

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)

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 13<sup>th</sup> 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

Commonwealth of Kentucky  
Public Service Commission

UTILITY INSPECTION REPORT

East Kentucky Waste Control  
East Point, Kentucky

Utility operations, utility maintenance, utility management and their impact on utility services and operating costs are a primary concern of the Commission and this Division. Our ongoing inspection program is to determine if the utility is in compliance with Kentucky Revised Statutes (KRS 278), Public Service Commission (PSC) Regulations (807 KAR) and that adequate, efficient and reasonable service is being provided.

Daily maintenance, daily operations and good operating records are essential in the operation of an efficient utility. Our inspections are intended to determine if the utility is in compliance with PSC regulations in these areas.

On September 26, 2002, East Kentucky Waste Control's sewage treatment system was inspected for compliance with KRS Chapter 278 and PSC regulations (807 KAR). A review of records revealed that the transfer of ownership and operational control of Appalachian Waste Control to East Kentucky Waste Control had occurred without Commission approval in violation of KRS 278.020 (4) and (5).

This utility consists of five separate systems each consisting of a wastewater treatment plant and a collection system. This system is located in Johnson County, Kentucky. Preston Estates has 22 customers, Paradise Valley Estates 16, Neil Price

East Estates 6 and Richmond Hill has 18 customers. No one representing the utility was present during the inspection. The improvements or corrections necessary to bring this facility into compliance with KRS 278 and PSC regulations (807 KAR) are as follows:

#### PRESTON ESTATES

1. The structural integrity of the grating needs to be checked and if found unsafe, it should be replaced or removed for safety reasons per 807 KAR 5:071 Sec.7(1).
2. The bar screen needs to be cleaned as per 807 KAR 5:071 Sec.7(1).
3. The diffusers need to be inspected and repaired or replaced as necessary as per 807 KAR 5:071 Sec.7(1).
4. All air leaks need to be repaired as per 807 KAR 5:071 Sec.7(1).
5. The clarifier needs to be cleaned out as per 807 KAR 5:071 Sec.7(1).
6. The sludge recirculation system needs to be repaired as per 807 KAR 5:071 Sec.7(1).
7. The skimmer needs to be repaired as per 807 KAR 5:071 Sec.7(1).
8. A backup blower/motor unit or immediate access to one is needed in case of an emergency as per 807 KAR 5:071 Sec.7(1).

#### PARADISE VALLEY

1. The grating needs to be locked down for security and safety reasons as per 807 KAR 5:071 Sec.7(1).
2. All air leaks need to be repaired as per 807 KAR 5:071 Sec.7(1).
3. The bar screen needs to be cleaned as per 807 KAR 5:071 Sec.7(1).
4. The color is dark (almost septic conditions) and has a bad odor. Possibly needs more air induced as per 807 KAR 5:071 Sec.7(1).
5. A backup blower/motor unit or immediate access to one is needed in case of an emergency as per 807 KAR 5:071 Sec.7(1).



#### NFI PRICE SUBDIVISION

1. The fence needs to be made secure as per 807 KAR 5:071 Sec.7(1).
2. All electrical connections need to be protected for safety reasons as per 807 KAR 5:071 Sec.7(1).
3. A backup blower/motor unit or immediate access to one is needed in case of an emergency as per 807 KAR 5:071 Sec.7(1).

#### RICHMOND HILLS

1. The clarifier needs to be cleaned out as per 807 KAR 5:071 Sec.7(1).
2. The sludge in Weir needs to be cleaned out as per 807 KAR 5:071 Sec.7(1).
3. All air leaks need to be fixed as per 807 KAR 5:071 Sec.7(1).
4. The diffusers need to be inspected and repaired or replaced as necessary as per 807 KAR 5:071 Sec.7(1).
5. The sludge recirculation system needs to be repaired as per 807 KAR 5:071 Sec.7(1).
6. The skimmer needs to be repaired as per 807 KAR 5:071 Sec.7(1).

#### BIRCHSHIRE

1. The bar screen needs to be cleaned out as per 807 KAR 5:071 Sec.7(1).
2. The clarifier needs to be cleaned of sludge and other debris as per 807 KAR 5:071 Sec.7(1).

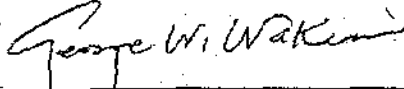
#### Recommendations

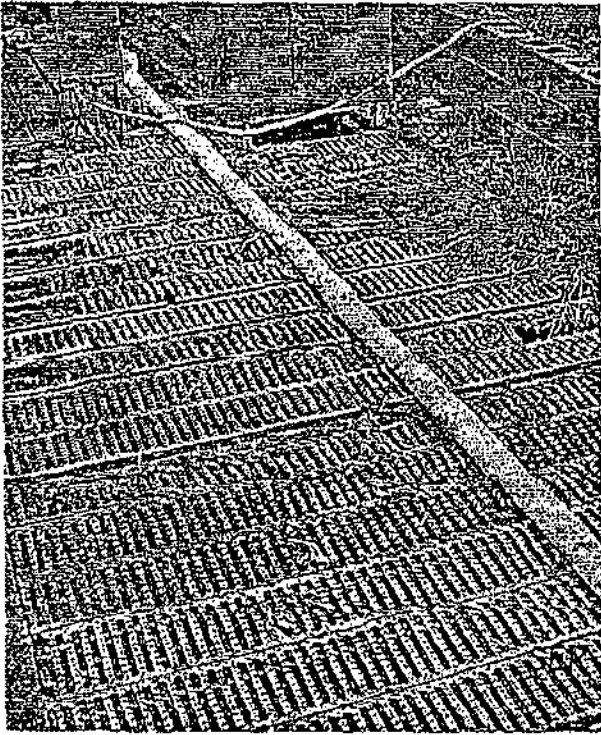
It is recommended that the Commission initiate a hearing to allow East Kentucky Waste Control (EKWC) and Appalachian Waste Control (AWC) to show cause why they should not be penalized for failure to receive Commission approval prior to the transfer of ownership and operational control from AWC to EKWC per KRS 278.020 (4) and (5).

East Kentucky Waste Control should, no later than November 28, 2002, submit to the Public Service Commission a detailed written response indicating the actions taken or planned to correct each noted deficiency with applicable supporting

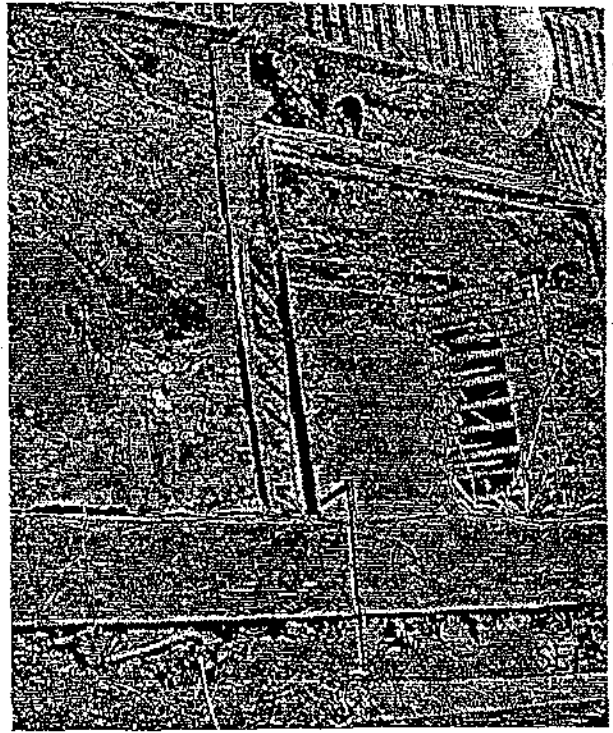
documentation (such as bids, ads, invoices, etc.), and the dates each action will be started and completed. Failure to advise the Commission of these actions may result in the initiation of a formal proceeding to investigate East Kentucky Waste Control's quality of service. Further, after reviewing Commission records, there does not appear to be a listing of the new utility or any record of the transfer.

Submitted,  
October 28, 2002

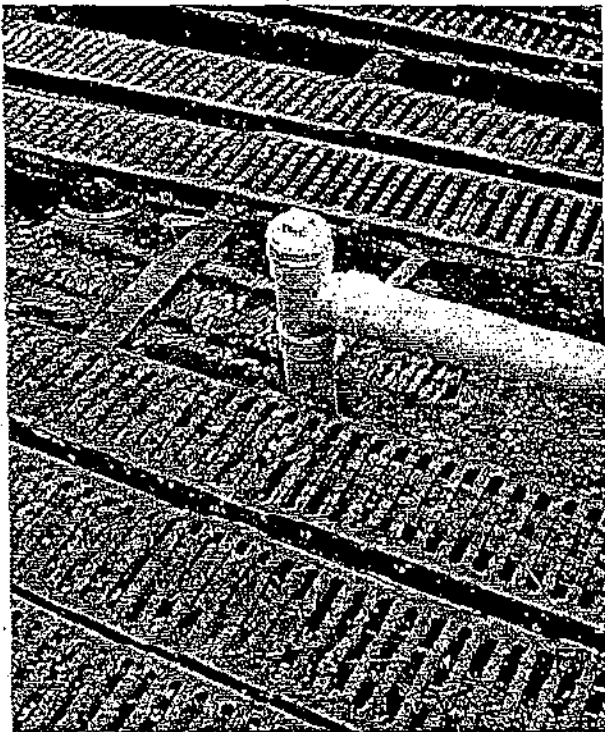
*for*   
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Brian L. Rice  
Utility Investigator



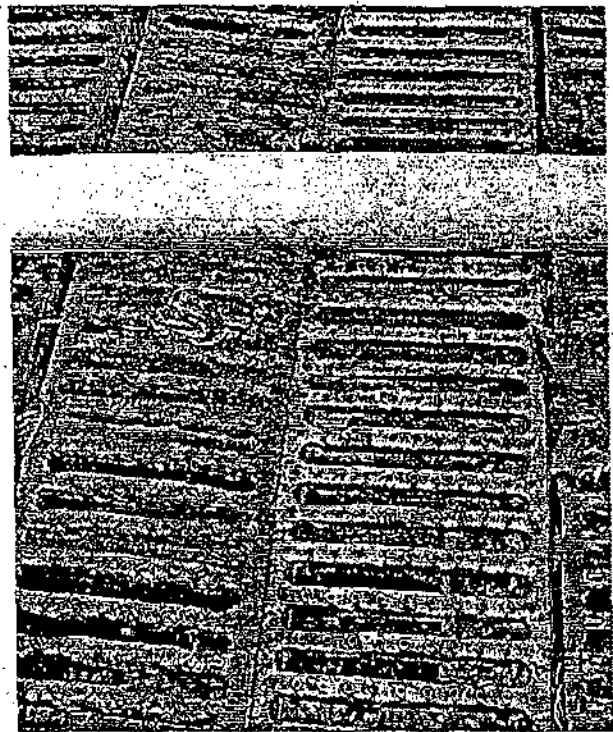
Preston Estates-Structural integrity of the grating needs to be checked



Preston Estates-Bar screen needs to be cleaned



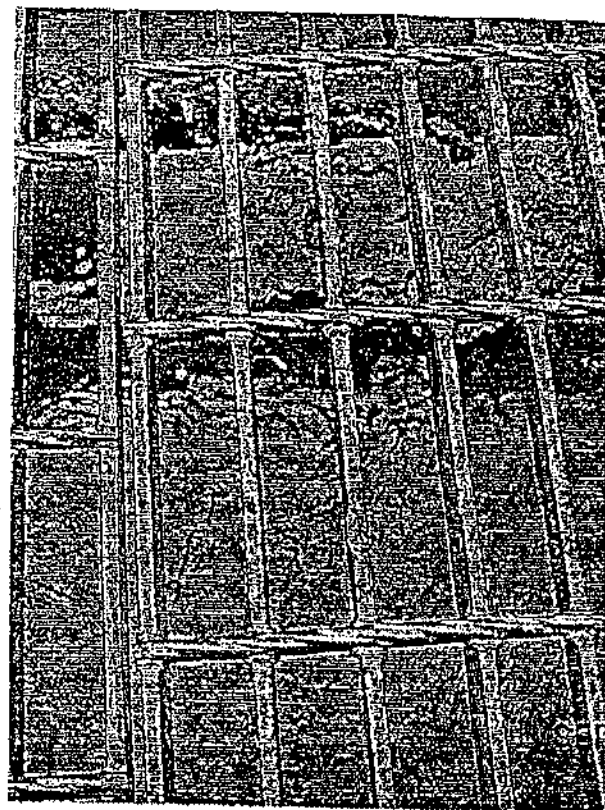
Preston Estates Clarifier needs to be cleaned of sludge



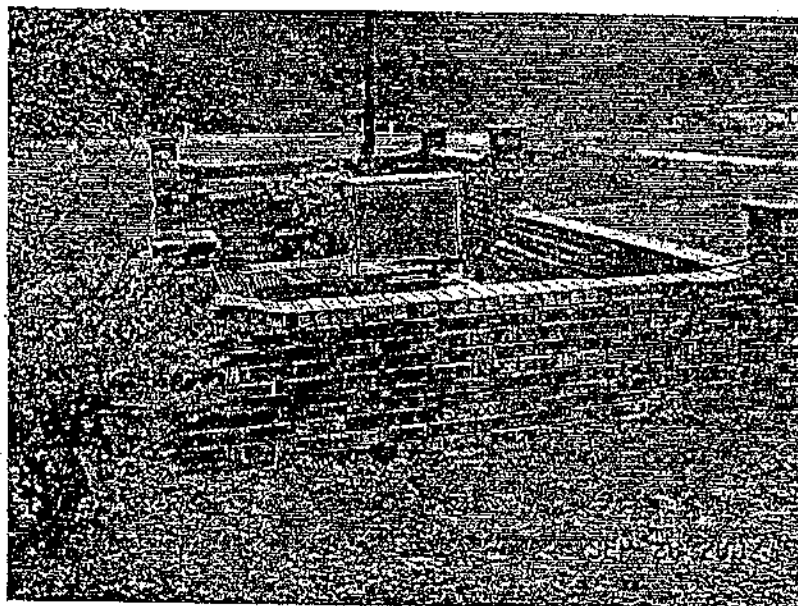
Preston Estates-The sludge return and the skimmer need to be operational



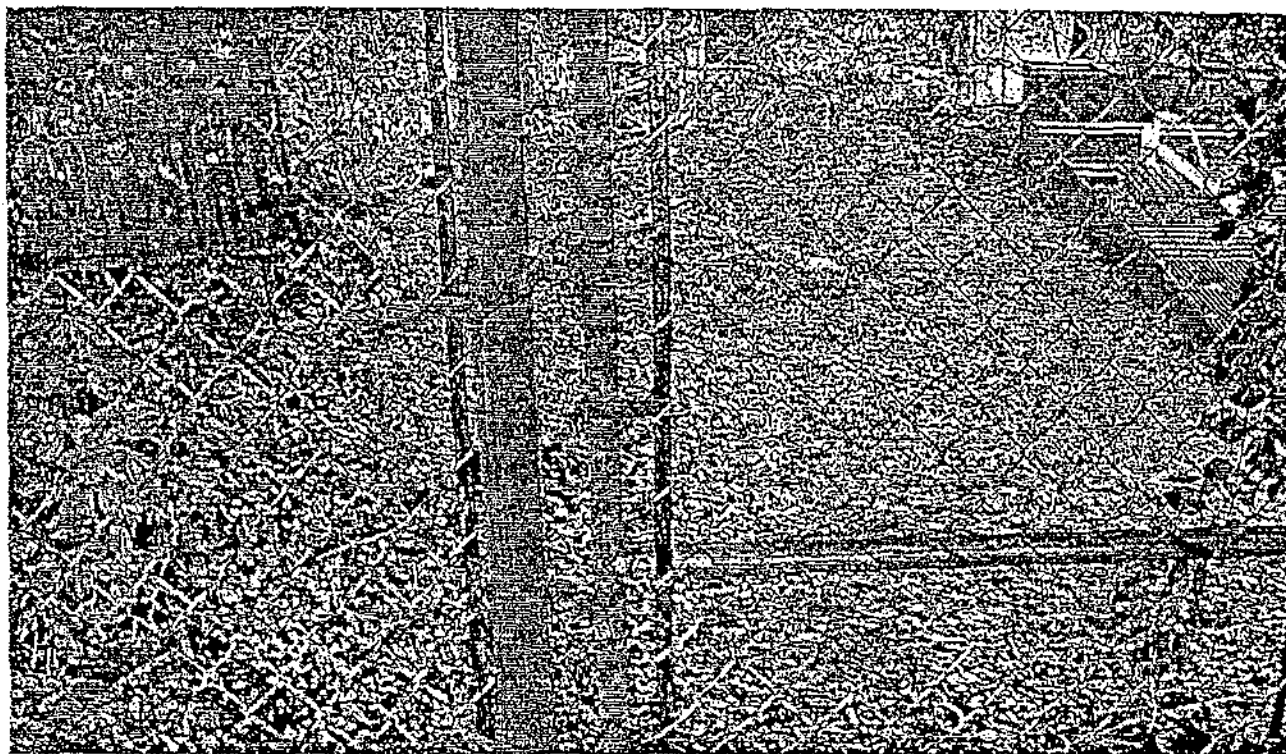
Paradise Valley-Bar screen needs to be cleaned



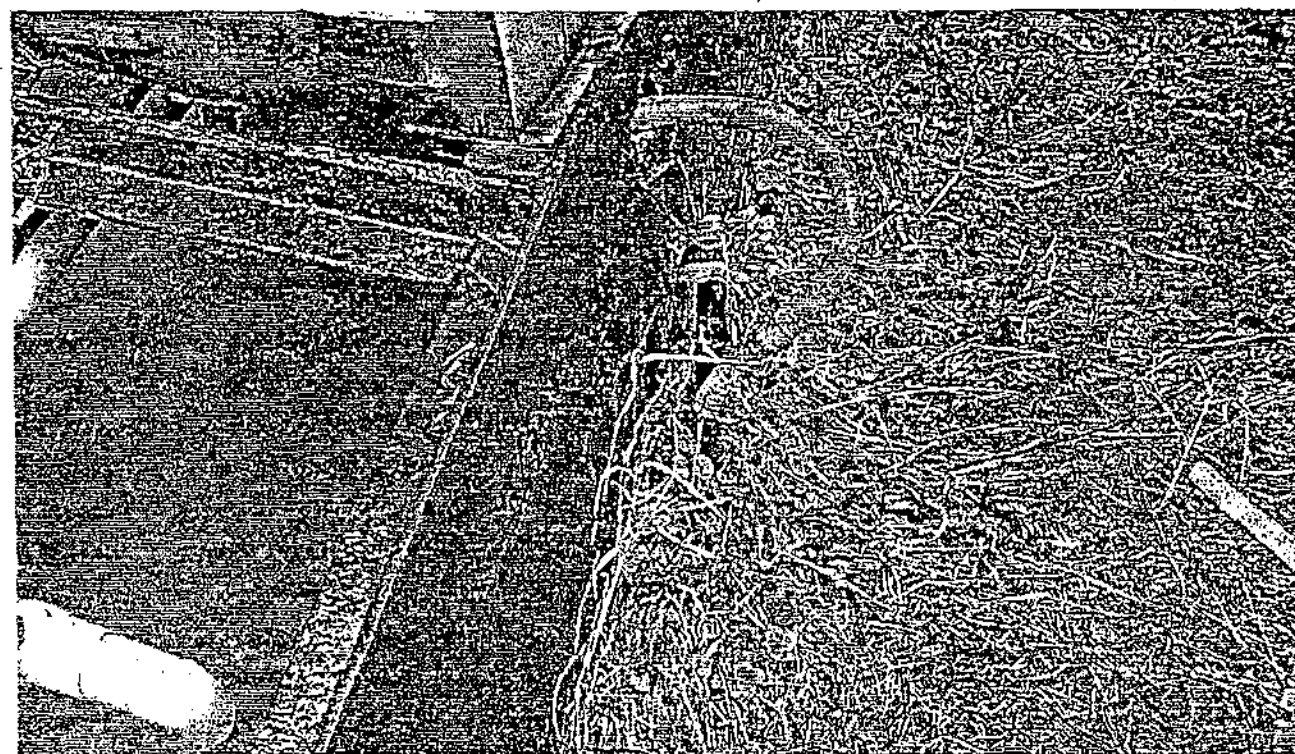
Paradise Valley-Bad Color



Paradise Valley-Either needs a 0' fence or needs grating lock down and secured



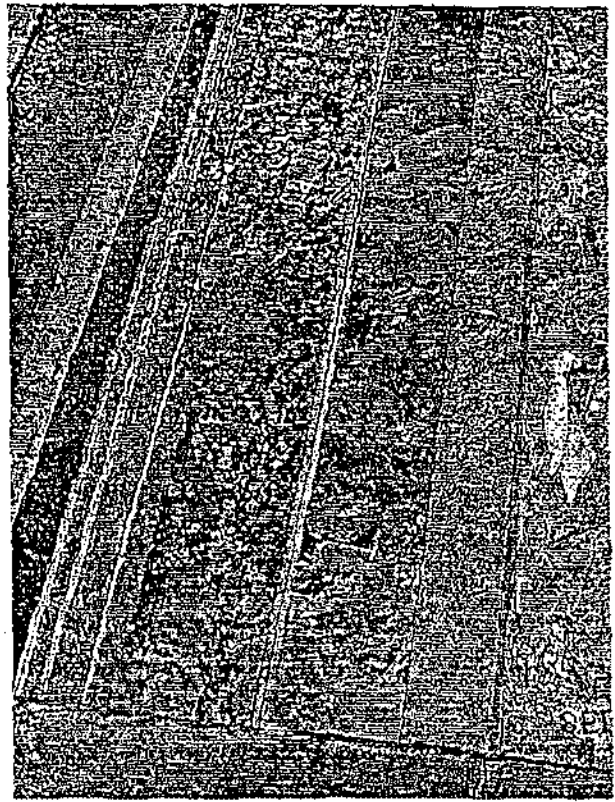
Neil Price Subdivision-Gate not secure



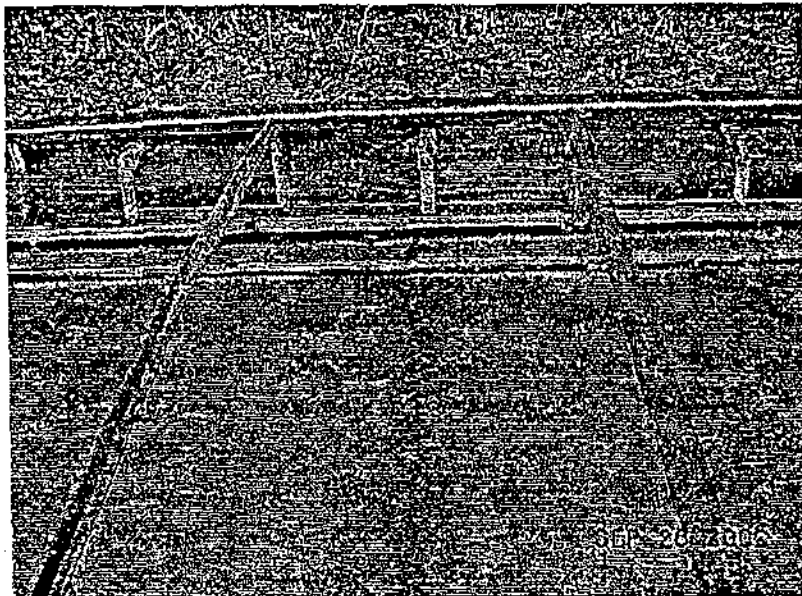
Neil Price Subdivision-Electrical connections need to be protected



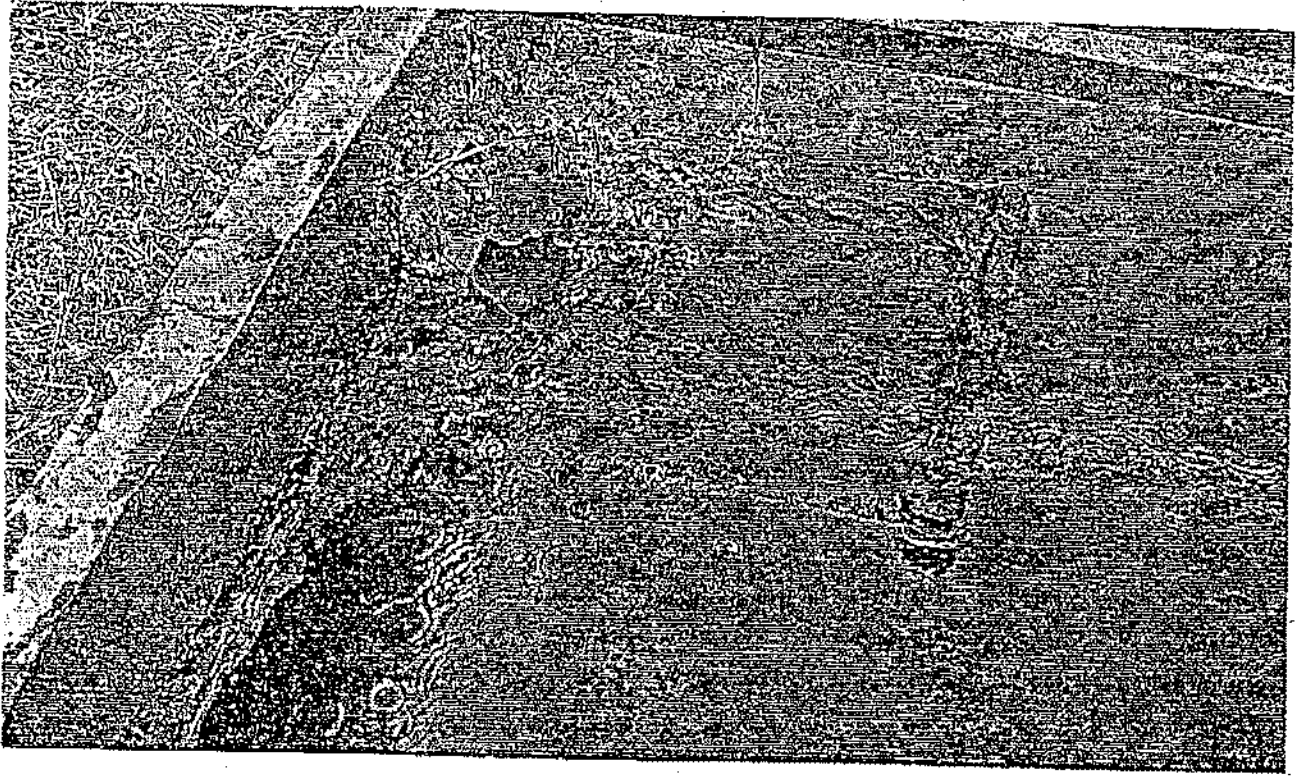
Richmond Hills-Clarifier needs cleaned of  
sludge



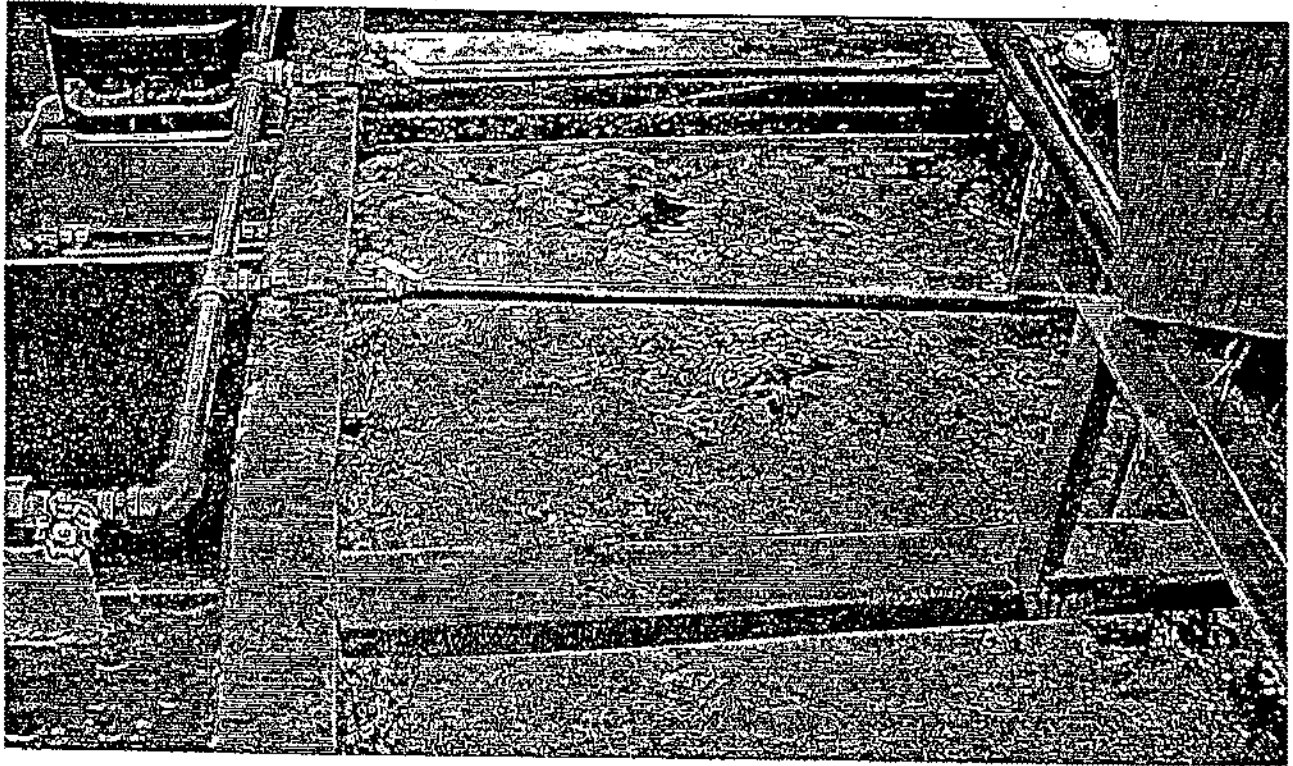
Richmond Hills-Sludge in weir trough  
needs to be removed



Richmond Hills-All diffusers need to be checked



Birchshire-Bar screen needs cleaned



Birchshire-Clarifier needs cleaned of sludge