

Cedarbrook WWTP
P O Box 54441
Lexington, KY 40505

RECEIVED

JUN 16 2014

**PUBLIC SERVICE
COMMISSION**

June 13, 2014

Mr. Jeff R. Derouen, Executive Director
Commonwealth of Kentucky
Public Service Commission
P O Box 615
Frankfort, KY 40602-0615

RE: Case # 2014-00091

Dear Mr. Derouen:

Please consider this letter as notice of our intent to withdraw the request to close the Cedarbrook Wastewater Treatment Plant currently before the commission. Although we have not been officially informed of such action, we understand that the local community leaders, along with representatives of the Public Service Commission (PSC), the Kentucky Association of Counties, the Bluegrass Area Development District and the WEDCO District Health Department attended a recent meeting where other options were considered. We welcome the opportunity to work with these groups to find a proper solution to this situation. So that it becomes a part of the record in this case, I have attached the newspaper article from the Cynthiana Democrat concerning this meeting and the items discussed therein. Although we take issue with some statements made in the article, we are encouraged and certainly want to participate. The formation of a special sewer district has been discussed previously but has never been fully explored. Contrary to what some might suggest, we are very interested in being part of the solution and have never intended otherwise. We remain very hopeful that, under the leadership of the County Judge Executive, work on this solution will move forward quickly.

Currently, Cedarbrook cannot support itself on the limited number of residents who pay their bills on time each month (current aging list attached). By far the majority of residents are in arrears with their sewer bills. We will continue our efforts to collect outstanding bills from residents who are not paying for sewer service, especially those who are months and years in arrears. This may unfortunately involve the termination of service to those residents in accordance with the terms of the tariff on file with the PSC.

We have not requested a rate increase since 2008 when a request was made in conjunction with a transfer request. Prior to that time the last rate increase was in 1992. The PSC has always assisted us by overseeing our efforts to determine what the rate increase should be, requiring that it be based on the legitimate, allowable operating expenses of the plant. As we have pointed out in several previous letters to the PSC and the Division of Water (DOW), we agree the rate is expensive but so are operational costs of the aging plant and collection system. Unfortunately, the high rate of non-payment among the residents has also caused serious consequences.

There seems to be a misconception that R. A. Williams Construction Co., Inc. (RAW) was the original developer of the subdivision. This is not correct, RAW only built a small number of houses in the subdivision on the last lots to be sold by the developer, Highland Development Company (Highland), a now defunct arm of Hinkle Construction Company. We did not install the treatment plant.

Mr. Jeff R. Derouen, Executive Director
June 13, 2014
Page Two

As we have previously identified, the PSC did not approve the transfer of the plant from Highland to RAW, and no third party beneficiary agreement exists.

We have, on numerous occasions, sought the help of various agencies and individuals to bring about a solution such as the one now under consideration. Actually, we met in September of 2011 with several of the agencies previously identified in this letter to discuss various options. Forming a sewer district was one of those options. Although we were very encouraged, nothing ever moved forward. Hopefully, all parties can now work together to make this plan a reality. The aging plant and infrastructure will never be able to be replaced or upgraded if it is dependent on the rate payer. Being able to apply for grants and low interest loans available to nonprofit organizations is crucial for the viability of the treatment plant. It is our understanding that without sewer service the homes will be considered uninhabitable – this is something we have cautioned about and worked diligently to prevent for many years.

Clearly, the resolution of this issue is of the utmost importance to all involved. It is also critical that all parties work together in a professional manner and do so promptly. The treatment plant simply cannot operate, now or in the future, no matter who manages the operations, unless residents pay their bills. Everyone, including all governmental and regulatory agencies, must be not only willing to work together to make this transfer work but also innovative in their approach to the solution. We are grateful for the willingness of all parties to come together in this manner and we look forward to working with everyone.

Thank you for your time and consideration.

Sincerely,

Ron Osborne

Enclosures: 1. Cedarbrook Sewer Causes Stink – article from the Cynthiana Democrat dated 6/5/14
2. List of Current Receivables from Cedarbrook Residents

Cedarbrook sewer causes stink

06/05/2014 10:19 AM

By Josh Shepherd, News writer

Representatives from several state organizations worked to channel the anger of Cedarbrook land owners upset over the possible abandonment of the neighborhood sewer plant at the Harrison County Extension Office Tuesday evening.

Harrison County Judge Executive Alex Barnett arranged for the public meeting after Cedarbrook residents discovered that the R.A. Williams Construction Company had filed a request to abandon and cease sewer plant operations with the Kentucky Division of Water (DOW) and the Kentucky Public Service Commission (PSC).

According to residents, and confirmed by Andrew Melnykovich, PSC Public Information Officer, the R.A. Williams Construction Company, doing business as the Cedarbrook Waster Water Treatment Plant, has been managing the package sewer system as a private business endeavor for about 38 years.

During that time, R.A. Williams had been collecting monthly fees from residents and requesting sewer rate changes with the PSC.

It is also apparent that Ron Osborne, President of the Bex Construction Company, has been trying to transfer managerial duties of the wastewater plant from R.A. Williams to another owner for almost two decades, according to Melnykovich.

According to the Bex Construction Company website, R.A. Williams became a wholly owned subsidiary of Bex in 2010.

In 1997, R.A. Williams filed papers to transfer Cedarbrook management duties to another group of investors, but the request was withdrawn when the deal apparently fell through, Melnykovich said.

In 2008, the PSC rejected a second attempt to transfer the plant to Cedarbrook Utilities, LLC, an operation involving a Lawrence Smither from Crestwood, Kentucky.

The PSC denied the transfer request, Menykovich said, because even though Cedarbrook Utilities had technical expertise, the organization lacked the financial capability of making the necessary improvements and upgrades to the sewer plant.

Following that rejection of the transfer, R.A. Williams submitted a PSC request to raise monthly sewer rates per household at Cedarbrook from \$23.55 per month to \$62, an increase of 163.23 percent.

Everyone speaking at the public meeting agreed that the residents were paying too much.

The situation came to a head in May 2013 when the DOW sent Osborne a Notice of Violation letter outlining a long list of deficiencies at the Cedarbrook plant.

Contending that R.A. Williams was never meant to operate the facility for this long, that it does not have ownership and that it does not have the capital needed to make the estimated \$300,000 in improvements to bring the Cedarbrook plant in compliance, Osborne made a formal request to abandon the facility, Melnykovich said.

Cedarbrook residents reported that they were unaware of any of these developments. If it had not been for resident Danny Tolson investigating why he and several residents had not received a May 2014 bill, residents argued that they would still not know about the abandonment.

However, summarizing the PSC's procedures when it comes to an abandonment, Melnykovich explained that a hearing would have been scheduled with the customers following a PSC investigation into Osborne's claims.

"Judge Barnett came in a few steps ahead of us on a public meeting, but considering the circumstances, it's a good thing he did," Melnykovich said.

This is the first time in his 12 years with the PSC that a company has submitted an abandonment request for a sewer plant.

"Our goal in the abandonment process is to try and keep the facility serving its customers. Shutting down a sewer service creates a number of health and environmental issues," Melnykovich said. "To be frank with you all, this is a tough case. But we're trying to help find an answer."

Tolson, Will Mallard, and several other residents at Cedarbrook were beginning to ask what can be done to hold R.A. Williams accountable for the past fees that were collected. Many said very little improvements have been done.

Barnett interrupted the questioning and explained that he intentionally did not invite either R.A. Williams or the DOW to the public meeting.

"We don't need a shouting match. We need solutions," Barnett said. "They're not part of the solution."

To introduce a possible answer, Barnett invited Roger Recktenwald, Director of Research and Planning with the Kentucky Association of Counties, and Gene Thomas, Environmental Director for the WEDCO district health department, to explain how, working with the Harrison County Fiscal Court, Cedarbrook could establish a special sewer district.

Recktenwald and Thomas have extensive experience setting up these districts and pledged themselves to helping Cedarbrook get started.

Creating this district, Recktenwald explained, would make the facility subject to public input.

"Instead of decisions being made about your system in a Lexington office building without your input, these sewer districts are subject to public meeting laws. You sit at the table, review the figures, and set the rates," Recktenwald said.

“And those rates are not subject to PSC regulations,” Melnykovich added.

A three-member board of Cedarbrook residents would manage the needs of the plant and collect monthly fees for its upkeep, Thomas said.

The process requires approval from the Harrison County Fiscal Court, Recktenwald said, and the judge-executive would appoint the members of the board.

After that, the fiscal court would have no further involvement in the decision-making, he said.

Furthermore, the public sewer district can apply for state and federal grants and low-interest loans that are denied to privately owned utilities.

No county tax money is involved with this type of sewage district, Recktenwald asserted.

Lake Carnico in Nicholas County set up a similar type of sanitation district, Thomas added. He was involved in getting the details of that district underway.

Thomas is also involved in a similar transition with a large trailer park in Scott County.

“It takes time, but it can be done and, if all parties are agreeable, its simple to do and straightforward,” he said,

Bob Casher of the Bluegrass Area Development District outlined some of the major grants that may be available to fund a project to upgrade the existing package sewer plant.

There are a vast number of details that still remain to be done. It’s a process that will take years instead of months, Thomas said.

First on the agenda, though, is the abandonment procedure, Barnett said.

R.A. Williams has several questions it must answer under oath to the PSC and the Kentucky Attorney General’s office about the legitimacy of the claims in its abandonment request.

The answers should be returned to the PSC by June 14, Melnykovich said.

In the meantime, residents were confused about whether they should continue paying their monthly bills. No one would give a direct answer to the question.

However, Barnett advised that failure to pay bills would only add fuel to the company’s argument that it cannot sustain proper maintenance of the treatment facility and allow them to wriggle free of any liability associated with their alleged mismanagement of the service.

**Cedarbrook Treatment Plant
A/R Aging Summary
As of June 12,2014**

	<u>1 - 30</u>	<u>31 - 60</u>	<u>61 - 90</u>	<u>> 90</u>	<u>TOTAL</u>
	0.00	0.00	0.00	0.00	0.00
	62.00	0.00	0.00	0.00	62.00
	0.00	0.00	0.00	1,174.97	1,174.97
	62.00	68.20	31.80	0.00	162.00
	62.00	62.00	0.00	0.00	124.00
	62.00	0.00	0.00	0.00	62.00
	68.20	68.20	68.20	935.40	1,140.00
Names have been	62.00	62.00	0.00	0.00	124.00
Intentionally omitted	68.20	68.20	68.20	880.40	1,085.00
	62.00	68.20	0.00	0.00	130.20
	0.00	0.00	0.00	0.00	0.00
	62.00	68.20	68.20	564.20	762.60
	62.00	0.00	0.00	0.00	62.00
	68.20	68.20	68.20	3,056.40	3,261.00
	68.20	68.20	68.20	544.40	749.00
	68.20	68.20	68.20	188.40	393.00
	68.20	68.20	68.20	230.40	435.00
	62.00	0.00	0.00	9.00	71.00
	62.00	0.00	0.00	-62.00	0.00
	62.00	0.00	0.00	-62.00	0.00
	62.00	0.00	0.00	0.00	62.00
	62.00	0.00	0.00	0.00	62.00
	68.20	0.00	0.00	641.70	709.90
	62.00	0.00	-62.00	0.00	0.00
	124.00	0.00	0.00	-62.00	62.00
	136.40	0.00	68.20	209.20	413.80
	62.00	0.00	0.00	0.00	62.00
	62.00	0.00	0.00	-62.00	0.00
	68.20	68.20	6.20	577.80	720.40
	68.20	68.20	68.20	5,383.48	5,588.08
	68.20	68.20	68.20	1,426.00	1,630.60
	62.00	0.00	0.00	0.00	62.00
	124.00	0.00	0.00	0.00	124.00
	68.20	68.20	68.20	1,711.20	1,915.80
	68.20	68.20	68.20	725.40	930.00
	68.20	68.20	68.20	4,632.66	4,837.26
	62.00	0.00	0.00	0.00	62.00
	124.00	0.00	4.40	-6.20	122.20
	68.20	68.20	68.20	1,469.40	1,674.00
	0.00	0.00	0.00	0.00	0.00
	68.20	68.20	62.00	908.30	1,106.70
	60.00	0.00	0.00	0.00	60.00
	68.20	68.20	68.20	641.70	846.30
	68.20	68.20	68.20	1,143.40	1,348.00
	68.20	68.20	68.20	607.60	812.20
	62.00	0.00	0.00	0.00	62.00
	31.00	0.00	0.00	0.00	31.00
	68.20	68.20	68.20	73.80	278.40
	68.20	68.20	68.20	1,357.80	1,562.40
	68.20	68.20	68.20	1,029.20	1,233.80
	68.20	68.20	0.00	3,195.19	3,331.59
TOTAL	<u>3,277.80</u>	<u>1,760.80</u>	<u>1,406.40</u>	<u>33,063.20</u>	<u>39,508.20</u>