

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION OF)	
ARTESIAN WASTEWATER MANAGEMENT, INC.,)	
FOR A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY TO PROVIDE)	
WASTEWATER SERVICES TO THREE PARCELS)	PSC DOCKET NO. 06-WW-009
OF LAND LOCATED ON PINEY NECK ROAD,)	("PEPPER CREEK")
NORTHEAST OF DAGSBORO, SUSSEX COUNTY,)	
DELAWARE (FILED APRIL 26, 2006))	
)	

ORDER NO. 6938

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
TO PROVIDE WASTEWATER SERVICES**

This 6th day of June, 2006, the Commission determines and Orders the following:

1. By the provisions of 74 Del. Laws ch. 317 (July 6, 2004), the General Assembly and Governor included wastewater systems within the public utilities subject to the regulatory oversight of this Commission. 74 Del. Laws ch. 317 (2004) (amending "public utility" definition in 26 Del. C. § 102(2)).

2. The law includes a specific regime for the granting of Certificates of Public Convenience and Necessity ("CPCN") to begin the business of a wastewater public utility or to extend the system and operations of an existing wastewater public utility. 74 Del. Laws ch. 317 § 6, adding 26 Del. C. § 203D. Under the statute, specifically 26 Del. C. § 203D(d)(2), the Commission shall grant a CPCN to an applicant if it has submitted a petition requesting wastewater services signed by a majority of the landowners in the proposed service area, as well as the proof that all of the landowners in the

proposed service area were notified of the application. Under 26 Del. C. § 203D(e), the Commission may deny a request for a CPCN if the applicant is currently subject to a Commission finding or if the Commission finds that the applicant is unable or unwilling to provide safe, adequate, and reliable service to existing customers.

3. On February 22, 2005, by PSC Order No. 6573, the Commission adopted final *Regulations Concerning the Jurisdiction of the Public Service Commission to Grant and Revoke Certificates of Public Convenience and Necessity to Provide Wastewater Services* ("Regulations") which govern the process that non-governmental wastewater utilities serving, or planning to serve, fifty or more customers (in the aggregate) apply for and are granted a CPCN.

4. Artesian Wastewater Management, Inc. ("AWMI") is a public utility offering wastewater services and is subject to the regulatory oversight of this Commission. On April 26, 2006, AWMI filed an application with the Commission requesting a CPCN to provide wastewater services to three parcels of land located on Piney Neck Road, northeast of Dagsboro, Sussex County, Delaware ("Proposed Service Area").

5. As required by 26 Del. C. § 203D(d)(2), and Commission Regulations, AWMI included in its application: (a) a petition requesting wastewater services signed by the owner of the three parcels of land comprising the Proposed Service Area; and (b) evidence in the form of a signed United States Postal Service certified mail receipt showing that the landowner was sent notice of the Application.

Also included with the Application was a Sussex County tax map showing the location of the Proposed Service Area.

6. Pursuant to Commission Regulations, Commission Staff requested written comment from the Delaware Department of Natural Resources and Environmental Control ("DNREC") as to whether there are any outstanding issues with that Agency indicating AWMI has been unwilling or unable to provide safe, adequate and reliable wastewater services to its existing customers.¹ In its reply, DNREC indicated it had no objection to the Commission granting the requested CPCN to provide wastewater treatment and disposal services.

¹Under Commission rules, the utility is required to file a copy of its application with DNREC, the Office of State Planning ("OSP"), and: "a) any county within whose boundaries the proposed service territory would be located; and b) any municipality, town, or local authority: i) whose boundaries are adjacent to the proposed service territory; or ii) within whose boundaries or existing wastewater service territory the proposed service territory would be located." Staff copied the OSP and the Sussex County Engineering Department ("the County") on its request for comment sent to DNREC. While written comment is only required from DNREC, by notifying the other agencies Staff can be alerted if an Application is not filed, or if there is a significant issue with an Applicant or Application that the Commission may wish to consider. In this case, the County indicated that while it had no objection to the Commission granting the requested CPCN, the properties involved are within an area the County intends to serve. According to the County, when County service comes to the area, AWMI will be required to connect to the Sussex County system and properly abandon any on-site treatment and disposal facility serving the properties. According to the data previously provided to the Commission by Sussex County, AWMI's Proposed Service Area is located within the "Dagsboro/Frankford Planning Area" where the County has completed, or is now conducting, planning studies with the intention of serving all properties located within the identified Planning Area. If the Service Area proposed here is not within a service territory of the County, then AWMI does not need approval from the County in order to extend its service territory to the parcels. 26 Del. C. § 203D(b). In addition, under the same provision, if the parcels are not within the County's service territory and the Commission grants AWMI a CPCN for those parcels, Sussex County might later need to obtain Commission approval before the County can extend its service to the parcels. 26 Del. C. § 203D(b). The Commission does not here take any position on the validity of the "conditions" set forth in the County's comments. Any questions, and answers, about the ability of Sussex County to serve in the proposed service territory at a later time can be addressed when they arise. Finally, the OSP did not offer comment on the Applicant or on the Application.

7. Consequently, consistent with the statutory requirement, the Commission shall grant a CPCN to AWMI to provide wastewater public utility services within the Proposed Service Area.

Now, therefore, **IT IS ORDERED:**

1. That, pursuant to the provisions of 26 Del. C. § 203D(d)(2), a Certificate of Public Convenience and Necessity is granted to Artesian Wastewater Management, Inc., to provide wastewater public utility services to three parcels of land located on Piney Neck Road, northeast of Dagsboro, Sussex County, Delaware, and more specifically identified by the Sussex County tax map parcels numbers 233-7.00-19.01, 233-233-7.00-28.02, and 233-7.00-30.00.

2. That Artesian Wastewater Management, Inc., shall comply with any and all federal, state, county, and local statutes, ordinances, orders, regulations, rules, and permit conditions that are applicable, or may become applicable, to any matter involving water utility services provided to the service territory granted by this Certificate of Public Convenience and Necessity.

3. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joann T. Conaway
Commissioner

