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PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BUSH GARDENS ENTERPRISES, LLC)	CASE NO.
ALTERNATIVE RATE FILING ADJUSTMENT,)	2015-00306
INITIAL OPERATIONS, AND TARIFFS)	

ATTORNEY GENERAL'S COMMENTS

Comes now the intervenor, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and pursuant to the Commission's December 28, 2015, Procedural Order tenders the following comments in the above-styled matter. The comments filed herein, along with exhibits tendered for filing to the public record of this matter, represent the preliminary position of the Attorney General. The Attorney General reserves his right as an intervenor in this proceeding to fully participate in a hearing or informal conference that may be scheduled, and to file a post-hearing brief, if desired and consistent with the Commission's Scheduling Order.

I. STATEMENT OF THE CASE

Bush Gardens Enterprises, LLC ("Bush Gardens" or "Company") provides wastewater service to eight customers¹ in the Bush Gardens Subdivision in Johnson County, Kentucky.² On September 8, 2015, Bush Gardens filed an application with the Public Service Commission of

¹ *Application of Bush Gardens Enterprises, LLC for Approval of Initial Sewer Rates Pursuant to the Alternative Rate Filing Procedures for Small Utilities and Tariff*, Case No. 2015-00306 (Ky. PSC September 8, 2015) (hereinafter "Application"); ARF Form-1 July 2014, at 3.

² Application, Proposed Tariff at 1.

Kentucky (“the Commission”) requesting to set an initial flat monthly residential sewer rate of \$194.61³ that would produce annual operating revenues of \$18,682.39.⁴ The application relies upon a twelve (12) month historical test period ending December 31, 2014,⁵ and according to the Company, includes both actual and projected expenses.⁶

According to the record, David and Linda Bowling initially intended to develop the Bush Gardens subdivision by building twenty homes on property that they owned.⁷ However, only eight homes were constructed, leaving twelve additional lots available for new residential development.⁸ The Bowlings determined that a sewer treatment plant would be the most “feasible sewer option” for the newly built homes.⁹ The Bush Gardens treatment plant was constructed and designed to work in conjunction with the septic tanks that were installed for each home.¹⁰ The septic tanks were to hold the solid waste of each individual home, while the liquid sewage would be discharged to the treatment plant.¹¹

Bush Gardens contends that it has never filed an application to set an initial sewer rate since the treatment plant began operating nearly ten years ago, with no payment for services ever requested from the homeowners.¹² Currently, the Company asserts that this filing is necessary due to the “Operator’s separate and independent economic duress.”¹³ The Company concludes that the entire requested rate increase is required in order to continue sewer treatment

³ *Id.*, Notice of Proposed Rate Adjustment; ARF Form 1 Attachment CPR September 2011, Current and Proposed Rates.

⁴ *Id.*, ARF Form-1 July 2014, at 3.

⁵ *Id.*

⁶ *Id.*, ARF Form 1 Attachment SR September 2011, Reasons for Application.

⁷ Bush Gardens’ Response to PSC 1-2(C).

⁸ Bush Gardens’ Response to PSC 1-2(C) and (C)2.

⁹ *Id.*

¹⁰ Bush Gardens’ Response to PSC 1-2(D)(4) and D(5)

¹¹ *Id.*

¹² *Id.* Application Cover Letter.

¹³ *Id.*

operations.¹⁴ Conversely, the Commission Staff performed a limited financial review of Bush Gardens' test-year operations and filed a Staff Report that recommends reducing the revenue requirement to \$12,224 and the flat sewer rate to \$127.33 per month per customer.¹⁵

The Attorney General, by and through his Office of Rate Intervention, sought and was granted intervention by Order of the Commission on September 30, 2015.¹⁶ The Attorney General recommends a downward adjustment to the requested revenue and monthly sewer rate contained in both the Bush Gardens' application and the Commission's Staff Report, since the request would result in unjust, unfair, and unreasonable rates.¹⁸

II. REVENUE REQUIREMENT RECOMMENDATIONS

Bush Gardens bears the burden of proof to show "that the rates contained in its application were just and reasonable."¹⁹ The Company has failed to meet its burden of proof to demonstrate that the revenue it proposes will result in fair, just and reasonable rates as required by KRS 278.190(3).²⁰ Therefore, the Attorney General opposes the revenue that Bush Gardens is requesting and asks the Commission to deny the application in a manner consistent with the positions outlined in his Comments. If the Commission grants Bush Gardens' application as filed, then it would result in unjust, unfair, and unreasonable rates due to the following issues.

¹⁴ *Id.*

¹⁵ Case No. 2015-00306, Commission's Staff Report on Bush Gardens Water District (January 13, 2016) at 10. (hereinafter "Staff Report")

¹⁶ Case No. 2015-00306, Order (September 30, 2015).

¹⁸ See KRS 278.190, "At any hearing involving the rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility..."; See also *Energy Regulatory Commission v. Kentucky Power Co.*, 605 S.W.2d 46, 50 (Ky. App. 1980). (At such hearing and through the Commission proceeding, the municipal utility seeking the rate adjustment bears the burden of showing that the proposed adjustment is reasonable.); See KRS 278.030(1).

¹⁹ *Kentucky-American Water Company v. Commonwealth ex rel. Cowan, Ky.*, 847 S.W.2d 737, (1993).

²⁰ See KRS 278.190, "At any hearing involving the rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility..."; See also *Energy Regulatory Commission v. Kentucky Power Co.*, 605 S.W.2d 46, 50 (Ky. App. 1980). (At such hearing and through the Commission proceeding, the municipal utility seeking the rate adjustment bears the burden of showing that the proposed adjustment is reasonable.); See KRS 278.030(1).

A. Manager Fee and Owner Compensation

After roughly ten years of operating the treatment plant the Bowlings established Bush Gardens Enterprises, LLC and transferred the asset to the newly formed LLC.²¹ Linda Bowling was named as President, Chief Executive Officer, and owner of 100% interest in Bush Gardens Enterprises, while Lance Bowling, the son of Linda and David Bowling, was named as Manager.²² David Bowling was questionably not listed as an owner, or in any other capacity for Bush Gardens Enterprises, even though according to the ratepayers it is clear that David Bowling has been running the treatment plant throughout its existence.²³ In fact, one ratepayer stated that she has only spoken to David Bowling in reference to the plant and has "... never met Lance or Linda in regards to this plant."²⁴ The Attorney General can only presume that Mr. Bowling's name was intentionally left off of the newly formed LLC due to his prior violations of Kentucky Revised Statute 224.70-110 that prohibits water pollution,²⁵ as well as violations of 33 U.S. Code Sections 1311(a) and 1319(c)(2)(A) for illegally discharging a pollutant, septic waste, into Waters of the United States without a permit.²⁶

In the Company's application, a \$3,600 owner/manager fee was requested to pay Lance Bowling. Bush Gardens later admitted that the fee was inappropriately labeled and should have been listed as a manager fee since the owner will receive \$2,241 of compensation for the plant.²⁷

The Attorney General concurs with the Commission Staff's proposed removal of the \$3,600

²¹ Application, Cover Letter.

²² Application, Statement of Disclosure of Related Party Transactions; Supplemental Sheet Statement of Disclosure of Related Party Transactions.

²³ Application, Supplemental Sheet Statement of Disclosure of Related Party Transactions; Public Comment Letter of Ashley Litteral, October 15, 2015; Public Comment Letter of John Crider, November 1, 2015.

²⁴ Public Comment Letter of Ashley Litteral, October 15, 2015.

²⁵ *Commonwealth v. David Bowling*, Case No. 06-F-00484; 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://migration.kentucky.gov/Newsroom/aag/bigandyriversewage.htm>)

²⁶ *United States of America v. David L. Bowling and Dave's Concrete Products & Septic Service, Inc.*, Case No. 7:07-CR-00013-GFVT, (Ed.Ky, 2007).

²⁷ Bush Gardens' Response to PSC 1-6(D).

manager fee from the revenue requirement,²⁸ but would also recommend eliminating the \$2,241 owner compensation as well.

First and foremost, Bush Gardens did not provide substantial proof that the manager fee was reasonable. The Commission has previously held that when an owner/manager fee is not the result of an arm's-length transaction, then the utility must demonstrate that the fee is reasonable by substantial evidence.²⁹ The record is lacking any evidence, let alone substantial evidence, that would justify paying Lance Bowling, the son of the owner, a \$3,600 fee. In fact, in an attempt to justify the \$3,600 manager fee Linda and David Bowling made an important admission by stating that, “[w]e conscripted Lance Bowling to manage this company because we don’t think anybody else would put up with the headache for \$3,600 a year.”³⁰ Stating that the Bowlings conscripted their son into managing the utility is strong evidence to the contrary that this is an arms-length transaction. More importantly, mere statements that the manager position will be time consuming fails to meet the burden of substantial proof that is required to determine whether the \$3,600 fee is reasonable.

Furthermore, the Kentucky Department for Environmental Protection (DEP) has issued at least six separate Notice of Violations to the Bowlings in regards to the Bush Gardens treatment plant in the past ten years.³¹ By the Bowlings own admission, there are possibly more violations that have been issued that they do not have record of and have had to request from the Division of Water.³² The violations have been issued continuously from the very beginning stages of the treatment plant in 2005 throughout present day.³³ The sheer number of violations that have been

²⁸ Staff Report at 6.

²⁹ Case No. 2007-00436, *Application of Farmdale Development Corporation for an Adjustment in Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities* (Ky. PSC July 30, 2008) at 4-5.

³⁰ Bush Gardens’ Response to AG 1-7(A).

³¹ Bush Gardens’ Response to PSC 1-5(D), Exhibit 9.

³² *Id.*

³³ *Id.*

issued throughout the timespan that the Bowlings have operated the treatment plant is of grave concern; however, even more alarming are the substantive portion of the violations.

For instance, in 2005 the DEP issued a violation to the Bowlings based upon a routine inspection of the Bush Gardens treatment plant where it was found not operating.³⁴ Then in 2007 DEP issued another violation to the Bowlings, for various reasons including the skimmer not operating, and advised that due to the history of the facility the issue had been referred to the Division of Enforcement.³⁵ Further, the DEP issued four individual violations in 2012 since the treatment plant was allowing pollutants into the Commonwealth's water, thereby not complying with the Kentucky Pollutant Discharge Elimination System Permit ("KPDES" permit).³⁶ This problem unfortunately persisted and once again the DEP issued a violation in 2014 for failure to comply with the KPDES permit.³⁷

The DEP issued yet another Notice of Violation on June 25, 2015, based upon an inspection performed on April 13, 2015, and noted that the facility was not being properly operated and maintained.³⁸ The DEP further declared that in addition to the clarifier not functioning properly, the discharge pipe for the plant was also broken which caused the plant to discharge onto the ground causing standing water.³⁹ Per the DEP violation, nearby residents spoke with the inspectors and expressed concerns of odor and disease transmission through mosquitoes and insects.⁴⁰

³⁴ *Id.* Notice of Violation, February 14, 2005

³⁵ *Id.* Notice of Violation, July 24, 2007.

³⁶ *Id.* Notice of Violation, February 25, 2013.

³⁷ *Id.* Notice of Violation, October 16, 2014.

³⁸ *Id.* Notice of Violation, June 25, 2015.

³⁹ *Id.*

⁴⁰ *Id.*

The DEP has also issued a Notice of Violation during the pendency of this case that Bush Gardens did not submit into the record as required.⁴¹ The violation was issued on January 7, 2016 based upon an inspection performed on September 28, 2015.⁴² The DEP report states once again that the treatment plant is not being properly operated and maintained as required, and that previous flooding has damaged the facility and requires plumbing repairs.⁴³ The violation report further states that “some of the wiring used at the plant appears questionable” since it appears that the wiring was intended for interior use.⁴⁴ The DEP also noted that connections were exposed and could potentially pose a safety hazard.⁴⁵

Moreover, the Notice of Violation indicated that the discharge pipe for the plant was still broken and the plant was still discharging onto the ground, causing ponding and standing water.⁴⁶ Once again, the nearby residents spoke to the inspector and expressed concerns with odor and disease transmission due to the improper discharge onto the ground. According to the Notice of Violation, Bush Gardens’ KPDES permit indicates the facility should discharge directly into Tom’s Creek, and not the ground near the plant. The inspection was referred to the Division of Enforcement due to “numerous unresolved violations.”⁴⁷

When taking into account the history of repeated violations spanning the past decade, as well as the current violations, it is abundantly clear that the Bush Gardens treatment plant has been negligently operated at best. Therefore, neither the Bush Gardens’ manager nor owner should be financially rewarded for its negligent operations. For these reasons, the Attorney

⁴¹ Attorney General’s Exhibit A. Notice of Violation, January 7, 2016.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

General recommends the removal of the \$3,600 manager fee and the \$2,241 owner compensation from the revenue requirement.

B. Fuel and Power Expenses

The Attorney General similarly agrees with the Commission Staff's removal of \$64 for fuel and power expenses.⁴⁸ With that said, it is of great concern that Bush Gardens did not properly maintain copies of the individual monthly invoices from Big Sandy Rural Electric Cooperative Corporation.⁴⁹ Due to this neglect, the Commission Staff had to contact the electric utility and request an analysis of the account to be performed in order to determine the actual cost of electricity for 2014.⁵⁰ The lack of necessary documentation is further proof of negligent operations of the treatment plant.

C. Maintenance, Structures, and Depreciation Expense

The Attorney General is in agreement with the Commission Staff's proposal to remove the \$1,240 for maintenance and structures, as well as the depreciation expense of \$1,317.⁵¹ The Commission Staff discovered that Bush Gardens had incorrectly reported the purchase of a discharge pipe, blower motor, and pump as a maintenance and structure test year expense when it should have been depreciated instead.⁵² The Commission Staff recommends that Bush Gardens should be permitted to depreciate these items in the rates.⁵³ The Attorney General objects to this recommendation. According to the last two notice of violations, with the most recent being issued on January 7, 2016, the Bush Gardens' discharge pipe has been broken causing effluent to

⁴⁸ Staff Report at 7.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Staff Report at 7 and 8.

⁵² *Id.*

⁵³ *Id.*

discharge onto the ground.⁵⁴ Consequently, Bush Gardens should not be permitted to depreciate the discharge pipe, blower motor, or pump until it has unequivocally proven that these items have been used to repair the cited violations of the treatment plant.

The Attorney General concurs with the Commission Staff's proposed removal of the treatment plant and fencing depreciation in the amount of \$1,317.⁵⁵ Bush Gardens stated in its application that the original cost of the treatment plant was \$25,000, and the fencing was \$1,000.⁵⁶ The Company asserted in discovery that the treatment plant was initially funded by the "... original investment in the Bush Garden subdivision, provided by David and Linda Bowling"⁵⁷ This response was verified by both David and Linda Bowling.⁵⁸

Nevertheless, when the Commission Staff performed its field investigation and further questioned Bush Gardens about the costs of the treatment plant and fencing, it was finally admitted that the treatment plant was obtained by barter, and the costs previously provided represented the estimated replacement costs instead of the actual costs.⁵⁹ Since the Company has not provided even one iota of evidence to verify the true costs of the treatment plant or fencing, the depreciation amount of \$1,064 should be removed.

D. Tax Expense

The Attorney General also concurs with the Commission Staff's recommendation to remove the \$100 property tax expense.⁶⁰ Bush Gardens tendered a property tax statement in the amount of \$124.42 as evidence of the taxes due and owing, yet this included not only the

⁵⁴ Attorney General's Exhibit A. Notice of Violation, January 7, 2016; Bush Gardens' Response to PSC 1-5(D), Exhibit 9, Notice of Violation, June 25, 2015.

⁵⁵ Staff Report at 8 and 9.

⁵⁶ Application, ARF Form 1 Attachment SAO-S September 2011.

⁵⁷ Bush Gardens' Response to PSC 1-2(F) and PSC 1-15(A) and (B).

⁵⁸ *Id.*

⁵⁹ Staff Report at 8 and 9.

⁶⁰ Staff Report at 9.

treatment plant property but also the surrounding 71.03 acres as well.⁶¹ Per the Company, the \$100 tax fee was an estimate since they did not have a tax evaluation on exclusively the treatment plant property.⁶² Due to the fact that there has been no evidence submitted that provides a known and measurable tax expenditure for the Bush Gardens treatment plant, the costs should be removed for ratemaking purposes.

E. Routine Maintenance, Chemical, Sludge Hauling, and Structures and Improvements

In regards to the routine maintenance fee of \$3,900, the Attorney General would support an issuance of bids in order to determine if this is a reasonable rate to maintain the Bush Gardens treatment plant. It seems especially vital to issue bids for the routine maintenance in light of the continued notice of violations issued by DEP.⁶³

Moreover, the Attorney General would also recommend that the Commission scrutinize the chemical, sludge hauling, office lease, and structures and improvements costs very closely since it appears there may be conflicts of interest that exist. Bush Gardens, through Linda and David Bowling, admitted in discovery that it did not obtain bids from other companies before contracting with Tri-County Concrete, Inc. for chemicals, office lease, maintenance and structural work, etc.⁶⁴ Bush Gardens filed a Statement of Disclosure of Related Party Transactions in its application to set rates. In this disclosure, it is stated that Lance Bowling is the manager of Tri-County Concrete, Inc. and the son of Linda Bowling, the owner of Bush Gardens Enterprises, LLC.⁶⁵ However, Bush Gardens failed to also admit in the application or in

⁶¹ Bush Gardens' Response to PSC 1-16, Exhibit 16.

⁶² *Id.*

⁶³ Bush Gardens' Response to PSC 1-5(D), Exhibit 9.

⁶⁴ Bush Gardens' Response to AG 1-8(C).

⁶⁵ Application, Statement of Disclosure of Related Party Transactions; Supplemental Sheet Statement of Disclosure of Related Party Transactions.

discovery that David Bowling, Linda's husband, is the Incorporator and Registered Agent of Tri-County Concrete, Inc.⁶⁶

This potential conflict of interest and lack of arm's-length transactions becomes extremely problematic when Bush Gardens is making a purchase and/or contracting labor from Tri-County Concrete, Inc. Under these circumstances, there will be absolutely no incentive to negotiate a fair price or to go to competitors for a lower price. Not only are the Bowlings requesting their ratepayers to pay an extraordinarily high sewer fee, but they also want to funnel these monies into their other business as well. This type of arrangement affords no protections or safeguards to the ratepayers. For these reasons, the Attorney General recommends an issuance of bids to determine if the purchases from Tri-County Concrete, Inc. are truly the most cost effective for the ratepayers.

III. RATEPAYER IMPACT

The residents of Johnson County have faced a steep and severe economic decline that mirrors the decline of coal production in Appalachia.⁶⁷ A drop in coal jobs has caused a particular hardship in Eastern Kentucky because coal had long been a dominant piece of the economy.⁶⁸ The loss of good paying jobs reduces the per capita income, and increases the under and unemployed population in Johnson County. According to the United States Census Bureau data there are 24.3% of Johnson county residents living below the poverty line, and the per capita income is a dismal \$19,445.⁶⁹

⁶⁶ Attorney General's Exhibit B. Kentucky Secretary of State website: [https://app.sos.ky.gov/ftshow/\(S\(ke3shyqmbn2aapit24letnw\)\)/default.aspx?path=ftsearch&id=0662811&ct=09&cs=99999](https://app.sos.ky.gov/ftshow/(S(ke3shyqmbn2aapit24letnw))/default.aspx?path=ftsearch&id=0662811&ct=09&cs=99999)

⁶⁷ "Report: Kentucky lost more than 1 in 10 coals jobs during first three months of 2015," Bill Estep, Lexington Herald-Leader, April 30, 2015. www.kentucky.com/2015/04/30/3828148_report-kentucky-lost-more-than.html?rh=1#storylink=cpy

⁶⁸ *Id.*

⁶⁹ United States Census Bureau, State & County QuickFacts, <http://quickfacts.census.gov/qfd/states/21/21115.html>.

Based upon the severe economic situation that currently exists, Bush Gardens proposal to place an initial \$195 monthly sewer rate⁷⁰ on the shoulders of those who can least afford it is unconscionable and flies in the face of the theory of gradualism. The Commission recently acknowledged its long history employing the principle of gradualism in rate making in order to mitigate the financial impact of rate increases on customers.⁷¹ While the principle is most frequently employed with respect to fixed customer charges, it has also been employed to limit the increases of fixed sewer rates.⁷² The principle of gradualism exists to protect ratepayers from significant and acute rate increase that would cause harm. In this case, having the ratepayers' bills spike from \$0 to \$195 per month as proposed by Bush Gardens, or from \$0 to \$125 as recommended by the Commission Staff would render detrimental harm to the ratepayers and violate the principle of gradualism.

The Bowlings themselves have admitted that the proposed rates would cause their customers an undue hardship by stating “[w]e don’t think that Bush Gardens residents can or will pay such a high rate. We anticipate the collection process to literally be a full-time job and full-time pain...”⁷³ In further evidence of this belief, the Bowlings stated that “[c]onsidering the magnitude of expenses in our application, and the rate that is required to cover these expenses,

⁷⁰ Application, Notice of Proposed Rate Adjustment; ARF Form 1 Attachment CPR September 2011, Current and Proposed Rates.

⁷¹ Case No. 2014-00396, *In the Matter of: Application of Kentucky Power Company for: (1) A General Adjustment of its Rates for Electric Service; (2) An Order Approving its 2014 Environmental Compliance Plan; (3) An Order Approving its Tariffs and Riders; and (4) An Order Granting All Other Required Approvals and Relief*, (Ky. PSC June 22, 2014). (“...the Commission has long employed the principle of gradualism....”) *See also*; Case No. 2000-080, *In the Matter of: The Application of Louisville Gas & Electric Company to Adjust its Gas Rates and to Increase its Charges for Disconnecting Service, Reconnecting Service and Returned Checks*, (Ky. PSC September 27, 2000) (“... the Commission is adhering to the rate-making concepts of continuity and gradualism in order to lessen the impact of these increases on the customers that incur these charges.”)

⁷² Case No. 2014-00390, *In the Matter of: Application of Kentucky-American Water Company for an Adjustment of its Wastewater Rates Pursuant to 807 KAR 5:076*; Case No. 97-243, *In the Matter of: The Application of the East Pendleton Water District for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities*.

⁷³ Bush Gardens’ Response to AG 1-7(A).

we anticipate that the time collecting fees will amount to a full-time job.”⁷⁴ By making these callous statements the Bowlings have admitted that the sewer rate they are seeking is so egregiously high it will be difficult, if not impossible, for the ratepayers to pay their sewer bill. These rates for sewer service would be deemed unfair, unjust, and unreasonable throughout the state of Kentucky, but are especially unreasonable in an area that is experiencing an economic decline, loss of good paying coal jobs, and has prevalent poverty.

The Attorney General would argue that a resident who subsists on the per capita income of \$19,445 or less, can ill afford to pay either \$125 or \$195 per month for sewer service. For the reasons stated herein, Bush Garden’s proposed rates are not affordable to its ratepayers, and would lead to unfair, unjust, and unreasonable rates.

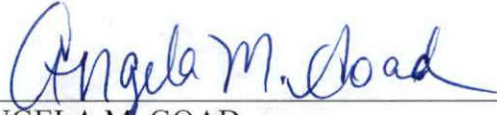
IV. CONCLUSION

WHEREFORE, based on the factual record, legal analysis and the reasons set forth in comments, the Attorney General recommends denying Bush Gardens’ application for a revenue increase due to the fact that the Company did not meet the required burden of proof. If the Commission is inclined to grant an initial sewer rate then the Attorney General requests a delayed implementation to allow the ratepayers adequate time to consider all of the potential alternatives. Further, the Attorney General requests that any revenue granted should be limited to what the Company has proven with known and measurable evidence that will result in fair, just, and reasonable rates for the ratepayers.

⁷⁴ Bush Gardens’ Response to PSC 1-6(C)(2).

Respectfully submitted,

ANDY BESHEAR
ATTORNEY GENERAL

A handwritten signature in blue ink that reads "Angela M. Goad". The signature is written in a cursive style with a horizontal line underneath it.

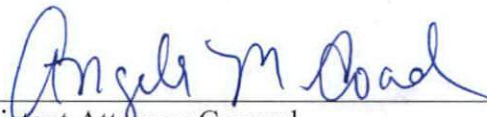
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Certificate of Service and Filing

Counsel certifies that an original and five photocopies of the foregoing were served and filed by hand delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail, postage pre-paid, to:

Hon. Aaron R. Davis
Hon. Stephanie L. Davis
The Davis Firm, PLLC
165 Evergreen Lane
Pikeville, Kentucky 41501

this 27th day of January, 2016.



Assistant Attorney General



MATTHEW G. BEVIN
GOVERNOR

CHARLES G. SNAVELY
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Division of Water
233 Birch St
Hazard, KY 41701-2115
www.kentucky.gov

January 7, 2016

Certified No. 7009 2820 00036151 7186
Return Receipt Requested

Bush Gardens Subd
Attn: Linda Bowling
PO Box 248
Hagerhill, KY 41222

Re: Notice of Violation
AI ID: 34976
AI Name: Bush Gardens Subd
Activity ID: ENV20150002
Permit No. KY0103853
Johnson County, KY

Dear Bush Gardens Subd:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines.

This NOV is being issued as a result of an inspection conducted on September 28, 2015.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 606-435-6022.

Sincerely,

E-Signed by Joshua George
VERIFY Authenticity with Approval
Joshua George

Joshua George,
Environmental Inspector
Division of Water

Enclosure

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water

NOTICE OF VIOLATION

To: Bush Gardens Subd
Attn: Linda Bowling
PO Box 248
Hagerhill, KY 41222

AI Name: Bush Gardens Subd **AI ID:** 34976 **Activity ID:** ENV20150002
Discovery ID: CIN20150002 **County:** Johnson
Enforcement Case ID:
Date(s) Violation(s) Observed: 09/28/2015

This is to advise that you are in violation of the provisions cited below:

1 Violation Description for Subject Item GINS000000001 Wasterwater/Inspection/Field Staff/WWTP(KPDES Individual):

Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. [401 KAR 5:065 Section 2(1)] As in [40 C.F.R. 122.41(e)].

Description of Non Compliance:

The facility is not being properly operated and maintained as required. At the time of the inspection the facility was operating. The aeration basin was aerating. Previous flooding had damaged the facility requiring repairs to the plumbing. Some of the wiring used at the plant appears questionable. It appears that wiring intended for interior use may have been used. Some connections are exposed and could potentially pose a safety hazard. The aeration basin was aerating. The basin appeared grey in color and appeared to be underloaded. The clarifier was slightly murky with some solids present. Chlorine and de-chlorination tablets were present. The discharge pipe for the plant has been broken. The plant now discharges onto the ground near the plant. The effluent is ponding and causing the area to stand in water. Nearby residents spoke with us during the inspection and expressed concerns of odor and disease transmission through mosquitoes and insects. The KPDES permit indicates the facility should discharge directly into Tom's Creek. The effluent pipe should be repaired to alleviate these issues.


The remedial measure(s), and date(s) to be completed by are as follows:

The permittee must, at all times, properly operate & maintain the facility. With proper approval(s) from the Division of Water, upgrade/update the facility in order to meet the regulatory requirements and facility permit conditions. This matter is being referred to the Division of Enforcement due to numerous unresolved violations. [401 KAR 5:065 Section 2(1)]

Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.


If you have questions or need further information, write or call the undersigned:

Division of Water
Hazard Regional Office
233 Birch St
Hazard, KY 41701-2115
606-435-6022 (8:00 AM – 4:30 PM)
Joshua George, Environmental Inspector

E-Signed by Joshua George 
VERIFY authenticity with ApproveIt
Joshua George

Issued By:

Joshua George, Environmental Inspector
Date: January 7, 2016

E-Signed by Damon White 
VERIFY authenticity with ApproveIt
Damon White

Issued By:

Damon White, Environmental Control Supervisor
Date: January 7, 2016

How Delivered: Certified Mail Certified/Registered # 7009 2820 0003 6151 7186

EXHIBIT B**TRI COUNTY CONCRETE, INC.****General Information**

Organization Number	0662811
Name	TRI COUNTY CONCRETE, INC.
Profit or Non-Profit	P - Profit
Company Type	KCO - Kentucky Corporation
Status	A - Active
Standing	G - Good
State	KY
File Date	4/23/2007 1:55:18 PM
Organization Date	4/23/2007
Last Annual Report	8/20/2015
Principal Office	PO BOX 248 HAGER HILL, KY 41222
Registered Agent	DAVID L. BOWLING 1700 US 23 SOUTH HAGER HILL, KY 41222
Authorized Shares	1000

Current Officers

President	<u>Jeffery Lance Bowling</u>
Director	<u>Jeffery Lance Bowling</u>

Individuals / Entities listed at time of formation

Incorporator	<u>DAVID L BOWLING</u>
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Images available online

Documents filed with the Office of the Secretary of State on September 15, 2004 or thereafter are available as scanned images or PDF documents. Documents filed prior to September 15, 2004 will become available as the images are created.

<u>Annual Report</u>	8/20/2015	1 page	<u>PDF</u>	
<u>Annual Report</u>	8/13/2014	1 page	<u>PDF</u>	
<u>Annual Report</u>	8/13/2013	1 page	<u>PDF</u>	
<u>Annual Report</u>	7/5/2012	1 page	<u>PDF</u>	
<u>Annual Report</u>	6/28/2011	1 page	<u>PDF</u>	
<u>Annual Report</u>	6/30/2010	1 page	<u>PDF</u>	
<u>Annual Report</u>	6/30/2009	1 page	<u>PDF</u>	
<u>Annual Report</u>	1/31/2008	1 page	<u>PDF</u>	
<u>Articles of Incorporation</u>	4/23/2007	1 page	<u>tiff</u>	<u>PDF</u>

Assumed Names**Activity History**

Filing	File Date	Effective Date	Org. Referenced
Annual report	8/20/2015 11:18:35 AM	8/20/2015 11:18:35 AM	

Annual report	8/13/2014 9:41:33 AM	8/13/2014 9:41:33 AM
Annual report	8/13/2013 10:01:55 AM	8/13/2013 10:01:55 AM
Annual report	7/5/2012 3:13:07 PM	7/5/2012 3:13:07 PM
Annual report	6/28/2011 10:25:58 AM	6/28/2011 10:25:58 AM
Annual report	6/30/2010 10:22:45 AM	6/30/2010 10:22:45 AM
Annual report	6/30/2009 1:01:00 PM	6/30/2009 1:01:00 PM
Annual report	1/31/2008 8:29:37 AM	1/31/2008 8:29:37 AM
Add	4/23/2007 1:56:23 PM	4/23/2007

Microfilmed Images
