013 and an administrative conference held on November 18, 2013. Thank you for the time extension to submit this response.

I will attempt to address the items cited in the NOV and then offer our response.

As you know, the Cedarbrook Treatment Plant has experienced operational issues for many years mainly due to the problems with Inflow and Infiltration during significant rainfall events and with an aging plant which wasn't designed to handle the extra flow.

Additionally, it is our contention that we do not own the treatment plant, which we did not develop or install and we did not develop the subdivision it serves. The homeowners association was to have responsibility to operate the plant but did not form as planned by the subdivision developer.

The items addressed in the NOV are not new issues and in fact have been addressed with your agency previously. We are surprised to see that an NOV was issued when we have been working with the Cabinet for some time to resolve the issues at the plant. We have met with the leaders of the city and county governments, the Public Service Commission, the Division of Water and the Attorney General's office in addition to various civic agencies including the Bluegrass Area Development District all in an attempt to resolve the issues we are still experiencing at Cedarbrook.



No agency or individual has offered any feasible suggestion to help in resolving the issues so that sewer service can continue for the residents of Cedarbrook Subdivision. However it has been discussed in these meetings, and we have been counseled by our consultants, that closing the plant will solve the issues cited by the Division of Water relating to the pollution of the waters of the Commonwealth. We took this approach in July of 2004 when we submitted a study completed by Shield Environmental Associates, Inc. At that time, we were asked by the various agencies, including the Division of Water, to hold off on this plan in order to participate with the DOW to find another solution.

Cedarbrook Treatment Plant has a long history of dealing with the Division of Water on the problems cited once again in the NOV. The basic operation of the plant has not changed through the years nor has the I & I problem it continues to experience. Unfortunately, although we are assured of cooperation from the DOW and other agencies, we eventually end up back in this spot for whatever reason.

As we noted in our last response, the permit was not renewed before it expired because we were not properly informed of the need for a renewal permit to be submitted. That notification was sent but went to the operator of the plant in 2008 who hasn't been involved with the plant since then. This occurred in spite of the fact that we regularly receive other correspondence from the DOW on other matters. An employee of the DOW explained this to us when we investigated. We paid the fee and made application for the permit which was received by the DOW on June 17, 2013. We still have not received the renewal permit and get no updates on where it stands unless we call to check on it. Even then we are simply told it is in the process of being reviewed. It is evident that this oversight is not our fault therefore no penalty should be assessed.

Since August, 2013 the operation of the plant has been supervised by a licensed operator, Kenny Hogsten, who is a class IV certified operator. It should also be noted that we have routinely asked for assistance from the DOW in identifying certified operators but received limited assistance. Since the new operator took over in August, the plant has made significant improvements in the quality of the outflow.

We have been instructed to notify the DOW when the plant enters into a bypass condition and when that condition concludes. On the day of this inspection, notice was given to the DOW that the plant was in a bypass event due to recent heavy rains. As we have been instructed, when the bypass event begins we shut down parts of the plant in order to retain solids within the plant. We are confused then as to why we are being cited for doing what the DOW instructed during bypass events. Also, we have explained on numerous occasions why we cannot afford to change the method of chlorination to that which the DOW now specifies. Last year the delivery method for the tablet chlorination was changed to a Norweco Tablet Feeder Model XT-2000S which provides reliable delivery of tablet chlorine for plants up to 100,000 GPD. A separate but identical unit also provides dechlorination for the plant. During an I & I event, no chlorination system can be relied upon to deliver consistent results. These events are infrequent and unpredictable, as rainfall is occasionally, therefore the plant cannot be held to a standard higher than its design capacity. The plant is referred to as an

intermediate or large WWTP in the NOV. It is our understanding that the plant was designed and classified as a small WWTP. Somehow, through the permit process the plant has been upgraded to a Class II plant based on the I & I volume rather than the design volume of the homes in the subdivision it serves. Since the I & I problem is not consistent, but rather depends solely on rainfall, this does not seem equitable.

We have attempted to withdraw our application or not renew it in previous years however we have been threatened with large fines if a permit was not in place. We have not been notified in a timely manner of the deficiencies that are now being noted back to January of 2012. Perhaps there is a reason the DOW did not see fit to notify us of the problem at the time but now insists on using the deficiencies to generate fines, we would welcome an explanation.

The following facts have been presented to the DOW previously and frequently.

The current rate for sewer service is simply too high for the residents of the subdivision to pay. As a result, many have outstanding balances, some run into the thousands. See attachment. These rates were determined by the PSC upon reviewing our financial records. The current rates became effective October 1, 2008. The receivable from the plant for operations we have subsidized over the years now stands at more than \$216,000.

The cost of repairs to the plant to bring it up to current operational requirements would be cost prohibitive. An entirely new plant would be more economical. This does not consider the cost of repairing the I & I issues which are estimated to be significantly more than \$300,000. Previously the PSC denied the plan to add a surcharge for this work when a qualified sewer treatment business wanted to assume ownership.

R. A. Williams Construction Co. Inc. does not benefit financially or otherwise from the operation of the Cedarbrook Treatment Plant. We have previously made exhaustive efforts to identify a willing and experienced sewer treatment plant operator which was willing to take over the plant upon us paying them a fee. We were willing to make such an arrangement and actually indicated that willingness by contributing some of the fee by making improvements they requested to the plant. However, the transfer was not approved.

In the absence of any other viable alternatives, we have no choice but to close the plant in order to meet the demands identified by the DOW. The monthly income from the plant doesn't nearly cover regular operational expense, paying on the receivable or for improving the plant so there simply isn't any money available to pay a fine. We have invested over \$3,600 in the plant during the 2013 calendar year. Obviously any funds available are better spent towards continuing to improve the plant rather than paying fines for non compliance caused by an unimproved plant.

We have exhausted every attempt at finding a solution to these problems including: finding funding for improvements, requesting assistance from both the city and county governments and governmental officials, urging the residents to form the homeowners association as originally intended by the subdivision developer to operate the plant and perhaps apply for grants available to governments or nonprofit entities for needed improvements and lastly searching for a company in the sewer treatment business to take over operations.

While we are hopeful that a solution can be found for the sake of the residents and homeowners and while we remain willing to transfer the plant to the county, state or any other qualified operator, given the current situation, we feel we have no other option than to immediately begin the process to close the plant and end all violations.

As always, we welcome your thoughts and suggestions and look forward to hearing from you.

Thank you for your time and consideration.

Sincerely,

Ron Osborne  
Cedarbrook Wastewater Treatment Plant Representative

Encl: (2)

4:34 PM  
02/13/14

**Cedarbrook Treatment Plant**  
**A/R Aging Summary**  
As of February 13, 2014

Names Intentionally Omitted

Current	1 - 30	31 - 60	61 - 90	> 90	TOTAL
0.00	0.00	0.00	0.00	1,829.00	1,829.00
0.00	62.00	62.00	0.00	-62.00	62.00
0.00	0.00	0.00	0.00	577.20	577.20
68.20	0.00	0.00	0.00	232.00	300.20
0.00	0.00	0.00	0.00	1,174.97	1,174.97
0.00	68.20	68.20	0.00	0.00	136.40
0.00	62.00	0.00	0.00	-62.00	0.00
0.00	62.00	0.00	0.00	0.00	62.00
0.00	68.20	68.20	68.20	786.60	991.20
-62.00	62.00	62.00	0.00	0.00	62.00
0.00	68.20	68.20	68.20	607.60	812.20
0.00	62.00	62.00	0.00	-62.00	62.00
0.00	0.00	0.00	0.00	0.00	0.00
0.00	68.20	68.20	68.20	291.40	496.60
0.00	68.20	68.20	68.20	2,783.60	2,988.20
0.00	68.20	68.20	68.20	771.60	976.20
0.00	68.20	68.20	53.80	0.00	190.20
0.00	68.20	68.20	68.20	407.60	612.20
0.00	62.00	0.00	0.00	9.00	71.00
0.00	62.00	0.00	0.00	-62.00	0.00
0.00	62.00	0.00	0.00	-62.00	0.00
0.00	62.00	0.00	0.00	0.00	62.00
0.00	68.20	68.20	68.20	573.50	778.10
0.00	68.20	62.00	0.00	0.00	130.20
0.00	62.00	0.00	0.00	-62.00	0.00
0.00	0.00	0.00	0.00	1,532.08	1,532.08
0.00	68.20	68.20	68.20	136.40	341.00
0.00	0.00	0.00	-0.80	0.80	0.00
0.00	62.00	0.00	0.00	-62.00	0.00
0.00	0.00	0.00	0.00	303.80	303.80
0.00	68.20	68.20	68.20	509.60	714.20
0.00	68.20	68.20	68.20	5,110.68	5,315.28
0.00	68.20	68.20	68.20	1,153.20	1,357.80
0.00	0.00	0.00	0.00	1,959.00	1,959.00
0.00	62.00	0.00	0.00	0.00	62.00
0.00	68.20	68.20	0.00	0.00	136.40
0.00	0.00	0.00	0.00	2,442.60	2,442.60
0.00	68.20	68.20	68.20	1,438.40	1,643.00
0.00	68.20	68.20	68.20	452.60	657.20
0.00	68.20	68.20	68.20	4,359.86	4,564.46
0.00	68.20	62.00	0.00	0.00	130.20
0.00	0.00	0.00	0.00	777.80	777.80
0.00	68.20	68.20	68.20	1,198.60	1,401.20
0.00	62.00	0.00	0.00	-62.00	0.00
0.00	68.20	68.20	68.20	635.50	840.10
0.00	-5.60	0.00	0.00	0.00	-5.60
0.00	68.20	68.20	68.20	388.90	573.50

4:34 PM  
02/13/14

**Cedarbrook Treatment Plant  
A/R Aging Summary  
As of February 13, 2014**

<u>Current</u>	<u>1 - 30</u>	<u>31 - 60</u>	<u>61 - 90</u>	<u>&gt; 90</u>	<u>TOTAL</u>
0.00	0.00	0.00	0.00	2,436.40	2,436.40
0.00	68.20	68.20	68.20	870.60	1,075.20
0.00	68.20	68.20	68.20	334.80	539.40
0.00	68.20	68.20	68.20	62.00	266.60
0.00	68.20	68.20	68.20	1,085.00	1,289.60
0.00	68.20	68.20	68.20	756.40	961.00
0.00	68.20	68.20	68.20	3,126.99	3,331.59
<u>6.20</u>	<u>2,710.00</u>	<u>2,083.20</u>	<u>1,621.60</u>	<u>40,598.08</u>	<u>47,019.08</u>



## 4.0 Conclusions

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The conveyance system at Cedarbrook Subdivision suffers from a number of physical issues that have resulted in the inflow and infiltration of storm water during sizable rain events. After identifying and analyzing the severity of the inflow and infiltration problem, R. A. Williams Construction Co., Inc. (RAWC) has determined that it is not financially feasible to repair the system. In its current structure, the limited income from the 54 homes will not provide funding for this remedial work. RAWC has operated the plant for several years at a loss; it can no longer afford to do so.

Previously the management of RAWC tried to help the residents of the subdivision to take over operations of the plant without success due to lack of interest of the residents. In light of the continuing losses, the cost of the remedial actions necessary for continued operations and the need to meet the regulation of the Division of Water RAWC plans to close the treatment plant and effectively end the discharge into the unnamed tributary of Townsend Creek.

RAWC will promptly notify the residents and the Public Service Commission of this decision. An effective closing date will be determined and the Division of Water notified. Shield Environmental will oversee the closure of the plant.

## APPENDIX B

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2014-00091 DATED **MAR 3 1 2014**

1. Refer to the March 3, 2014 letter to George Wakim. Explain the basis for the \$216,000 that the Cedarbrook Treatment Plant owes to R. A. Williams Construction Co., Inc.
2. Refer to the March 3, 2014 letter to George Wakim. Explain in detail the basis and need for the stated \$300,000 plant replacement.
3. State whether Cedarbrook has considered requesting a rate increase.
4.
  - a. State whether Cedarbrook has a payment enforcement mechanism to include an agreement to shut off a customer's water service for failure to pay for sewer service.
  - b. If yes, state the number of water service disconnects performed at the request of Cedarbrook in 2013, and the name of the water provider which has agreed to shut off a customer's water service for failure to pay for sewer service.
  - c. If an agreement is not in place for the water provider to shut off a customer's water service for failure to pay for sewer service, state the name of the entity which provides water service to customers of Cedarbrook.
5.
  - a. State whether Cedarbrook has explored transferring or selling the utility to another person or entity from 2009 to present.
  - b. Identify all parties contacted, if any, regarding a potential sale or transfer and state the result of the inquiries from 2009 to present.

6. Refer to the March 3, 2014 letter to George Wakim. State what actions Cedarbrook has taken regarding those customers “in arrears by several thousand dollars.”

7. State what actions Cedarbrook has taken to alleviate its inflow and infiltration issues and provide the cost for each action.

8. State whether Cedarbrook customers have been provided notice of the intent to abandon service. If so, provide a copy of the notice.

9. State the procedures or process Cedarbrook will follow in shutting down the utility.

10. List the alternatives of waste water disposal and approximate cost of those alternatives to Cedarbrook customers, if abandoned.

11. Was the letter dated March 3, 2014, to George Wakim intended to initiate abandonment proceedings as contemplated by the Commission pursuant to KRS 278.021?

12. Does the utility intend to relinquish control and ownership of interests in all property necessary for providing utility service? List and describe all such property interests and estimated value.

13. Explain in detail all measures planned to secure the facilities to ensure their safety and integrity during and after the abandonment process.

14. Is it the utility’s contention that it is unable to render safe and adequate utility service in a manner consistent with applicable regulatory requirements? Describe the limitations that prevent the utility from being able to comply with applicable regulatory requirements.



15. Is the utility unable to meet its financial obligations associated with utility service? Explain and provide financial exhibits that fully document the utility's financial condition.

16. Is the utility unable or unwilling to take necessary corrective actions to ensure the continued availability of safe and adequate utility service? Describe in detail, including estimated costs and a time frame for completion, the actions necessary to bring the utility facilities and operations into compliance with applicable regulatory requirements.

Ron Osborne  
Cedarbrook Wastewater Treatment Plant  
P.O. Box 54441  
Lexington, KENTUCKY 40505