

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION INTO THE ALLEGED	)	
UNAUTHORIZED TRANSFER OF STOCK AND	)	
OWNERSHIP OF B.L.S.T., INC. FROM	)	CASE NO.
JERRY L. TYLER TO MIKE AND TIM	)	90-266
MONTGOMERY AND ALLEGED DEFICIENCIES	)	
IN THE SYSTEM	)	

O R D E R

B.L.S.T., Inc. ("B.L.S.T.") is a sewage treatment facility within the Commission's jurisdiction. On September 18, 1990, the Commission initiated this proceeding to investigate an alleged unauthorized transfer of B.L.S.T. and alleged deficiencies in the plant's two facilities. A deed of gift was entered into on July 19, 1990 between B.L.S.T. and H.S.T., Inc. ("H.S.T.") transferring ownership of the utility from B.L.S.T. to H.S.T. On October 18, 1990, H.S.T. transferred back to B.L.S.T. by deed of gift the same property conveyed on July 19, 1990. A letter from Tim Montgomery, president of H.S.T., received by the Commission on March 27, 1991 indicated Mr. Montgomery has no intention of purchasing B.L.S.T. sewage treatment facilities.

On June 12, 1991, the Mercer Circuit Court ordered that Brightleaf Estates Subdivision Homeowners Association, Inc. ("Homeowners") be appointed as temporary receiver of B.L.S.T. B.L.S.T. and Homeowners then entered into an Agreed Order on June 14, 1991. The Order set aside the appointment of Homeowners as

receiver of B.L.S.T. and ordered Jerry Tyler, owner of B.L.S.T. to resign as sole director of B.L.S.T. and establish a new board of directors to control and operate B.L.S.T. The new board of directors would consist of five members, two appointed by Homeowners; two appointed by Jerry Tyler and one that was completely neutral to the parties and appointed by the majority vote of the four new directors. Under KRS 278.020(4) and (5), without prior approval of the Commission, there can be no transfer of control of the utility.

By Order dated January 14, 1991, B.L.S.T. was ordered to file certain information; and by letter dated February 14, 1991, B.L.S.T. was informed that the Commission had not received a response. On March 18, 1991, the Commission then ordered B.L.S.T. to appear at a hearing on May 9, 1991. Both Commission Orders were sent by certified mail and return receipt was received by B.L.S.T. However, B.L.S.T. failed to appear at the hearing and still has not responded to all the alleged deficiencies noted in the two Inspection Reports dated April 5, 1990 and April 16, 1991 and made part of the record in this case.

The alleged deficiencies common to both plants are as follows:

1. The bar screen needs to be kept clean to avoid violation of 807 KAR 5:071, Section 7(1).
2. The diffusers need to be inspected and repaired or replaced as necessary to avoid violation of 807 KAR 5:071, Section 7(1).

3. The chlorine contact basin needs to be cleaned of sludge to avoid violation of 807 KAR 5:071, Section 7(1).

4. The skimmers need to be made operational to avoid violation of 807 KAR 5:071, Section 7(1).

5. The plant is currently being operated without a comminutor. As long as the plant can be operated satisfactorily and produce an acceptable effluent, the Commission may not require the use of a comminutor. However, the utility must monitor plant operations and immediately install a functioning comminutor should conditions warrant to avoid violation of 807 KAR 5:071, Section 7(1).

6. The thick scum blanket on the surface of the clarifier needs to be removed to avoid violation of 807 KAR 5:071, Section 7(1).

7. The scum behind the baffle in the clarifier needs to be removed to avoid violation of 807 KAR 5:071, Section 7(1).

8. The chlorination unit needs to be repaired and put in service to avoid violation of 807 KAR 5:071, Section 7(1).

9. The effluent needs to be chlorinated to avoid violation of 807 KAR 5:071, Section 7(1).

10. The woven wire fence installed during the expansion needs to be replaced by a chain link fence to match the existing fence around the old system to avoid violation of 807 KAR 5:071, Section 7(1).

11. The fence next to the chlorine contact box needs to be secured at the corner to avoid violation of 807 KAR 5:071, Section 7(1).

12. The door to the electrical control box needs to be repaired to avoid violation of 807 KAR 5:071, Section 7(4).

13. The gate to the plant area needs to be kept locked to avoid violation of 807 KAR 5:071, Section 7(4).

Alleged deficiencies of only the large plant are as follows:

1. Clumps of sludge on the surface of the clarifier indicate that the sides need to be scraped to avoid violation of 807 KAR 5:071, Section 7(1).

2. An air leak in the line to the sludge return needs to be repaired to avoid violation of 807 KAR 5:071, Section 7(1).

3. The septic condition of the aeration basin needs to be alleviated to avoid violation of 807 KAR 5:071, Section 7(1).

4. The backup blower/motor unit needs to be inspected and repaired if necessary to avoid violation of 807 KAR 5:071, Section 7(1).

Alleged deficiencies of only the small plant are as follows:

1. The existing blower/motor unit needs to be repaired to avoid violation of 807 KAR 5:071, Section 7(1).

On June 18, 1991, the Commission received a letter from B.L.S.T., by counsel, which will be treated as a motion to dismiss, requesting dismissal of the show cause proceeding pending the filing within 60 days of construction plans and a rate request. The letter states B.L.S.T. has retained the facilities by deed conveying the land from H.S.T. back to B.L.S.T. B.L.S.T. also states the new board of directors will be in charge of the utility, and that some of the deficiencies arise from design deficiencies of the plant such that construction will be necessary

to cure them. Although certain deficiencies not affected by construction will be corrected immediately according to B.L.S.T., it is not appropriate for the Commission to dismiss this investigation until all alleged deficiencies have been corrected. In the event of any construction not in the ordinary course of business an application for a Certificate of Public Convenience and Necessity seeking authority to construct must be filed with any application for a rate adjustment that may be proposed.

Having been otherwise sufficiently advised, the Commission **HEREBY ORDERS AND COMPELS** that:

1. Within 30 days of the date of this Order, B.L.S.T. shall file a status report addressing each alleged deficiency and specifically state what steps are being taken to correct said deficiencies and the expected completion date for each correction.

2. Within 60 days of the date of this Order, the five new directors of B.L.S.T. and Mr. Tyler shall file a status report addressing the control and operation of B.L.S.T. as determined by the Mercer Circuit Court.

3. B.L.S.T.'s motion to dismiss is hereby denied.

Done at Frankfort, Kentucky, this 17th day of July, 1991.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

ATTEST:

  
Executive Director

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Commissioner