

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

IN THE MATTER OF THE APPLICATION OF )  
TIDEWATER ENVIRONMENTAL SERVICES, INC., )  
FOR A CERTIFICATE OF PUBLIC CONVEN- )  
IENCE AND NECESSITY TO PROVIDE WASTE- ) PSC DOCKET NO. 05-WW-006  
WATER SERVICES TO SIXTY-FIVE PARCELS OF ) (BREEDER'S CROWN)  
LAND TO BE DEVELOPED AS THE BREEDER'S )  
CROWN SUBDIVISION, LOCATED IN KENT )  
COUNTY, DELAWARE (FILED MAY 24, 2005) )

**ORDER NO. 6703**

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY  
TO BEGIN OPERATIONS AS A WASTEWATER PUBLIC UTILITY**

This 23<sup>rd</sup> day of August, 2005, 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 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. In the case of a new wastewater utility, 26 Del. C., § 203D(d)(4) requires the utility to also file with the Commission evidence that it possesses the financial, operational, and managerial capacity to serve the public convenience and necessity and to comply with all state and federal regulations.

4. 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.

2. On April 7, 2005, Tidewater Environmental Services, Inc. ("TESI" or "the Applicant"), made a pre-application filing containing documentation needed for the Commission to consider in granting to TESI a CPCN to begin operations as a wastewater public utility. This filing included the following: a) a legal history of TESI, including the Certificate of Incorporation; b) a description of all relationships between TESI and its parent, subsidiaries, affiliates, and a chart showing the inter-company relationships; c) the Annual Reports to stockholders for the prior two years of TESI's parent

company, Middlesex Water Company ("MWC"; d) MWC's 10K's and proxy material for the past two years; and e) evidence of comprehensive general liability insurance.

3. On May 24, 2004, TESI filed its first request for a CPCN to allow it to provide wastewater services to sixty-five parcels of land to be developed as "Breeders Crown" located on the northwest corner of the Milford-Harrington Highway and Deer Valley Road, Kent County, Delaware, and more specifically described by the Kent County Tax Map Parcels Numbers MD00-172.03-01-01.00 through MD00-172.03-01-65.00. TESI has not previously been granted a CPCN to operate as a wastewater public utility, and it does not presently operate any regulated wastewater facilities nor presently serve any customers in Delaware.

3. As required by 26 Del. C. § 203D(d) (2004 Supp.) and Commission Regulations, TESI included in its Application:

- (a) a petition signed by the president of Breeder's Crown, LLC, owner of the sixty-five parcels of land that would compose TESI's initial service territory; and
- (b) evidence, consisting of a copy of the United States Postal Service's certified mail receipt, reflecting that the owner of the sixty-five parcels of land was provided notice of the Application.

4. In addition, the application includes documents reflecting that the wastewater treatment system that will serve the proposed service territory has already received the regulatory approval to construct an on-site wastewater treatment and disposal system from the Department of Natural Resources and Environmental Control ("DNREC") dated July 28, 2004 (DNREC Permit Number 188061).

5. The Commission's Staff has reviewed TESI's application, first to determine whether TESI possesses the financial, operational, and managerial capabilities to serve the public convenience and necessity and to comply with all State and federal regulations, and then to confirm that it has complied with all the statutory requirements under 26 Del. C. § 203D for its initial proposed service territory. In a memo dated August 10, 2005, the Commission Staff's Regulatory Policy Administrator, Robert Ambrose, concludes "TESI, with the support of Middlesex and affiliates and guarantees from developers, has the financial, operational, and technical resources to own, operate, maintain, and comply with PSC regulations to render safe reliable wastewater service". Staff Planner Andrea Maucher, in a memo dated August 18, 2005, reports that TESI has complied with all applicable statutory and regulatory rules, and recommends the Commission grant the requested CPCN.

7. The Commission sat to consider TESI's application and the Staff memoranda at its public meeting on August 23, 2005. Based on the materials in the pre-application filing and in the CPCN application, the information solicited by Staff, and Staff's analysis, the Commission concludes that TESI has the financial, managerial, and operational capacities to begin and operate a wastewater system to serve the proposed initial service territory. TESI's service in the proposed service territory will serve the public convenience and necessity. In addition, TESI has the ability to comply with all federal and state laws and regulations related to its operation of a

wastewater system as a public utility. See 26 Del. C. § 203D(d)(4) (2004 Supp.).

8. Consequently, consistent with the statutory requirements, the Commission now grants a CPCN to TESI to begin operations as a wastewater public utility. As a public utility, TESI shall be subject to all the relevant provisions of 26 Del. C. ch. 1 as well as the original supervision and regulations of this Commission. This Certificate shall authorize TESI to construct facilities and to provide wastewater public utility services to a service territory composed of the sixty-five parcels of land discussed in paragraph three of this Order.

9. In addition, the Commission finds that TESI has provided sufficient documentation for the Commission to award it a CPCN for its initial service territory encompassing the above parcels to be known as the "Breeder's Crown" subdivision. TESI has submitted a petition signed by the landowner of record of those parcels and has provided evidence that the landowner was notified of the filing of TESI's application. Moreover, as noted above, the public convenience and necessity will be served by TESI providing wastewater services to the Breeder's Crown subdivision.

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

1. That, pursuant to the provisions of 26 Del. C. § 203D, a Certificate of Public Convenience and Necessity is granted to Tidewater Environmental Services, Inc., to begin operations as a wastewater public utility subject to the provisions of 26 Del. C. ch. 1 and the original supervision and regulation of this Commission.

This Certificate authorizes Tidewater Environmental Services, Inc., to provide wastewater public utility services and to operate the wastewater public utility facilities as described in its request filed on May 24, 2005. This Certificate shall encompass a service territory encompassing parcels identified by Kent County Tax Map Parcels Numbers MD00-172.03-01-01.00 through MD00-172.03-01-65.00.

2. That Tidewater Environmental Services, Inc., shall comply with all the obligations and duties of a public utility, as set forth in 26 Del. C. ch. 1, and any relevant rules, regulations, or Orders of this Commission. Tidewater Environmental Services, Inc., shall forthwith provide to the Commission, and thereafter keep current, the name and address of its resident agent.

3. That, by this Order, the Commission does not approve any tariff or rates submitted by Tidewater Environmental Services, Inc., with this application. The Commission shall review the rates, terms, and conditions for services by Tidewater Environmental Services, Inc., in a separate proceeding to be initiated hereafter. Tidewater Environmental Services, Inc., shall not provide to the public any wastewater services until the Commission has approved (on an interim or final basis) just and reasonable terms, conditions, and rates for the utility.

4. That Tidewater Environmental Services, 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

wastewater utility services provided to the service territory granted by this Certificate of Public Convenience and Necessity.

5. 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

\_\_\_\_\_  
Vice Chair

/s/ Joann T. Conaway  
Commissioner

/s/ Jaymes B. Lester  
Commissioner

/s/ Dallas Winslow  
Commissioner

ATTEST:

/s/ Norma J. Sherwood  
Acting Secretary