

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

The Environmental and Public Protection Cabinet (“EPPC”) has applied to the Commission for a determination that Appalachian Waste Control, Inc. (“Appalachian Waste Control”) has abandoned certain sewage collection and treatment facilities in Johnson County, Kentucky. Finding that such abandonment has occurred, we direct the Commission’s General Counsel to initiate proceedings for the appointment of a receiver to operate these facilities.

Appalachian Waste Control is a corporation that was organized pursuant to KRS Chapter 271A.¹ It owns sewage collection and treatment facilities (“the Sewage Treatment Facilities”) that are located in the Richmond Hills Estate,² Paradise Valley,³ Preston Estates,⁴ Neil Price,⁵ and Burkeshire Development Subdivisions of Johnson

¹ See <http://apps.sos.ky.gov/business/obdb/showentity.aspx?id=0239201&ct=09&cs=99999> (last visited Dec. 13, 2007).

² 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).

³ 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). Paradise Valley Subdivision is also known as Paradise Village Subdivision. The plant has also been referred to as the Paradise Village Sewage Treatment Plant.

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

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

County, Kentucky and that serve a total of approximately 65 customers for compensation. It is a utility subject to Commission jurisdiction.⁶

According to the records of the Office of the Kentucky Secretary of State,⁷ Keith Fairchild and David Bowling incorporated Appalachian Waste Control on January 25, 1988. Mr. Fairchild and Mr. Bowling are listed as its only directors. Mr. Fairchild is listed as Appalachian Waste Control's registered agent for service of process. On or about November 3, 1998, the Kentucky Secretary of State administratively dissolved Appalachian Waste Control for failing to file its annual report.⁸

On or before September 26, 2002, Appalachian Waste Control attempted to transfer to Lance Bowling d/b/a East Kentucky Waste Control without prior Commission approval its ownership of the Sewage Treatment Facilities. The record does not disclose the specific date of this attempt. When Commission Staff inspected the Sewage Treatment Facilities on September 26, 2002, Mr. Bowling represented that he had acquired the Sewage Treatment Facilities.⁹ In February 2002, he acquired a National Pollutant Discharge Elimination System water discharge permit from the

⁶ KRS 278.010(3)(f).

⁷ See supra note 1.

⁸ Certificate of Dissolution Record No. 0239201 (found at <http://apps.sos.ky.gov/corpscans/01/0239201-09-99999-19981103-ADS-736790-PU.pdf> (last visited Dec. 13, 2007)). Administrative dissolution of a corporation does not terminate a corporation's existence, but limits the corporation's ability to continue to conduct business. See KRS 271B.210.

⁹ See 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. 31, 2007) at 5.

Natural Resources and Environmental Protection Cabinet in the name of East Kentucky Waste Control for at least one of the Sewage Treatment Facilities.¹⁰

On January 13, 2003, finding prima facie evidence that an unauthorized transfer of control and ownership of the Sewage Treatment Facilities had occurred, the Commission initiated an investigation into, inter alia, the ownership of the Sewage Treatment Facilities.¹¹ On January 30, 2007, the Commission found that an unauthorized transfer of ownership of the Sewage Treatment Facilities had occurred and that this transfer was void as a matter of law.¹²

Lance Bowling's operation of the Sewage Treatment Facilities had been problematic.¹³ In December 2006, the Sewage Treatment Facilities were the subject of a joint investigation by the EPPC and the Kentucky Bureau of Investigation into the illegal dumping of raw untreated sewage into the Big Sandy River.¹⁴

As a result of this investigation, EPPC 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

¹⁰ See Letter from Keith Fairchild to KPDES Branch, Kentucky Division of Water (Feb. 13, 2002); Letter from R. Bruce Scott, Manager, KPDES Branch, Kentucky Division of Water, to Lance Bowling (Feb. 27, 2002).

¹¹ Case No. 2002-00396, Order of January 13, 2003.

¹² Case No. 2002-00396, Order of January 30, 2007 at 9.

¹³ See, e.g., Case No. 2002-00396, Order of January 30, 2007, at 9 - 11.

¹⁴ 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/bigsandyriversewage.htm>) (last visited Dec. 13, 2007). See also State Files to Take Over Five Wastewater Plants, Lexington Herald-Leader, Dec. 21, 2006, 2006 WLNR 22277103.

the Cabinet.”¹⁵ It further directed EPPC 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 Commission Staff reported that all biological activity essential to the proper operation of a sewage treatment plant had ceased in 4 of the 5 facilities, that all required “extensive maintenance,” and that none were being operated in accordance with accepted good engineering practice.¹⁶

On December 28, 2006, EPPC 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. Expressing a concern that the Sewage Treatment Facilities were not properly treating waste affluent, EPPC 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) 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

¹⁵ 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).

¹⁶ See Case No. 2006-00569, Order of January 31, 2007, App. B.

order to facilitate having a receiver appointed on a permanent basis as soon as possible.¹⁷

On January 31, 2007, the Commission initiated this proceeding to investigate the current condition of ownership and management of the Sewage Treatment Facilities with a special focus on whether these facilities had been abandoned. We further directed that the following persons be made parties to this proceeding: Appalachian Waste Control; Lance Bowling; EPPC; Squire N. Williams III, in his capacity as Special Master Commissioner; and the Attorney General.¹⁸

On April 23, 2007, Keith Fairchild, submitted a sworn stipulation to the Commission on behalf of himself and Appalachian Waste Control in which he stipulated that on September 26, 2002, Appalachian Waste Control had transferred control of the Sewage Treatment Facilities without prior Commission consent and approval. He further stipulated that after September 26, 2002, neither he nor Appalachian Waste Control had maintained or operated the Sewage Treatment Facilities and that to the extent that he and Appalachian Waste Control had any interest in those facilities, they had abandoned such interest.

On May 15, 2007, the Commission held an evidentiary hearing in this proceeding. The Attorney General, EPPC and Mr. Williams appeared. Neither Lance Bowling, Mr. Fairchild, nor any representative for Appalachian Waste Control appeared.

¹⁷ 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).

¹⁸ The Commission directed all named parties to provide a brief and concise statement setting forth all issues that the Commission should consider and all information related to the ownership and operation of the Sewage Treatment Facilities. Only EPPC responded to this directive.

KRS 278.021(1) provides:

If the commission determines, after notice and hearing, that any utility is abandoned, the commission may petition the Franklin Circuit Court for an order attaching the assets of the utility and placing it under the sole control and responsibility of a receiver.

Based upon the evidence of record, the Commission finds that Appalachian Waste Control has abandoned the Sewage Treatment Facilities. Appalachian Waste Control, through its only recognized official, has disclaimed all interest in the facilities and has not taken any affirmative actions to operate or maintain the facilities since September 2002. Mr. Bowling, the putative owner of the Sewage Treatment Facilities, has also disclaimed any ownership.¹⁹

The appointment of a receiver to operate Appalachian Waste Control and the Sewage Treatment Facilities is in the best interest of the public. The appointment of a receiver will allow for the continued operation of the Sewage Treatment Facilities and provide the legal framework to transfer the utility's assets to a party that is more financially and technically competent to provide utility service.

IT IS THEREFORE ORDERED that:

1. The sewage collection and treatment facilities that Appalachian Waste Control owns are declared abandoned.
2. The Commission's Executive Director shall take all actions necessary to locate persons who are qualified and willing to serve as receiver of these facilities.

¹⁹ Transcript of Hearing at 13. Bowling had previously sought to transfer any interest that he had in the plant to Larry Stambaugh. 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). Mr. Stambaugh subsequently withdrew his petition. See Joint Petition of Keith Fairchild et al., Case No. 2005-00123 (Nov. 3, 2005).

3. The Commission's General Counsel shall take all actions necessary to obtain, pursuant to KRS 278.021(1), an order from Franklin Circuit Court attaching the assets of Appalachian Waste Control and placing them under the sole control and responsibility of a receiver.

4. The Executive Director shall serve by mail a copy of this Order on all parties of record and shall cause notice of the issuance of this Order to be published in a newspaper of general circulation in the area in which Appalachian Waste Control provides sewage collection and treatment services.

Done at Frankfort, Kentucky, this 18th day of December, 2007.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and flourishes, positioned above a horizontal line.

Executive Director