

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

By Order dated January 13, 2003, the Commission scheduled a hearing in this case for February 19, 2003. The Commission subsequently determined that an informal conference should be conducted to address the issues set out in the January 13, 2003 Order and to formulate solutions to the existing problems of Appalachian Waste Control, Inc. (AWC).

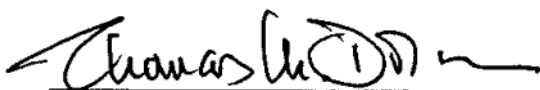
The Commission, on its own motion, HEREBY ORDERS that:

1. The hearing scheduled for February 19, 2003 is cancelled.
2. AWC shall appear for an informal conference with Commission Staff on February 19, 2003 at 10:00 a.m., Eastern Standard Time, in Conference Room 2 of the Commission s offices at 211 Sower Boulevard, Frankfort, Kentucky.
3. A copy of the Commission s Order of January 13, 2003 shall be attached hereto and shall be mailed by certified mail, return receipt requested, to all parties of record.

Done at Frankfort, Kentucky, this 4th day of February, 2003.

By the Commission

ATTEST:

A handwritten signature in black ink, appearing to read "Thomas H. [unclear]", written over a horizontal line.

Executive Director

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ORDER

Appalachian Waste Control, Inc. (AWC) is a Kentucky corporation with its principal offices at 2656 Route 2039, Hager, Kentucky 41222. Gary K. Fairchild is the registered agent of the corporation and appears to have been its principal shareholder and the corporate officer responsible for the operation of its facilities. The facilities consist of five separate sewage collection, transmission, and treatment systems in Johnson County that are used to serve the public for compensation. The facilities are affixed to real property, and are not located in a county containing a city of the first class or subject to regulation by a metropolitan sewer district or any sanitation district created pursuant to statute. AWC is, thus, a public utility operating subject to the Commission s jurisdiction.

On September 26, 2002, a Utility Investigator employed by this Commission conducted an inspection of AWC s facilities. During the course of the investigation, the investigator determined that control of the facilities has been transferred to Lance Bowling, doing business as East Kentucky Waste Control (EKWC), either as the

owner of the facilities or as the principal shareholder and corporate officer of AWC. An examination of Commission records produced no Order approving the transfer, and the investigator could not determine when the transfer was made.

KRS 278.020(4) provides that [n]o person 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, without prior approval by the commission.

KRS 278.020(5) provides that [n]o individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an acquirer), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. Any acquisition of control without prior authorization *shall be void and of no effect*. [Emphasis added].

The Commission having no record of an Order approving the transfer to Lance Bowling, the transfer appears to be in violation of the law.

As a part of his inspection, the Utility Investigator also examined the facilities to determine whether they were being operated in compliance with the law. KRS 278.280(2) directs the Commission to prescribe rules and regulations for the performance of services by utilities. Pursuant to this statutory directive, the Commission promulgated 807 KAR 5:071, Section 7(1). This regulation requires sewer utilities to maintain and operate their plant and facilities in accordance with accepted good engineering practices to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.

On October 28, 2002, the investigator submitted a report of his findings and recommendations. The report, a copy of which is appended hereto and incorporated herein by reference, described numerous deficiencies affecting the maintenance, operation, and safety of EKWC's plant facilities, which constituted violations of the regulation and the statute under which it was promulgated.

KRS 278.150(2) requires each public utility operating in this state to pay to the Revenue Cabinet, on or before each July 31, an annual assessment based on its gross earnings during the preceding calendar year. The purpose of the assessments is to produce sufficient funds for the operation of this Commission. Utilities that fail to pay the assessment are subject to a penalty prescribed by KRS 278.990(3) of \$1,000 plus \$25 per day for each day the penalty remains delinquent. Pursuant to that authority, the Revenue Cabinet, on or before July 1, 2001, issued an assessment to AWC for \$50.00. The Revenue Cabinet has reported to the Commission that AWC has failed or refused to pay the assessment when due, in violation of KRS 278.150(2).

Based upon the foregoing and its review of the Utility Inspection Report, and being otherwise sufficiently advised, the Commission finds that *prima facie* evidence exists that:

1. AWC and EKWC violated KRS 278.020(4) and (5) by failing to obtain Commission approval prior to transferring ownership and control of AWC's sewage collection, transmission, and treatment facilities in Johnson County to EKWC, and Gary K. Fairchild and Lance Bowling, in their positions as owners, operators, or officers of AWC and EKPC, aided and abetted this failure.

2. AWC and EKWC failed to operate and maintain their sewage collection, transmission, and treatment facilities in accordance with accepted good engineering practice, and Gary K. Fairchild and Lance Bowling, as owners, operators, or officers of AWC and EKWC, aided and abetted that failure, in violation of 807 KAR 5:071, Section 7(1).

3. AWC failed to pay the annual assessment due July 31, 2002, and Gary K. Fairchild and Lance Bowling aided and abetted that failure, in violation of KRS 278.150(2).

The Commission, on its own motion, HEREBY ORDERS that:

1. AWC, EKWC, Gary K. Fairchild, and Lance Bowling shall appear before the Commission on February 19, 2003 at 9:00 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, for the purpose of presenting evidence concerning the alleged violations of KRS 278.020(4) and (5), 807 KAR 5:071, Section 7(1), and KRS 278.150(2), and to show cause why they should not be subject to the penalties prescribed in KRS 278.990(1) for these alleged violations.

2. AWC, EKWC, Gary K. Fairchild, and Lance Bowling shall submit to the Commission, within 20 days of the date of this Order, a written response to the allegations contained in this Order and in the Utility Inspection Report.

3. The Utility Inspection Report of October 28, 2002, a copy of which is appended hereto, is incorporated herein and made a part of the record of this proceeding.

4. Any party may request an informal conference with Commission Staff to consider any matter that would aid in the handling or the disposition of this proceeding. Such requests shall be in writing, shall be filed with the Commission no later than 20 days from the date of this Order, and shall be served on all parties.

Done at Frankfort, Kentucky, this 13th day of January, 2003.

By the Commission

ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2002-00396 DATED January 13, 2003

See document 200200396apx_020403.pdf