



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

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OFFICE OF THE
SECRETARY

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Secretary's Order No.: 2020-W-0008

**RE: On-Site Wastewater Treatment and Disposal System Operations Permit Application
for treated wastewater effluent disposal via spray irrigation by Artesian
Wastewater Management, Inc. ("Artesian"), at Artesian Northern Sussex
Regional Water Recharge Facility ("ANSRWRF")
located in Milton, Delaware**

Date of Issuance: March 18, 2020

Effective Date: March 18, 2020

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 *Del.C.* §§6003, 6004, 6006, Delaware's *Regulations Governing the Design, Installation, and Operation of On-Site Wastewater Treatment and Disposal Systems*, (7 DE Admin. Code 7101), and all other relevant statutory authority, the Department of Natural Resources and Environmental Control ("Department" or "DNREC") issues this Order, approving the On-Site Wastewater Treatment and Disposal Systems Operations Permit Application for treated wastewater effluent disposal via spray irrigation by Artesian Wastewater Management, Inc. ("Artesian"), at the Artesian Northern Sussex Regional Water Recharge Facility ANSRWRF in Milton, Delaware ("Application").

The operation proposed in the Application is subject to various state and federal regulatory requirements, including, but not limited to, Delaware's *Regulations Governing the Design, Installation, and Operation of On-Site Wastewater Treatment and Disposal Systems*, as set forth in 7 DE Admin. Code 7101, and as provided for under Delaware law in 7 *Del.C.* Ch. 60.

The Artesian Application is very closely aligned with another permit application submitted to the Department by Allen Harim Foods, LLC. Although the Department processed both permit applications together, this Order sets forth the decision solely on the pending Application of Artesian.

Background and Findings of Fact

Artesian has applied for a State of Delaware Operations Permit to receive treated wastewater effluent from the Allen Harim Harbeson Processing Facility's on-site wastewater treatment system for storage in a synthetically lined lagoon, and disposal via spray irrigation at ANSRWRF in Milton, Delaware. The Artesian facility will utilize treated wastewater effluent for irrigation of privately-owned agricultural land under a lease held in perpetuity by Artesian as the wastewater utility provider. The proposed irrigation sites, including current and future phases, total approximately 1,714 acres of land, which includes both wooded and agricultural areas. These sites have been permanently placed in an Agricultural Preservation Easement by the Delaware Agricultural Lands Preservation Foundation. The treated wastewater effluent discharged via spray irrigation is required to comply with water quality limitations, along with operational, monitoring, and reporting requirements intended to protect public health and the environment.

As noted above, due to the relationship between the wastewater treatment system permit requirements of Allen Harim Foods, LLC ("Allen Harim"), and Artesian's permit requirements for discharging the treated wastewater effluent via spray irrigation, the Department processed these permit applications together. The permit applications submitted by Artesian and Allen Harim were deemed technically complete by the Department on July 18, 2019, and July 24, 2019, respectively. Given the level of public interest on the Applicants' proposed activities as set forth in these Applications, the Department made the decision to go directly to a public hearing (instead of waiting to receive a meritorious request for a hearing to be held).

Accordingly, the Department published legal notices in the *Sunday News Journal* and the *Delaware State News* on July 31, 2019, advertising that a public hearing would be held, as referenced above. Thereafter, the Department held that public hearing on August 21, 2019.

Department staff, representatives of both Artesian and Allen Harim, and approximately one hundred members of the public attended the August 21, 2019 public hearing. Many of the hearing attendees provided comment on the Application. Due to the high level of public interest in the Application, and in response to requests made by the public at the time of the hearing for the Department to extend the public comment period, the hearing record remained open for receipt of comment through September 27, 2019. It should be noted that comments were received from the public not only at the time of the public hearing, but also during both the pre- and post-hearing phases of this permitting matter. Proper notice of the hearing was provided as required by law

Following the close of the public comment as noted above, and at the request of Hearing Officer Lisa A. Vest, the technical experts in the Department's Division of Water, Groundwater Discharges Section ("GWDS"), provided a Technical Response Memorandum ("TRM"), dated December 31, 2019, in response to the public concerns received by the Department about the pending application of Artesian. An Amended TRM was provided to Hearing Officer Vest dated March 9, 2020.

Subsequent to the receipt of the Department's Amended TRM, Hearing Officer Vest prepared her Hearing Officer's Report ("Report"), dated March 12, 2020. Ms. Vest's Report set forth the procedural history, summarized and established the record of information ("Record") relied on in the Report, and provided findings of fact, reasons, and conclusions that recommend the Department approve Artesian's Application, subject to the conditions set forth in the Draft Permit noted above. The Report also addressed the public comments received in this matter and concluded that the same did not warrant the Department's denial of Artesian's pending Application, nor the delay of the permit decision to receive any further additional information.

Reasons and Conclusions

The On-Site Wastewater Treatment and Disposal Systems Operations Permit Application is to allow treated wastewater effluent disposal via spray irrigation by Artesian Wastewater Management, Inc., at ANSRWRF in Milton, Delaware. I find that the proposed project requires the Applicant to obtain an Operations Permit, as noted above.

I further find that Artesian's proposed project is subject to various state and federal regulatory requirements, including, but not limited to, Delaware's *Regulations Governing the Design, Installation, and Operation of On-Site Wastewater Treatment and Disposal Systems*, as set forth in 7 DE Admin. Code 7101, and as provided for under Delaware law in 7 Del.C. Ch. 60.

In reviewing the applicable statutes and regulations, as well as weighing public benefits of this project against potential detriments, the Department's experts in the GWDS have concluded that the Application complies with all applicable federal and state laws and regulations. The GWDS Operations Permit that would be issued by the Department would be reflective of the Application submitted by Artesian, and would include water quality limitations, along with operational, monitoring, and reporting requirements for the Applicant, to ensure continued protection of public health and the environment.

In response to the above referenced comments received from the public in this matter, the Department has sought to minimize the potential impacts to the surrounding communities. To that end, the Department's experts in GWDS have made the following determinations:

1. The storage lagoon at ANSRWRF is designed for 61 days of storage, providing sufficient assurance that spray disposal can be postponed or diverted during periods when conditions are unfavorable for approved uses, or when the quality requirements cannot be met.

2. ANSRWRF will be required to perform extensive water quality monitoring through spray effluent monitoring, the use of lysimeters (in-field), monitoring wells (in-field, up-gradient, and down-gradient), and surface water grab samples, allowing the GWDS to assess what impact the spray irrigation activities are having on the spray fields, groundwater, and surface waters within and adjacent to the spray fields.
3. In the event trends of increasing concentrations and/or impacts are observed, Artesian will be required to take all necessary actions to eliminate and correct any adverse impact on public health and/or the environment resulting from permit non-compliance, in accordance with Section 3.20 of 7 DE Admin. Code 7101, Delaware's *Regulations Governing the Design, Installation, and Operation of On-Site Wastewater Treatment and Disposal Systems*.

The Record developed in this matter indicates that the Department's GWDS experts have considered all statutes and regulations that govern projects such as the Applicant's above proposed activities and have recommended approval of the Operations Permit necessary for the same.

I find and conclude that the Applicant has adequately demonstrated compliance with all requirements of the statutes and regulations, as noted herein, and that the Record supports approval of the Application as submitted by Artesian in this matter. I further find and conclude that the Record supports the recommendations of the Department's experts in GWDS, as set forth in the Amended TRM of March 9, 2020, including, but not limited to, the recommendation concerning the issuance of the Operations Permit for the Applicant, for the reasons noted above.

Accordingly, this Order approves the Application of Artesian for On-Site Wastewater Treatment and Disposal Systems Operations Permit, to allow treated wastewater effluent disposal via spray irrigation by Artesian Wastewater Management, Inc., at ANSRWRF in Milton, Delaware, consistent with the Record developed in this matter.

Further, the Department concludes and specifically directs the following:

1. The Department has jurisdiction under 7 *Del. C.* §§6003, 6004, 6006(4), Delaware's *Regulations Governing the Design, Installation, and Operation of On-Site Wastewater Treatment and Disposal Systems* (7 DE Admin. Code 7101), and all other relevant statutory authority, to make a final determination on the Application after holding a public hearing, considering the public comments, and all information contained in the Record generated in this matter;
2. The Department provided proper public notice of the Application submitted by both Artesian, and of the public hearing held on August 21, 2019, and held said hearing to consider any public comment that may be offered on the Application, in a manner required by the law and regulations;
3. The Department considered all timely and relevant public comments in the Record, as established in the TRMs provided by the Department's GWDS, which have now been expressly incorporated into the Record generated in this matter;
4. The Department has carefully considered the factors required to be weighed in issuing the permit required by the Application, and finds that the Record supports approval of the same;
5. The Department shall issue to Artesian the On-Site Wastewater Treatment and Disposal System Operations Permit for effluent disposal via spray irrigation by Artesian Wastewater Management, Inc., at ANSRWRF in Milton, Delaware, consistent with the Record developed in this matter. Furthermore, said permit shall include all conditions as set forth in the Department's Draft Permit for Artesian, to ensure that Delaware's environment and public health will be protected from harm;

6. The Department adopts the Report and its attachments as further support for this decision;
7. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
8. The Department shall serve and publish its Order on its internet site, and shall provide legal notice of the Order in the same manner that the Department provided legal notice of the Original Application.



Shawn M. Garvin
Secretary

