



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-WH-0007

RE: Permit Modification Application of Waste Management, Inc., to allow Delaware Recyclable Products, Inc. ("DRPI") a Design Elevation Revision and permit the vertical expansion of the DRPI Landfill from 130 feet Mean Sea Level ("MSL") to 140 feet MSL at 246 Marsh Lane, New Castle, Delaware 19720

Date of Issuance: March 16, 2020

Effective Date: March 16, 2020

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to *7 De/.C.* §§6003, 6004, 6006, Delaware's *Regulations Governing Solid Waste* (7 DE Admin. Code 1301), and all other relevant statutory authority, the Department of Natural Resources and Environmental Control ("Department" or "DNREC") issues this Order, approving the modification of existing permit SW-15/02 of Waste Management, Inc. ("WM," "Applicant") for the Delaware Recyclable Products, Inc. ("DRPI") Landfill located at 246 Marsh Lane, New Castle, Delaware. Issuance of this modified permit will allow the vertical expansion of the DRPI Landfill from its current design elevation of 130 Mean Sea Level ("MSL") to 140 feet MSL, while maintaining protection of the State of Delaware's environment and public health.

The Applicant's permit modification request is subject to various statutory and regulatory requirements, including, but not limited to, *7 Del.C.* Ch. 60 and Delaware's *Regulations Governing Solid Waste*, as set forth in 7 DE Admin. Code 1301.

Background and Findings of Fact

The Applicant submitted its original *Permit Modification Application (Volumes 1 - 3) for Vertical Expansion, DRPI Industrial Landfill, New Castle, Delaware* on July 20, 2018, which requested a vertical expansion of the DRPI Landfill from a design elevation of 130 MSL to 190 MSL ("Original Application"). The Department's Division of Waste and Hazardous Substances ("DWHS"), Compliance and Permitting Section ("CAPS"), deemed the Original Application to be administratively complete on April 1, 2019. Subsequently, New Castle Councilman Jea Street requested a public hearing on April 11, 2019.

Accordingly, the Department held its public hearing concerning this matter, as noticed, on May 29, 2019, which was attended by Department staff, representatives of the Applicant, and over 100 members of the public, with a voluminous amount of comment received by the Department at that time. Given the public interest in this matter, the hearing record ("Record") was kept open for receipt of public comment through June 28, 2019. 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 DWHS prepared a Technical Response Memorandum ("TRM") to specifically address the concerns set forth in the public comments received by the Department in this matter. This TRM, dated August 27, 2019, identified and responded to the concerns voiced by members of the public about the Applicant's original permit modification request.

On August 28, 2019, New Castle County Ordinance No. 19-046 (“Ordinance”) became effective. The Ordinance formally amended New Castle County Code, Chapter 40, stating in pertinent part:

Landfills shall not exceed 140 feet in height, as determined pursuant to industry standards...

With the effective date of the Ordinance as referenced above, WM’s Original Application was no longer administratively complete, as Section 4.2.1.8 of the DRGSW mandates that the Applicant have “...proof that all applicable zoning approvals and all appropriate federal, state, and local environmental permits have been obtained.” Accordingly, on December 4, 2019, the Applicant submitted a *revised* permit application to the Department, reducing the proposed design elevation from 190 feet MSL to 140 feet MSL (“Revised Application”). This Revised Application was deemed administratively complete by CAPS on January 6, 2020.

A supplemental TRM package was provided to Hearing Officer Vest by the Department’s DWHS on February 17, 2020. This TRM package was comprised of the following documentation: (a) Supplemental TRM dated January 8, 2020; (b) Draft Industrial Waste Landfill Permit; (c) TRM dated August 27, 2019; (d) New Castle County Department of Land Use Letter; and (e) Hydrogeological Assessment Summary Update Report from Taylor Geoservices Earth and Water Consultants, submitted on behalf of the Applicant, dated January 2020. The August 27, 2019 TRM provides a summary of the public comment received in this matter and provides specific responses to the same. The supplemental TRM, dated January 8, 2020, serves to capture the activity surrounding the passing of the Ordinance by New Castle County on August 28, 2019, the submission of a Revised Application by the Applicant, and the inclusion into the Record of all additional documentation received by the Department to date by both New Castle County and the Applicant regarding this pending permitting matter.

It should be noted that many of the comments contained in the Record were reiterated by more than one commenter. Those repeated concerns were consolidated by the DWHS' CAPS during its review of the Record, and then summarized within the August 27, 2019 TRM for both clarity and brevity. Additional comments received by the Department voiced concerns about various aspects of the Applicant's business operations, some of which fell outside of the CAPS' specific permitting authority as it relates to this permit modification request. Further comments voiced personal opinions regarding the Applicant's business in general, which are also beyond the scope of the Department's authority in permitting matters such as this.

The August 27, 2019 TRM provides the CAPS' formal responses to the public comment received by the Department regarding matters specifically associated with the Revised Application currently pending before the Secretary at this time. This TRM does not, however, address comments that pertain to matters outside the permitting authority of the CAPS, nor is it responsive to any comments that are not specifically related to the Applicant's Original Application, which was the subject matter of the public hearing held by the Department on May 29, 2019.

Subsequent to the Department's TRM package of February 17, 2020 having been received for inclusion into the Record, Hearing Officer Vest prepared her Hearing Officer's Report ("Report"), dated March 9, 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 this Revised Application, subject to the conditions set forth in the Draft Industrial Waste Landfill Permit (SW-15/02). The Report also addressed the public comments received in this matter and concluded that the same did not warrant the Department's denial of this pending Revised Application, nor the delay of this permit decision to receive any further additional information.

Reasons and Conclusions

This Revised Application is for Waste Management, Inc., to receive a modification of its existing permit (SW-15/02) to allow the vertical expansion of the DRPI Landfill from a design elevation of 130 feet MSL to 140 feet MSL, as set forth above. I find that this proposed project requires the Applicant to obtain a modification of its existing DRPI permit for the aforementioned design elevation to 140 feet MSL. I further find that the Applicant's proposed project is subject to various statutory and regulatory requirements, including, but not limited to, Delaware's *Regulations Governing Solid Waste*, as set forth in 7 DE Admin. Code 1301.

In reviewing the applicable statutes and regulations, as well as weighing public benefits of this project against potential detriments, the Department's experts in CAPS have concluded that the Applicant's Revised Application complies with all statutory and regulatory requirements. The Revised Application has reduced the proposed design elevation from the previously requested 190 feet MSL down to 140 feet MSL. The Revised Application package also included a letter from the New Castle County Department of Land Use dated November 27, 2019, verifying that DRPI's request to extend the vertical limit of the landfill from 130 feet MSL to a final elevation of 140 feet MSL complies with local land use plans and zoning regulations.

It should also be noted that, on February 7, 2020, the Applicant submitted its *Hydrogeological Assessment Summary Update* to CAPS to address concerns that had been raised by the public, both at the time of the public hearing held on May 29, 2019 and during the time period when the Record was open to receive written comment. In response to the public concerns voiced over the possibility that landfill operations were potentially impacting public water supply wells located south and east of the landfill, the Applicant took the following actions during the time period of July through October of 2019:

- Installed three (3) new monitoring wells;
- Installed two (2) new piezometers;
- Completed geophysical logging of seven (7) existing wells; and
- Sampled the three (3) new wells in conjunction with the required quarterly sampling, completed in October of 2019.

The new wells are located south and east of the landfill, were installed rotosonically, and are screened in the uppermost Potomac sands. In the supplemental TRM dated January 8, 2020, CAPS describes the methodology associated with the Department's analysis of the data received from the new wells, and concludes that any potential impacts to groundwater in the sand units underlying the landfill pose no threat to groundwater supplying the well fields east of the site. The supplemental TRM further states that the enhanced potentiometric data obtained from the existing wells, new wells, and piezometers further confirm that the groundwater in both the shallow and intermediate water bearing zones underlying the landfill is moving generally to the northeast, away from the water supply wells.

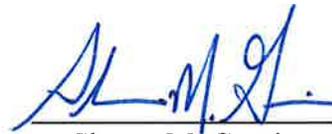
Based upon the review of the documentation in the Record, the Department's experts concur with the conclusions presented in the aforementioned *Hydrogeological Assessment Summary Update*, specifically, that DRPI's Landfill operations are not significantly impacting groundwater beneath the site, and that a release from the landfill poses no threat to water supply wells in the area. To that end, the Draft Industrial Waste Landfill Permit ("Draft Permit") prepared by the Department's WHS reflects a modification of the final maximum landfill elevation at DRPI, from 130 feet MSL to 140 MSL. The Draft Permit is also reflective of the Revised Application received from the Applicant, and contains requirements that include, but are not limited to, updates to the Operations and Maintenance Plan and the Engineering Report as part of the vertical expansion of the landfill. Operational cover placement frequency would also be increased from once every two weeks to once per week, and sampling procedures for leachate seeps would be added to the Surface Water Management and Monitoring section of the modified permit.

I find and conclude that the Applicant has adequately demonstrated its compliance with all requirements of the statutes and regulations, as noted herein, and that the Record supports approval of the Revised Application as set forth herein. Accordingly, this Order approves the modification of DRPI's existing permit (SW-15/02) to allow for the vertical expansion of the DRPI Landfill from a design elevation of 130 feet MSL to 140 feet MSL, consistent with the Record developed in this matter, and directs the same be issued in the customary form, and with appropriate conditions intended to protect public health and the environment.

Further, the Department concludes and directs the following:

1. The Department has jurisdiction under 7 *Del. C.* §§6003, 6004, 6006(4), Delaware's *Regulations Governing Solid Waste* (7 DE Admin. Code 1301), and all other relevant statutory authority, to make a final determination on the Revised Application, after holding a public hearing and considering all information contained in the Record generated in this matter;
2. The Department provided proper public notice of the Original Application of Waste Management, Inc., and of the public hearing held on May 29, 2019, and held said hearing 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 Department's February 17, 2020 TRM package, which has 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 modification required by the Applicant's proposed vertical expansion of the DRPI Landfill from a design elevation of 130 feet MSL to 140 feet MSL, and finds that the Record supports approval of the Revised Application and the modification of the DRPI Landfill permit SW-15/02 associated with same;

5. The Department shall issue the aforementioned modification to the Applicant's existing permit (SW-15/02), as required for the proposed vertical expansion of the DRPI Landfill from a design elevation of 130 feet MSL to 140 feet MSL. Furthermore, said permit shall include all special conditions as set forth in the Department's Draft Permit, 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