



Control Number: 42994

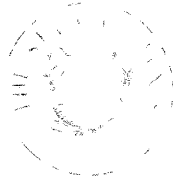


Item Number: 9

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83<sup>rd</sup>  
Legislature, Regular Session, transferred the functions  
relating to the economic regulation of water and sewer  
utilities from the TCEQ to the PUC effective  
September 1, 2014.

Bryan W. Shaw, Ph.D., P.E., *Chairman*  
 Toby Baker, *Commissioner*  
 Zak Covar, *Commissioner*  
 Richard A. Hyde, P.E., *Executive Director*



# 42994

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

May 23, 2014

RECEIVED  
 2014 SEP 15 AM 10:32  
 PUBLIC UTILITY COMMISSION  
 FILING CLERK

**BY FAX AT 512/477-5267 AND BY  
 BY CERTIFIED MAIL**

Mr. Bob Renbarger, Attorney  
 Fritz, Byrne, Head & Harrison, PLLC  
 98 San Jacinto Boulevard, Suite 2000  
 Austin, TX 78701-4288

Re: Application from EMCAD Water and Wastewater, LLC, A2089, to Acquire Facilities and transfer Certificate of Convenience and Necessity (CCN) No. 20816 held by Dusty Drury dba D & K Development Corp., in Tarrant County; Application No. 37727-S

CN: 604519330; RN: 107111247 (EMCAD Water and Wastewater, LLC)  
 CN: 600677470; RN: 101239796 (D&K Development Corp.)

Dear Mr. Renbarger:

We have reviewed the criteria in Texas Water Code (TWC), Section 13.301(e) and determined that a public hearing will not be requested. You may complete your proposed transaction as scheduled, or any time after you receive this notification. Please note that the transaction must comply with the requirements of TWC Section 13.301(d) and therefore cannot be completed prior to the issuance of this letter.

The second part of the application, which is transferring the CCN, will occur following receipt of the following documents:

- a copy of the signed contract or bill of sale, and
- documents supporting the disposition of customer deposits.

The application cannot be approved nor the CCN transferred until we receive evidence that the transaction was completed. These items must be received by the Utilities & Districts Section, Water Supply Division, within 30 days after the effective date of the transaction.

After the proper documentation is received, staff will prepare a proposed map, certificate, and recommendation for both applicants to review before submitting them to the Executive Director for approval and the transfer of the CCN. A copy of this information will be sent to both the buyer and seller.

Mr. Bob Renbarger, Attorney  
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May 23, 2014

If you concur with the recommendation, the consent forms must be signed and returned by both applicants before the recommendation to transfer the CCN can be approved by the Executive Director. If both consents are not received, the CCN will remain in the name of the seller and the seller remains responsible for the systems for purposes of TWC Section 13 regulations. (See TWC, Section 5.122 and 30 Texas Administrative Code Section 50.33).

As an alternative to the seller's continued involvement in the process, the closing document(s) and any accompanying correspondence may include a statement that the seller consents with the transfer of the CCN to the buyer with specific references to the statute and rule noted above. The statement will serve to authorize the Executive Director to take action upon receipt of the buyer's signed consent form. In this situation, however, the seller is relying on the buyer to provide the final consent on the CCN transfer.

Finally, please note that from the time the application is filed until the CCN is transferred, it is the applicants' (buyer and seller) responsibility to notify and update the Utilities & Districts Section, Water Supply Division, of changes in the financial, managerial, or technical information provided in the application.

If you have further questions, please contact Ms. Debbie Reyes Tamayo at (512) 239-4683, or if by correspondence, include Mail Code 153 in the letterhead address.

Sincerely,



Cari-Michel La Caille, Assistant Director  
Water Supply Division  
Texas Commission on Environmental Quality

TB/DRT/ln

cc: EMCAD Water and Wastewater, LLC  
D&K Development Corporation

## \*\* Transmit Conf. Report \*\*

P. 1

May 23 2014 15:36

Fax/Phone Number	Mode	Start	Time	Page	Result	Note
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**TCEQ**  
Protecting Texas  
by Reducing and  
Preventing Pollution

# Fax Cover Sheet

Number of Pages:  
(including this sheet)

3

**Date:** May 23, 2014  
**To:** Ms. Bob Renbarger, Attorney  
**Organization:** Fritz, Byrne, Head & Harrison PLLC  
**Fax:** 512-477-5267  
**From:** Debbie Reyes Tamayo  
**Division :** Water Supply Division  
 Texas Commission on Environmental Quality  
**Phone:** 512-239-4691  
**Fax:** 512-239-6972

STM Checklist

**Checklist must be submitted to Work Leader and Team Leader prior to final map or hearing request.**

Applicant: EMCAD Water and Wastewater, LLC  
 Application No.: 37727-S

§13.301(a)	Was written application filed on or before the 120 <sup>th</sup> day before the effective date of a sale? Yes.	Date verified: 01/15/14
Description: The application was received 09/13/13 An NOD was issued 10/29/13 and was accepted for filing 12/04/13. (see question 2 of the application)		
§13.301(a)	Was proper public notice provided? Yes.	Date verified: 01/15/14
Date(s): 12/23/13		
Waivers?: None		
Additional notice required for amendment?: No.		
All appropriate entities notified?: Yes.		
§13.301(b)	Does the purchaser have adequate FMT to provide continuous and adequate service to the requested area AND any areas currently certificated to that person? Yes.	Date verified: 01/15/14
Description: See FM Memo dated 2/19/14		
Description of qualifications: Donald Clayton is in charge of finance and administration and John Ebert is in charge of operations. Mr. Clayton has served the utility industry in executive and consulting capacities for more than 35 years. He is currently the principal at Tangible LLC who provides compliance support of the and wastewater authorities. Mr. Ebert has worked in the utility and regulated industries from more than 30 years. Since January of 2006, he has been the CEO and principal shareholder of ANGD LLC which is a holding company for two small gas utilities one which additionally focuses on renewable energy from landfills. As of 2/16/14 no enforcement cases are found in the consolidated compliance and enforcement data system. (see question 11. A. of the application)		
Description of any plans for improvements: No improvements are needed at this time. (see question 11. C and pg. 7, question 17. A of the application)		
§13.301(c)	Is a bond or other financial assurance required to ensure continuous and adequate service? No.	Date verified: 2/21/14
Description: See FM Memo dated 2/19/14. This transaction should have a minimal impact on the purchaser's financial and managerial capabilities. (review FMT Checklist and Memo for response)		
§13.301(d)	Will the transaction serve the public interest? Yes. The transaction will consolidate 3 utilities under a single professional management team which will have better access to capital and potentially provide service at a lower cost due to increased customer count.  (see pg. 4, question 11. D of the application)	Date verified: 01/15/14
Is the applicant willing to make improvements? EMCAD is funded through personal equity and bank financing. Management has more than 35 years of experience in providing utility service. The transaction will consolidate 3 utilities under a single professional management team which will have better access to capital and potentially provide service at a lower cost due to increased customer count.		
Description: No improvements needed at this time. (see question 11. C of the application)		
§13.301(e)	Does the purchaser or any affiliate of the purchaser have a history of noncompliance with the requirements of the commission within the past 5 years? No.	Date verified: 01/15/14
Description: NA (see question 11. B. of the application)		
Any active enforcement actions?: NA		
Enforcement Coordinator: NA		
Date of previous enforcement orders: NA		
Penalties: NA		
In compliance with previous orders?: NA		
§13.301(e)	Does the purchaser or any affiliate of the purchaser have a history of continuing mismanagement or misuse of revenues as a utility service provider? No.	Date verified: 01/15/14

Description: NA (see question 11. B. of the application)		
§13.301(j)	If applicable, has the seller made a written disclosure to the purchaser related to customer contributions in aid of construction derived from specific surcharges? No. <i>no customer C.I.A.C. is included.</i>	Date verified: 01/15/14
Description: <i>NA. However, there were Developer Contributions in Aid of Construction in the amount of \$ 331,523.</i> (see question 13. A. of the application)		
If applicable, have protestants' concerns been addressed by letter from the staff or utility? No protests were received.		Date verified: 01/15/14
Names of protestants: None.		
Description of protests: NA		
Protestants included on mailing list?: NA		
Have any customer deposits been accounted for? A list of customer deposits are attached with the application Appendix A. (see question 5. of the application)		Date verified: 01/15/14
Have all tariff issues including rates, tap fees and service rules/extension policy language been resolved?		Date verified: Pending
Description: The rates will not change, they will be transferred to the buyer's.	Date tariff was stamped approved: Pending	
If entity is a WSC, is most recent version of tariff on file? NA	Date WSC tariff was received: NA	
§13.132	Does the applicant have a current Annual Report on file? Yes.	Date verified: 01/15/14
Description: 2013 annual report	Date annual report was received: 04/12/12	
Do any of the systems being transferred have violations that need to be corrected? See Compliance Summary.		Date verified: 01/15/14
If the purchaser is a corporation, is it in good standing with the State Comptroller? Yes.		Date verified: 01/15/14
Have all TCEQ Fees and penalties and any laboratory fees owed by either the seller or purchaser been paid? Yes. (see the Admin's NOD letter)		Date verified: 01/15/14
What are the terms of the sale? EMCAD has applied to acquire the water assets owned by D&K Development from its shareholders via an asset purchase agreement and will acquire the existing service area of the Transferor by CCN 20816." (see question 12 of the application)		Date verified:
Sales price: \$300,000.00		
# of customers affected: 147		
Original cost of plant being transferred: \$847,724		
Accumulated depreciation: \$339,589		
Date of closing:		
If facility being transferred is a wastewater treatment system, has the applicant requested a transfer of the wastewater discharge permit? Yes. The TPDES Permit was submitted to TCEQ with date of 04/14/14 by WQ 0013518001. (see question 17 B of the application)		Date verified: 01/15/14
Miscellaneous information		Date verified: 01/15/14
Is the system under the jurisdiction of a city (if yes, name the city)? No. (see question 18 of the application)		
Is the seller's CCN being canceled?: No, the CCN will transfer to EMCAD. (see question 1 of the application)		

	<p>If applicable, the staff person must send an email to Central Registry requesting them to link the appropriate CCN, CN and RN numbers. <b>The email should be addressed to Karen Young with a copy to Bernadette Segala and say WUD Priority in the subject line.</b> If these numbers are not linked appropriately, the Chief Clerk's Office will not be able to accept the application for posting and the file will be returned to our program area. This will cause a delay in the getting the final order and CCN(s) signed.</p>	<p>Date verified: Will need to change the A2089 after TCEQ receives the closing docs to the CCN.</p>
<p>Description: Application from EMCAD Water and Wastewater, LLC, A2089, to Acquire Facilities and transfer Certificate of Convenience and Necessity (CCN) No. 20816 held by Dusty Drury dba D &amp; K Development Corp., in Tarrant County; Application No. 37727-S</p> <p>CN: 604519330; RN107111247 (EMCAD Water and Wastewater, LLC) CN: 600677470; RN: 101239796 (D&amp;K Development Corp.)</p>		

**COMPLIANCE SUMMARY:**

*(Please create a general description for every water and/or wastewater system being transferred)*

General: **Water Quality System Name:** D&K Development Corp.

**Public Quality System No.:** WQ0013518-001

**Inspection Date:** 03/08/12

**List of deficiencies/violations:** A few alleged violations were identified for which compliance documentation was required. TCEQ received adequate compliance documentation on majority of the problems. A few other alleged violations still need to be corrected. TCEQ received a response from the unresolved issues. On October 9, 2012, to evaluate the submitted corrective action documentation and the violations noted in the NOV were resolved. The final letter went out to the responsible party on October 12, 2012.

**Description of region inspector's comments:** See above information.

**Date of letter describing improvements/compliance:** October 12, 2012.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_