

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

GARY K. FAIRCHILD; APPALACHIAN WASTE CONTROL, INC.; AND 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(5) AND (6); KRS 278.150(2); AND KRS 278.160(2))	

ORDER

This case involves an investigation into the operation of 5 sewage treatment facilities in eastern Kentucky. At issue is whether the owners and operators of these facilities failed to maintain and operate these plants in accordance with Administrative Regulation 807 KAR 5:071 and to obtain Commission approval prior to transferring ownership and control of these plants. Finding in the affirmative, we declare the purported transfer of these plants as void and assess each subject of this investigation the sum of \$12,500.

PROCEDURE

On January 13, 2003, following receipt of a Utility Inspection Report¹ in which Commission Staff reported the findings of its inspection of the sewage treatment and collection systems located in the Richmond Hills Estate, Paradise Valley, Preston Estates, Neil Price, and Burkeshire Development Subdivisions of Johnson County, Kentucky (collectively "Sewage Treatment Facilities"), the Commission initiated this

¹ Order of January 13, 2003 at Appendix A.

proceeding. Commission Staff found conditions at each of the Sewage Treatment Facilities that were inconsistent with accepted engineering practice and constituted a violation of Administrative Regulation 807 KAR 5:071, Section 3. Commission Staff further reported that Appalachian Waste Control, Inc. ("Appalachian Waste Control") had apparently transferred the ownership and control of each of the Sewage Treatment Facilities to Lance Bowling, who was operating them under the name "East Kentucky Waste Control."

In our Order of January 13, 2003, we found prima facie evidence that an unauthorized transfer of control and ownership of the Sewage Treatment Facilities had occurred and that the Sewage Treatment Facilities were not being operated in accordance with Administrative Regulation 807 KAR 5:071, Section 3. We directed Appalachian Waste Control, its sole shareholder Keith Fairchild, and Lance Bowling ("Respondents") to show cause why they should not be penalized for alleged violations of KRS 278.020 and Administrative Regulation 807 KAR 5:071.² None responded in writing to the Commission's Order.

On March 28, 2003, Commission Staff held a conference with the subjects of this investigation.³ Following the conference, Commission Staff, on August 4, 2003, issued

² In our Order of January 13, 2003, we further noted the existence of prima facie evidence that Appalachian Waste Control had failed to pay its annual assessment for the maintenance of the Commission as KRS 278.150(2) requires. This assessment became due and payable on July 31, 2002. We directed the subjects of this investigation to show cause why they should not be penalized for a violation of KRS 278.150. Following the issuance of this Order, the assessment was paid. Accordingly, the Commission finds that, as to the alleged violation of KRS 278.150(2), the matter is closed.

³ Lance Bowling and Keith Fairchild attended this conference. Mr. Fairchild appears to have attended in his individual capacity and as a representative of Appalachian Waste Control.

a request for information to Lance Bowling d/b/a East Kentucky Waste Control. Mr. Bowling responded to this request on August 26, 2003.

Based upon this response, the Commission, on October 28, 2003, found prima facie evidence that the Respondents were assessing rates to the customers of the Sewage Treatment Facilities that were not published with the Commission in violation of KRS 278.160. We directed them to show cause why they should not be penalized for this violation. None responded in writing to this Order.⁴

On June 14, 2004, the Commission directed the Respondents to respond to our Orders of January 13, 2003 and October 28, 2003 and, if they desired a hearing, to request a hearing on the allegations contained in those Orders. We further directed that if no written request for hearing was received by June 30, 2004, this case would stand submitted for decision. None of the Respondents submitted a written response or request for hearing.

FINDINGS OF FACT

Having reviewed the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. Appalachian Waste Control, Inc. is a corporation that was organized pursuant to KRS Chapter 271A in 1988.⁵

⁴ On December 31, 2003, Lance Bowling submitted a schedule of rates for sewer service that the Burkeshire Development Subdivision provides. The Commission subsequently accepted this rate schedule. See Case No. 2003-00507, Application of East Kentucky Waste Control for a Certificate of Public Convenience and Necessity for Initial Operations With Tariff (Ky. PSC Jan. 16, 2004). As this action resolved allegations involving the assessment of unpublished rates, the Commission finds the matter with respect to those allegations is closed.

⁵ See [http://apps.sos.ky.gov/business/obdb/\(xauhlwfwoz02iq45vmsknczz\)/shoventy.asp?id=0239201&ct=09&cs=99999](http://apps.sos.ky.gov/business/obdb/(xauhlwfwoz02iq45vmsknczz)/shoventy.asp?id=0239201&ct=09&cs=99999) (last visited Jan. 4, 2007).

2. Keith Fairchild of Hagar Hill, Kentucky, is the registered agent for Appalachian Waste Control.⁶

3. Keith Fairchild is an incorporator and initial director of Appalachian Waste Control.⁷

4. Mr. Fairchild is currently the owner and sole shareholder of Appalachian Waste Control.

5. The Kentucky Secretary of State administratively dissolved Appalachian Waste Control on November 3, 1998 for failure to file its annual report.⁸

6. Appalachian Waste Control owns sewage collection and treatment facilities that are located in the Richmond Hills Estate Subdivision of Johnson County, Kentucky and that serve approximately 18 customers for compensation. It acquired ownership of these facilities in 1991.⁹

7. Appalachian Waste Control owns sewage collection and treatment facilities that are located in the Paradise Valley Subdivision of Johnson County,

⁶ Id.

⁷ Id.

⁸ See <http://apps.sos.ky.gov/corpscans/01/0239201-09-99999-19981103-ADS-736790-PU.pdf> (last visited Jan. 7, 2007).

⁹ Case No. 10141, The Application of Appalachian Waste Control, Inc. for Authority to Acquire and Operate the Sewage Treatment Plant Located at the Richmond Hills Estate Subdivision, Johnson County, Kentucky and For Approval of Rates Therefore (Ky. PSC July 9, 1991).

Kentucky and that serve approximately 16 customers for compensation. It acquired ownership of these facilities in 1989.¹⁰

8. Appalachian Waste Control owns sewage collection and treatment facilities that are located in the Preston Estates Subdivision of Johnson County, Kentucky and that serve approximately 22 customers for compensation. It acquired ownership of these facilities in 1993.¹¹

9. Appalachian Waste Control owns sewage collection and treatment facilities that are located in the Neil Price Subdivision of Johnson County, Kentucky and that serve approximately 6 customers for compensation. It acquired ownership of these facilities in 1993.¹²

10. Appalachian Waste Control owns sewage collection and treatment facilities that are located in the Burkeshire Development Subdivision of Johnson County, Kentucky and that serve approximately 11 customers for compensation.¹³

11. On or about September 26, 2002, Commission Staff inspected the Sewage Treatment Facilities. During the course of this inspection, Lance Bowling informed Commission Staff that he owned and operated the Sewage Treatment Facilities under the name “East Kentucky Waste Control.”

¹⁰ Case No. 1989-00064, The Application For Transfer of Paradise Valley Sewage Treatment Plant, Inc. to Appalachian Waste Control, Inc. (Ky. PSC Sep. 19, 1989).

¹¹ Case No. 1992-00551, The Application of Woodland-Preston Enterprises, Inc. for Approval to Transfer Appalachian Waste Control, Inc. (Ky. PSC Apr. 8, 1993).

¹² Case No. 2003-00016, Application of Price Estates for Approval to Transfer to Appalachian Waste Control (Ky. PSC Mar. 15, 1989).

¹³ See infra notes 21 and 22 and accompanying text.

12. The records of the Office of Secretary of State do not list any Kentucky corporation known as or doing business as “East Kentucky Waste Control” or any foreign corporation known as “East Kentucky Waste Control” authorized to transact business in Kentucky.

13. On March 28, 2003, Keith Fairchild and Lance Bowling attended a conference with Commission Staff at the Commission’s offices in Frankfort, Kentucky, regarding the Sewage Treatment Facilities. During the conference, Keith Fairchild admitted that he transferred control of the Sewage Treatment Facilities to Lance Bowling, but did not state the manner in which transfer of control had been made. During the same conference, Mr. Bowling acknowledged that he had acquired ownership and control of the Sewage Treatment Facilities and was currently operating them under the name “East Kentucky Waste Control.”¹⁴

14. On April 30, 2003, Keith Fairchild executed a written statement to the Commission in which he acknowledged that he transferred control of the Sewage Treatment Facilities to Lance Bowling.

15. On May 3, 2003, Lance Bowling executed a written statement to the Commission in which he acknowledged that he had acquired ownership and control of the Sewage Treatment Facilities and was currently operating them under the name “East Kentucky Waste Control.”

¹⁴ Memorandum from Dale Wright, Public Service Commission Staff Attorney, to Case File (April 22, 2003).

16. On March 14, 2005, Lance Bowling executed an agreement with Larry Stambaugh in which he purports to transfer and convey “complete and total ownership” of the Sewage Treatment Facilities.¹⁵

17. On March 23, 2005, Keith Fairchild, Lance Bowling doing business as “East Kentucky Waste Control,” and Larry Stambaugh petitioned for Commission approval of the transfer of ownership and control of the Sewage Treatment Facilities from Mr. Bowling to Mr. Stambaugh. In this Petition, which Mr. Bowling and Mr. Fairchild made under oath, Messrs. Bowling and Fairchild stated that Mr. Bowling was the current owner of the Sewage Treatment Facilities.¹⁶

18. The United States Environmental Protection Agency lists Lance Bowling and East Kentucky Waste Control as the “Contact/Owner” on the National Pollutant Discharge Elimination System (“NPDES”) water discharge permit (No. KY0080047) for the Preston Estates Subdivision Sewage Treatment Facility.¹⁷

19. The United States Environmental Protection Agency lists Lance Bowling and East Kentucky Waste Control as the “Contact/Owner” on the NPDES water

¹⁵ See Case No. 2005-00123, The Joint Petition of Keith Fairchild, Appalachian Waste Control, Inc., Lance Bowling, East Kentucky Waste Control (DBA) and Larry Stambaugh and The Purchase of Certain Residential Sewer Lease Currently Operated by Appalachian Waste Control, Inc., Joint Petition, Exhibit A (filed Mar. 23, 2005).

¹⁶ Case No. 2005-00123, Joint Petition at 1. Mr. Stambaugh subsequently withdrew his petition. See Joint Petition of Keith Fairchild et al., Case No. 2005-00123 (Nov. 3, 2005).

¹⁷ See http://oaspub.epa.gov/enviro/fii_query_dtl.disp_program_facility?pgm_sys_id_in=KY0080047&pgm_sys_acrnm_in=PCS (last visited Jan. 7, 2007).

discharge permit (No. KY0097225) for the Neal Price Subdivision Sewage Treatment Facility.¹⁸

20. The United States Environmental Protection Agency lists Lance Bowling and East Kentucky Waste Control as the “Contact/Owner” on the NPDES water discharge permit (No. KY0076686) for the Paradise Valley Subdivision Sewage Treatment Facility.¹⁹

21. The United States Environmental Protection Agency lists Lance Bowling and East Kentucky Waste Control as the “Contact/Owner” on the NPDES water discharge permit (No. KY0093823) for the Richmond Hills Subdivision Sewage Treatment Facility.²⁰

22. The United States Environmental Protection Agency and the Kentucky Natural Resources and Environmental Protection Cabinet issued a NPDES water discharge permit (No. KY0102687) to Appalachian Waste Control on October 6, 1998.²¹

23. The United States Environmental Protection Agency currently lists Lance Bowling and East Kentucky Waste Control as the “Contact/Owner” on the NPDES water

¹⁸ See http://oaspub.epa.gov/enviro/fii_query_dtl.disp_program_facility?pgm_sys_id_in=KY0097225&pgm_sys_acrnm_in=PCS (last visited Jan. 7, 2007).

¹⁹ See http://oaspub.epa.gov/enviro/fii_query_dtl.disp_program_facility?pgm_sys_id_in=KY0076686&pgm_sys_acrnm_in=PCS (last visited Jan. 7, 2007).

²⁰ See http://oaspub.epa.gov/enviro/fii_query_dtl.disp_program_facility?pgm_sys_id_in=KY0093823&pgm_sys_acrnm_in=PCS (last visited Jan. 7, 2007).

²¹ See http://oaspub.epa.gov/enviro/pcs_det_reports.pcs_tst?npdesid=KY0102687&npvalue=1&npvalue=2&npvalue=3&npvalue=4&npvalue=5&npvalue=6&rvalue=13&npvalue=7&npvalue=8&npvalue=10&npvalue=11&npvalue=12 (last visited January 12, 2007).

discharge permit (No. KY0102687) for the Burkeshire Development Sewage Treatment Facility.²²

24. On or before September 26, 2002, Appalachian Waste Control transferred ownership and control of the Sewage Treatment Facilities to Lance Bowling. Neither Appalachian Waste Control nor Mr. Bowling obtained Commission approval of the proposed transfer.

25. As Appalachian Waste Control's sole shareholder, Keith Fairchild aided and abetted the transfer of ownership and control of the Sewage Treatment Facilities to Lance Bowling without Commission approval.

26. On or about September 26, 2002, Lance Bowling operated and managed the Sewage Treatment Facilities.

27. On or about September 26, 2002, the following conditions existed at the Preston Estates Subdivision sewage treatment facilities:

- a. The sewage treatment plant's bar screen was clogged with debris and required a cleaning.
- b. The sewage treatment plant's diffusers were not operational.
- c. The sewage treatment plant had several leaks in its air hoses.
- d. The sewage treatment plant's clarifier contained a large amount of solids.

²² Id. On February 23, 2002, Mr. Bowling executed a "Change in Ownership Certification" in which he certified that he had assumed ownership of the Burkeshire Development Sewage Treatment Facility from Appalachian Waste Control. See Change in Ownership Certification, Form DEP 7032-CO (Feb. 23, 2002) (on file with Division of Water, Department of Environmental Protection, Environmental and Public Protection Cabinet).

e. The sewage treatment plant's sludge recirculator system was not functioning.

f. The sewage treatment plant's skimmer was not functioning.

g. The sewage treatment plant lacked a backup blower or motor unit to ensure the continuity of service in the event that the operating blower failed.

28. On or about September 26, 2002, the following conditions existed at the Paradise Valley Subdivision sewage treatment facilities:

a. The sewage treatment plant's grating was not secured and posed a security and safety risk.

b. The sewage treatment plant had several leaks in its air hoses.

c. The water in the sewage treatment plant had a dark color, appeared septic, and emitted a bad odor. These conditions indicated that lack of adequate air injection in the treatment process.

d. The sewage treatment plant lacked a backup blower or motor unit to ensure the continuity of service in the event that the operating blower failed.

29. On or about September 26, 2002, the following conditions existed at the Neil Price Subdivision sewage treatment facilities:

a. The fencing surrounding the sewage treatment plant was inadequate and posed a security and safety risk.

b. Some electrical connections were exposed and present potential safety risks.

c. The sewage treatment plant lacked a backup blower or motor unit to ensure the continuity of service in the event that the operating blower failed.

30. On or about September 26, 2002, the following conditions existed at the Richmond Hill Estates Subdivision sewage treatment facilities:

- a. The sewage treatment plant's clarifier contained a large amount of solids.
- b. The sewage treatment plant's Weir had an excessive amount of sludge and required cleaning.
- c. The sewage treatment plant's diffusers were not operational.
- d. The sewage treatment plant lacked a backup blower or motor unit to ensure the continuity of service in the event that the operating blower failed.
- e. The sewage treatment plant's sludge recirculator system was not functioning.
- f. The sewage treatment plant's skimmer was not functioning.

31. On or about September 26, 2002, the following conditions existed at the Burkeshire Development Subdivision sewage treatment facilities:

- a. The sewage treatment plant's bar screen was clogged with debris and required a cleaning.
- b. The sewage treatment plant's clarifier contained a large amount of solids and other debris.

32. The conditions set forth in Findings Paragraphs 27 through 31 are inconsistent with and contrary to accepted engineering practice.

CONCLUSIONS OF LAW

Based upon these findings, the Commission makes the following conclusions of law:

1. Appalachian Waste Control is a utility subject to Commission jurisdiction.²³

2. Appalachian Waste Control, Keith Fairchild, and Lance Bowling are “persons” for purposes of KRS Chapter 278.²⁴

3. KRS 278.020(5) 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 . . . without prior approval by the commission.”

4. As Appalachian Waste Control’s sole shareholder, Keith Fairchild possessed control of Appalachian Waste Control and indirect control of the Sewage Treatment Facilities.

5. As Keith Fairchild is a person and sought to transfer ownership of Appalachian Waste Control or the Sewage Treatment Facilities, KRS 278.020(5) is applicable to the transaction and required Mr. Fairchild to obtain Commission approval prior to this transfer.

6. KRS 278.020(6) 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.” As Lance Bowling acquired ownership and control of the Sewage Treatment Facilities that Appalachian

²³ KRS 278.010(3)(f).

²⁴ KRS 278.010(2).

Waste Control owned and controlled, this statute is applicable and required Commission approval of any transfer of the Sewage Treatment Facilities to Mr. Bowling.

7. As Keith Fairchild and Appalachian Waste Control transferred the Sewage Treatment Facilities to Lance Bowling without prior Commission approval, they violated KRS 278.020(5).

8. As Lance Bowling acquired ownership and control of the Sewage Treatment Facilities from Appalachian Waste Control without prior Commission approval, he violated KRS 278.020(5) and (6).

9. To the extent that Lance Bowling, on or about September 26, 2002, operated and managed the Sewage Treatment Facilities, he was a “utility” for purposes of KRS Chapter 278.²⁵

10. Administrative Regulation 807 KAR 5:071, Section 7(1), requires sewage treatment to “be constructed, installed, maintained and operated in accordance with accepted good engineering practice to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.”

11. Each of the conditions set forth in Findings Paragraphs 27 through 31 constitutes a violation of Administrative Regulation 807 KAR 5:071, Section 7(1).

²⁵ See KRS 278.010(3(f)) (“Utility” means any person except, . . . a city, who **owns, controls, operates, or manages** any facility used or to be used for or in connection with . . . The collection, transmission, or treatment of sewage for the public, for compensation, if the facility is a subdivision collection, transmission, or treatment facility plant that is affixed to real property and is located in a county containing a city of the first class or is a sewage collection, transmission, or treatment facility that is affixed to real property, that is located in any other county, and that is not subject to regulation by a metropolitan sewer district or any sanitation district created pursuant to KRS Chapter 220”) (emphasis added).

12. Appalachian Waste Control failed to maintain and operate the Sewage Treatment Facilities in accordance with accepted good engineering practice and, for each condition set forth in Findings Paragraphs 27 through 31, violated Administrative Regulation 807 KAR 5:071, Section 7(1).

13. As manager and operator of the Sewage Treatment Facilities on or about September 26, 2002, Lance Bowling failed to maintain and operate the Sewage Treatment Facilities in accordance with accepted good engineering practice.

14. As the sole shareholder and person who indirectly controlled the Sewage Treatment Facilities, Keith Fairchild aided and abetted each of Appalachian Waste Control's failures to maintain and operate the Sewage Treatment Facilities in accordance with accepted good engineering practice.

IT IS THEREFORE ORDERED that:

1. The purported transfer of ownership and control of the Sewage Treatment Facilities from Appalachian Waste Control to Lance Bowling is void.

2. Within 60 days of the date of this Order, the Respondents shall take all actions necessary to correct the conditions noted in Findings Paragraphs 27 through 31 and to bring the Sewage Treatment Facilities into compliance with Administrative Regulation 807 KAR 5:071, Section 7(1).

3. Appalachian Waste Control is assessed a civil penalty of \$500 for its violation of KRS 278.020(5).

4. Keith Fairchild is assessed a civil penalty of \$500 for his violation of KRS 278.020(5).

5. Lance Bowling is assessed a civil penalty of \$500 for his violation of KRS 278.020(5) and (6).

6. Appalachian Waste Control is assessed a civil penalty of \$12,000, for its violations of Administrative Regulation 807 KAR 5:071, Section 7(1).

7. Fairchild is assessed a civil penalty of \$12,000 for his violations of Administrative Regulation 807 KAR 5:071, Section 7(1).

8. Bowling is assessed a civil penalty of \$12,000 for aiding and abetting Appalachian Waste Control's violations of Administrative Regulation 807 KAR 5:071, Section 7(1).

9. Within 60 days of the date of this Order, each Respondent shall mail or deliver a cashier's check in the total amount assessed against them and made payable to "Treasurer, Commonwealth of Kentucky" to the Office of General Counsel, Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

Done at Frankfort, Kentucky, this 30th day of January, 2007.

By the Commission

ATTEST:



Executive Director