

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE CONDITION AND )  
MANAGEMENT OF APPALACHIAN WASTE ) CASE NO. 2006-00569  
CONTROL, INC. )

ORDER

This matter is before the Commission upon the written request of the Environmental and Public Protection Cabinet ("the Cabinet") to determine whether the sewage collection and treatment facilities that Appalachian Waste Control, Inc. ("Appalachian Waste Control") owns have been abandoned and should be placed under the control and responsibility of a receiver.

Appalachian Waste Control is a corporation that was organized pursuant to KRS Chapter 271A in 1988.<sup>1</sup> It owns sewage collection and treatment facilities ("the Sewage Treatment Facilities") that are located in the Richmond Hills Estate,<sup>2</sup> Paradise Valley,<sup>3</sup>

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<sup>1</sup> See [http://apps.sos.ky.gov/business/obdb/\(xauhlwfw02iq45vmsknczz\)/showentity.aspx?id=0239201&ct=09&cs=99999](http://apps.sos.ky.gov/business/obdb/(xauhlwfw02iq45vmsknczz)/showentity.aspx?id=0239201&ct=09&cs=99999) (last visited Jan. 4, 2007). The Kentucky Secretary of State administratively dissolved Appalachian Waste Control on November 3, 1998 for failure to file its annual report. See <http://apps.sos.ky.gov/corpscans/01/0239201-09-99999-19981103-ADS-736790-PU.pdf> (last visited Jan. 7, 2007)

<sup>2</sup> 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 Therefor (Ky. PSC July 9, 1991).

<sup>3</sup> 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).

Preston Estates,<sup>4</sup> Neil Price,<sup>5</sup> and Burkeshire Development Subdivisions of Johnson County, Kentucky and that serve a total of approximately 65 customers for compensation. It is a utility subject to Commission jurisdiction.<sup>6</sup>

On or before September 26, 2006, Appalachian Waste Control transferred without prior Commission approval its ownership of the Sewage Treatment Facilities to Lance Bowling d/b/a East Kentucky Waste Control. As the Commission did not approve Appalachian Waste Control's transfer and Bowling's acquisition of the Sewage Treatment Facilities, the transfer is void.<sup>7</sup>

Since on or before September 26, 2006, Bowling has operated the Sewage Treatment Facilities. He has acquired a National Pollutant Discharge Elimination System ("NPDES") water discharge permit from the Cabinet in the name of East Kentucky Waste Control for each of the Sewage Treatment Facilities.

Bowling's operation of the Sewage Treatment Plants has been problematic.<sup>8</sup> Most recently, the Sewage Treatment Facilities have been the subject of a joint

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<sup>4</sup> Case No. 1992-00551, The Application of Woodland-Preston Enterprises, Inc. for Approval to Transfer Appalachian Waste Control, Inc. (Ky. PSC Apr. 8, 1993).

<sup>5</sup> Case No. 1993-00016, Application of Price Estates For Approval to Transfer to Appalachian Waste Control (Ky. PSC Mar. 15, 1989).

<sup>6</sup> KRS 278.010(3)(f).

<sup>7</sup> Case No. 2002-00396, Gary K. Fairchild; Appalachian Waste Control, Inc.; and Lance Bowling D/B/A East Kentucky Waste Control – 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) (Ky. PSC Jan. 19, 2007).

<sup>8</sup> See, e.g., Case No. 2002-00396, Order of January 30, 2007, at 9 - 11.

investigation by the Cabinet and the Kentucky Bureau of Investigation into the illegal dumping of raw untreated sewage into the Big Sandy River.<sup>9</sup>

As a result of this investigation, the Cabinet sought a temporary injunction and the appointment of a temporary receiver to operate the Sewage Treatment Facilities. On December 21, 2006, the Franklin Circuit Court entered an Order appointing Squire N. Williams III as a special master commissioner and temporary receiver "to collect rates for the five (5) above-captioned plants and to pay the operator that will be appointed by the Cabinet."<sup>10</sup> It further directed the Cabinet to "petition the Public Service Commission to take the necessary steps to appoint a permanent receiver to take over" the Sewage Treatment Facilities.

On December 21, 2006, Commission Staff inspected the Sewage Treatment Facilities. In its report of this inspection, which is appended to this Order, Commission Staff reported that all biological activity, which is essential to the proper operation of a sewage treatment plant, had ceased in 4 of the 5 facilities, that all required "extensive

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<sup>9</sup> See Press Release, Office of Attorney General, Attorney General Greg Stumbo Announces Arrest Following Overnight Raid of Septic Company Caught Dumping Waste into Big Sandy River (Dec. 20, 2006) (found at <http://ag.ky.gov/news/bigandyriversewage.htm>) (last visited Jan. 10, 2007). See also State Files to Take Over Five Wastewater Plants, Lexington Herald-Leader, Dec. 21, 2006 (found at <http://www.kentucky.com/mld/kentucky/news/local/states/kentucky/counties/clark/16287510.htm>) (last visited Jan. 11, 2007).

<sup>10</sup> See Environmental and Public Protection Cabinet v. Jeffrey Lance Bowling d/b/a East Kentucky Waste Control, d/b/a Paradise Valley Sewage Plant (KPDES No. KY0076686), d/b/a Preston Estates Sewage Plant (KYDES No. KY0080047), d/b/a Richmond Hills Estates Sewage Plant (KYDES No. KY0093823), d/b/a Neal Price Sewage Plant (KYDES No. KY0097225), d/b/a Burkshire Development Sewage Plant (KYDES No. KY0102687), Civil Action No. 05-CI-1007 (Franklin Cir. Ct. Dec. 21, 2006). A copy of the Court's Order is found at Appendix A.

maintenance,” and that none were being operated in accordance with accepted good engineering practice.<sup>11</sup>

On December 28, 2006, the Cabinet submitted a written request that the Commission initiate a proceeding pursuant KRS 278.021 to consider the appointment of a receiver on a permanent basis. Noting the possibility that raw sewage for the Sewage Treatment Facilities was not being properly disposed, the Cabinet stated:

The Environmental and Public Protection Cabinet is very concerned with the health and welfare of the individuals residing in the following subdivisions in Johnson County which are served by the package plants at issue: (1) Neal Price, (2) Preston Estates, (3) Berkshire, (4) Richmond Hills, and (5) Paradise Village. The Cabinet is currently going through its database of licensed operators in and around Johnson County and speaking with the larger waste water treatment plants in order to locate an operator for the temporary receiver, Special Master Commissioner, Squire N. Williams, III. The Cabinet respectfully requests that you initiate proceedings pursuant to KRS 278.021 in order to facilitate having a receiver appointed on a permanent basis as soon as possible.<sup>12</sup>

The Commission's jurisdiction generally extends to the regulation of rates and services of utilities.<sup>13</sup> Within the scope of this jurisdiction is the authority to seek the

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<sup>11</sup> A copy of Commission Staff's Report is found at Appendix B of this Order.

<sup>12</sup> Letter from David Morgan, Director, Division of Water, Department of Environmental Protection, Environmental and Public Protection Cabinet, to Beth O'Donnell, Executive Director, Public Service Commission (Dec. 22, 2006). A copy of this letter is found at Appendix C of this Order.

<sup>13</sup> KRS 278.040(2).

appointment of a receiver for "any utility that is abandoned."<sup>14</sup> "Abandoned," however, is not defined by the statute. In construing the statute, the Commission must give effect to the intent of the legislature. See Lewis v. Jackson Energy Cooperative Corporation, 189 S.W.3d 87 (Ky. 2005).

Based upon the foregoing, the Commission finds that an investigation should be commenced into the current condition of ownership and management of the Sewage Treatment Facilities with a special focus on whether these facilities have been abandoned. We further find that, to ensure a complete and thorough investigation, that all interested persons should be made parties to this proceeding and that each party at the outset of this proceeding provide the Commission with a brief and concise statement setting forth all issues that this proceeding should address and all information related to the operation and ownership of the Sewage Treatment Facilities that it believes is relevant to this proceeding and a proposed procedural schedule.

IT IS THEREFORE ORDERED that:

1. This proceeding is initiated to determine whether the Sewage Treatment Facilities have been abandoned and whether, if such abandonment has occurred, they should be placed under the control and responsibility of a receiver pursuant to KRS 278.021.

2. The following persons are made parties to this proceeding: Appalachian Waste Control; Lance Bowling; the Cabinet; Squire Williams III, in his capacity as Special Master Commissioner; and the Attorney General.

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<sup>14</sup> KRS 278.021.

3. Within 20 days of the date of this Order, each party to this proceeding shall file with the Commission:

a. A brief and concise statement setting forth all issues that the Commission should consider in this proceeding and all information related to the operation and ownership of the Sewage Treatment Facilities that it believes is relevant to this proceeding; and

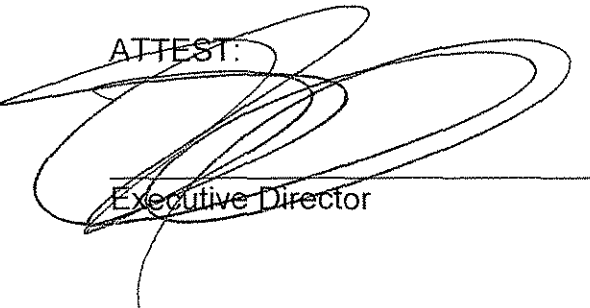
b. A proposed procedural schedule.

4. Within 5 days of the date in which it appoints an operator for the Sewage Treatment Plants, the Cabinet shall advise the Commission in writing of the appointment, the identity of the appointed operator, the scope of the operator's authority, and the operator's qualifications and previous experience in the operation of sewage collection and treatment facilities.

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

By the Commission

ATTEST:

  
Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2006-00569 DATED January 30, 2007.

COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
CIVIL ACTION NO. 05-CI-1007  
DIVISION I

**ENTERED**  
DEC 21 2006  
FRANKLIN CIRCUIT COURT  
SALLY JUMP, CLERK

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

PLAINTIFF

VS.

**TEMPORARY INJUNCTION ORDER**  
**APPOINTING A TEMPORARY RECEIVER**

JEFFREY LANCE BOWLING  
d/b/a EAST KENTUCKY WASTE CONTROL  
d/b/a PARADISE VALLEY SEWAGE PLANT  
(KPDES No. KY0076686)  
d/b/a PRESTON ESTATES SEWAGE PLANT  
(KPDES No. KY0080047)  
d/b/a RICHMOND HILLS ESTATES SEWAGE PLANT  
(KPDES No. KY0093823)  
d/b/a NEAL PRICE SEWAGE PLANT  
(KPDES No. KY0097225)  
d/b/a BURKESHIRE DEVELOPMENT SEWAGE PLANT  
(KPDES No. KY0102687)

DEFENDANT

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This matter having come before this Court on the Environmental and Public Protection Cabinet's Motion for a Temporary Injunction To Appoint Temporary Receiver and the Court having reviewed the Cabinet's Motion and the Affidavit attached thereunto and being otherwise fairly and fully advised and being of the opinion that the Cabinet is entitled to the temporary injunction order requested and being of the opinion that the Cabinet shall suffer irreparable injury and damage by any necessarily delay;

THEREFORE, IT IS HEREBY ORDERED that this Court does appoint a temporary receiver to act until the appointment of a permanent receiver.



THEREFORE, IT IS HEREBY ORDERED that Squire N. Williams III be appointed as Special Master Commissioner and temporary receiver to collect rates for the five (5) above-captioned plants and to pay the operator that will be appointed by the Cabinet.

THEREFORE, IT IS HEREBY ORDERED the Cabinet will petition the Public Service Commission to take the necessary steps to appoint a permanent receiver to take over the five (5) above-captioned plants, pursuant to KRS 278.021.

THEREFORE, IT IS HEREBY ORDERED the Defendant will furnish the Cabinet with a list of ratepayers and information on which ratepayers are delinquent on their bills, how much they owe, and any other information the Cabinet needs to operate the plant.

IT IS FURTHER HERBY ORDERED AND ADJUDGED that the Temporary Injunction Order entered by this Court on July 26, 2005, remains in effect.

Entered this the 21 day of December, 2006 at the hour of 10:50 <sup>A.M.</sup> EST.

  
\_\_\_\_\_  
JUDGE, FRANKLIN CIRCUIT COURT

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2006-00569 DATED January 30, 2007.

**COMMONWEALTH OF KENTUCKY  
PUBLIC SERVICE COMMISSION**

**UTILITY INSPECTION REPORT**

Report Date: 12/27/2006

Report Number: EastKentuckyWC\_122106

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**BRIEF**

**Inspector:** Brian Rice  
**Inspection Date:** 12/21/2006  
**Type of Inspection:** Follow-Up Inspection  
  
**Type of Facility:** Sewer  
**Name of Utility:** East Kentucky Waste Control  
**Location of Facility:** Johnson County Kentucky  
**Purpose of Inspection:** Determine status of utility

**Applicable Regulations:** 807 KAR 5:006 and 5:071

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**INSPECTION**

**Description of Utility:** five package treatment plants and collection systems  
**Number of Customers:** 73  
**Area of Operation:** Johnson County  
**Supply Source:**  
**Distribution Description:**  
**Workforce Summary:** Unknown  
**Utility Reps in Insp:** None Present  
**Date of Last Inspection:** 11/15/2005  
**DTR from Last Insp:**  
**DTRs not Cleared:**

**Summary of items and facilities Inspected:**

Bob Robards (PSC Engineer) and two investigators from the DOW, Denver Pigman and Lonnie Klopp, accompanied me to the 5 locations. Pictures were taken of each package plant. Overall, the systems are in an advanced state of disrepair and do not seem to be functioning as treatment plants.

**COMMONWEALTH OF KENTUCKY  
PUBLIC SERVICE COMMISSION**

**UTILITY INSPECTION REPORT**

Report Date: 12/27/2006

Report Number: EastKentuckyWC\_122106

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**FINDINGS**

- 1 Burkshire, Preston Estates, Neal Price, and Richmond Hills all appear to be lacking any biological activity. Without the biological activity, the wastewater cannot be properly treated before it is released into nearby streams.
  - 2 All 5 package plants were found to be in need of extensive maintenance. Plant equipment was rusted, excessive sludge buildup was found in clarifiers, bar screens were plugged. The plants did not appear to be inspected regularly, nor did deficient items appear to be corrected.
  - 3 Many backup systems were either non-existent or not functioning. Burkshire has a backup aeration blower which was disconnected electrically and physically. The other 4 plants have only one blower unit installed, there are no backup units visible.
- 

**RECOMMENDATIONS**

Until the biological processes can be re-established and the plants brought back to working order, the facilities should be regularly pumped out for off-site treatment.

A certified waste-water treatment plant operator shall be retained to manage the operations of the 5 package plants.

East Kentucky Waste Control may want to investigate the possibility of connecting some or all of their package collection systems to local sewer systems and dismantling their package plants.

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**ADDITIONAL INSPECTOR COMMENTS**

See attachment (Special Inspection of WWTP's Conducted 12/21/2006) for a more detailed list of items needing immediate correction or replacement.

Submitted by

\_\_\_\_\_  
Brian Rice  
Utility Regulatory and Safety Investigator II

Report Number: EastKentuckyWC\_122106  
DTR Number: 1

Due Date: 1/31/2007

## Deficiency Tracking Report

### Deficiency Detail

Utility	Date of Investigation	Investigator
East Kentucky Waste Control	12/21/2006	Brian Rice

### Regulation

807 KAR 5:071 Sec. 5(1) General. Each utility shall maintain and operate sewage treatment facilities of adequate size and properly equipped to collect, transport, and treat sewage, ...

Deficiency:

Burkshire, Preston Estates, Neal Price, and Richmond Hills all appear to be lacking any biological activity. Without the biological activity, the wastewater cannot be properly treated before it is released into nearby streams.

If Repeat Deficiency, Date of Last DTR:

### Response (attach additional pages as necessary)

1) Explain why the deficiency occurred. Include information about what caused the deficiency and why it was not detected by the utility. (Attach extra pages as necessary)

2) Explain actions taken to correct the deficiency, including utility's responsible person, actions taken, and when it was (or will be) done. (Attach extra pages as necessary)

3) Explain actions taken to prevent the deficiency from occurring again, including utility's responsible person, actions taken, and when it was (or will be) done. (Attach extra pages as necessary)

Response Provided By: \_\_\_\_\_

Response Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Report Number: EastKentuckyWC\_122106  
DTR Number: 2

Due Date: 1/31/2007

## Deficiency Tracking Report

### Deficiency Detail

Utility	Date of Investigation	Investigator
East Kentucky Waste Control	12/21/2006	Brian Rice

### **Regulation**

807 KAR 5:071 Section 7(4) Inspection of facilities. Each sewage utility shall adopt procedures for inspection of its sewage treatment facilities to assure safe and adequate operation . . .

Deficiency:

All 5 package plants were found to be in need of extensive maintenance. Plant equipment was rusted, excessive sludge buildup was found in clarifiers, bar screens were plugged. The plants did not appear to be inspected regularly, nor did deficient items appear to be corrected.

If Repeat Deficiency, Date of Last DTR:

### **Response (attach additional pages as necessary)**

1) Explain why the deficiency occurred. Include information about what caused the deficiency and why it was not detected by the utility. (Attach extra pages as necessary)

2) Explain actions taken to correct the deficiency, including utility's responsible person, actions taken, and when it was (or will be) done. (Attach extra pages as necessary)

3) Explain actions taken to prevent the deficiency from occurring again, including utility's responsible person, actions taken, and when it was (or will be) done. (Attach extra pages as necessary)

Response Provided By: \_\_\_\_\_

Response Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Report Number: EastKentuckyWC\_122106  
DTR Number: 3

Due Date: 1/31/2007

## Deficiency Tracking Report

### Deficiency Detail

Utility	Date of Investigation	Investigator
East Kentucky Waste Control	12/21/2006	Brian Rice

### **Regulation**

807 KAR 5:071 Sec. 7(1) Sewage treatment facilities of the sewage utility shall be constructed, installed, maintained and operated in accordance with accepted good engineering practice ...

Deficiency:

Many backup systems were either non-existent or not functioning. Burkshire has a backup aeration blower which was disconnected electrically and physically. The other 4 plants have only one blower unit installed, there are no backup units visible.

If Repeat Deficiency, Date of Last DTR:

### **Response (attach additional pages as necessary)**

1) Explain why the deficiency occurred. Include information about what caused the deficiency and why it was not detected by the utility. (Attach extra pages as necessary)

2) Explain actions taken to correct the deficiency, including utility's responsible person, actions taken, and when it was (or will be) done. (Attach extra pages as necessary)

3) Explain actions taken to prevent the deficiency from occurring again, including utility's responsible person, actions taken, and when it was (or will be) done. (Attach extra pages as necessary)

Response Provided By: \_\_\_\_\_

Response Date: \_\_\_\_\_

Signature: \_\_\_\_\_

# **SPECIAL INSPECTION OF WWTP'S** **CONDUCTED 12/21/2006**

## **Burkshire Development:**

1. Plant was extremely rusty and deteriorated.
  - There was sludge in the chlorine contact tank
  - Plant biological process was non existent or degraded to the point of not being viable
  - One blower motor unit was disconnected electrically and the v-belt from the motor to the blower on that unit was missing
  - Recirculation water was nearly clear indicating sludge had been removed
  - Did have Chlorine tables in contact tank
  - Bar screen full of rags and water was over flowing
2. Protective fencing
  - Outside fence gate—no lock present
  - Inside fence bent and deteriorated.

## **Paradise Valley**

1. Plant was rusty and deteriorated.
  - No Chlorine in contact tank
  - Only one blower unit installed but it was running, no back up unit visible
  - Clarifier full of sludge
  - Bar screen full of debris
  - No discharge effluent visible
  - Sludge deposits on ground
2. No Protective fencing



## Preston Estates

1. Plant rusty and deteriorated but running
  - Plant is septic
  - Bar screen full
  - No visible flow into plant
  - No working blower unit
  - Gravity line into plant has leak, sewage visible at ground level
  - Walk way gratings deteriorated and dangerous to walk on
  - There were chlorine tables in contact tank
  - Side walls very badly deteriorated
  - Diffuser drops broken
2. Protective fencing deteriorated
3. Lift station
  - Over flowing
  - No security fence
  - Drains to flat land and then possibly to nearby creek
  - Pump not operating

## Neal Price

1. Plant rusty but running
  - No bar screen
  - Biological process not working
  - No lock on entrance gate
  - Chlorine Contact Tank had chlorine tablets
  - Next door neighbor's house had open sewage flowing in front yard, possible gravity line leak to plant
  - Very small plant

## **Richmond Hills**

### 1. Plant rusty but in operation

- No biological process evident
- Downstream from effluent was gray water
- Sludge return not working
- Chlorine Contact Tank had gray water
- Approaching septic conditions

### 2. Did have secure fencing.

APPENDIX C

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2006-00569 DATED January 30, 2007.



## ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

**Ernie Fletcher**  
Governor

Department for Environmental Protection  
Frankfort Office Park  
14 Relly Road  
Frankfort, Kentucky 40601  
www.kentucky.gov

**Teresa J. Hill**  
Secretary

**Lloyd R. Cress**  
Commissioner

December 22, 2006

Ms. Beth O' Donnell, Executive Director  
Office of Executive Director  
Public Service Commission  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, KY 40602-0615

**RECEIVED**

DEC 28 2006

PUBLIC SERVICE  
COMMISSION

Case No. 2006-00569

Dear Executive Director O'Donnell:

It is my understanding that the Public Service Commission has been advised and has participated to some extent in the investigation of five (5) package plants owned and/or operated by Jeffery Lance Bowling. The Environmental and Public Protection Cabinet is very concerned with the health and welfare of the individuals residing in the following subdivisions in Johnson County which are serviced by the package plants at issue: (1) Neal Price, (2) Preston Estates, (3) Burkshire, (4) Richmond Hills, and (5) Paradise Village. The Cabinet is currently going through its database of licensed operators in and around Johnson County and speaking with the larger waste water treatment plants in order to locate an operator for the temporary receiver, Special Master Commissioner, Squire N. Williams III. The Cabinet respectfully requests that you initiate proceedings pursuant to KRS 278.021 in order to facilitate having a receiver appointed on a permanent basis as soon as possible. Based on the current accusations it would appear that David Bowling may have been emptying the plants and unlawfully disposing of the raw sewage. Moreover, the plants are not being run by a licensed operator.

Sincerely,

David Morgan, Director  
Division of Water

cc: Hon. Squire N. Williams III