

Written Comments from Keith Steck, Milton DE
Regarding DNREC Nov. 17, 2020, Hearing on Artesian Wastewater Projects

Docket #2020-P-W-0026

Overview

First, I want to state that DNREC should conduct separate hearings on separate permit applications and/or requests. While combining hearings on more than one permit seemingly related may be viewed by the agency as an efficient move, DNREC management needs to consider the public's perception and ability to comment. In these COVID days, it should actually be easier to accommodate singular hearings because DNREC does not need to reserve public spaces or otherwise make arrangements for large public spaces. More importantly, combined hearings lead to unintended consequences and misperceptions, not the least of which is the perception that DNREC is trying to "squeeze" the public or otherwise dis-involve concerned citizens. The combined hearing on November 17th is a case in point. It should have been two separate hearings for reasons I explain below.

In addition, I think most people recognize how the pandemic has created a lot of complications and frustrations both on the public and DNREC's side. People understand we have to accommodate one another and adjust our schedules and lives in this crisis. And we have to make allowances as everyone and agencies try to cope with the circumstances. So I want to make clear I appreciate the opportunity to comment. My comments are organized from the general to the specific, ending with comments related to each project.

Administrative and Overarching Points

Throughout DNREC's and Artesian Wastewater Management's documentation, one road name is spelled inconsistently. "Stiener Road," as identified by the US Postal Service and Sussex County government seems to be the correct name of part of the forcemain (pipeline) project area. However, in some cases, it is spelled "Steiner". It may be the pronunciation of "sty-ner" that throws people off, but that should not excuse misspelling the name of the road or the inconsistent spelling across and within documents. For example, the pipeline drawing includes both spellings. The agency should ascertain which is correct and ensure whichever is the

proper spelling to use it consistently in all documents involving both the pipeline and the Beaver Creek projects. Perhaps the arbiter should be the US Postal Service to resolve this.

On a more important point, the transcript of the hearing should be accurate. While I know there is pressure to get it done and made available to the public, it should be first and foremost correct. The transcript provided has at least one substantive error; a statement I made is not correctly transcribed. On line 5 of page 27 it states that I said "... **the application is complete....**" I did not say that. I either said "**incomplete**" or "**not complete**" regarding the application. Perhaps the recording is not clear or it was transcribed in accurately, but if you look at the context, the transcript as written does not make sense. If you look at the sentence, saying "complete" is not consistent with what follows immediately after: "... and missing basic information." Further, you can tell from my discussion about shortcomings of the pipeline/conveyance application that saying the application is complete then citing numerous problems makes no sense. The transcriptionist should review the recording and revise my statement to indicate I consider the application to be incomplete. As evidence that the transcript is not fully accurate, I noted what I believe is another mistake but does not change the meaning; on line 16 on page 14 it states Mr. Ashby said "...permit is **large of primarily...**" I believe that should state "large **or** primarily...." There are a couple of other similar minor mistakes in the transcription.

Moving from the small to the more global, the analysis of these two combined projects raise serious concerns that DNREC has not handled these cases in an objective and neutral manner. Despite statements at the hearing that the applications, exhibits, and public comments will be given due consideration and the record will be the basis of Secretary Garvin's ultimate and final decision, documents and actions indicate that the agency was biased in favor of Artesian Wastewater Management and approving both the pipeline application and modifications to the Beaver Creek Wastewater Treatment Plant. In the opening statements of the November 17th hearing, the hearing officer stated "The statutory purpose of tonight's hearing is to build the record with regard to the Department's proposed actions"--see lines 17 through 19, transcript page 7. She went on to say that no decision was made prior to the hearing as noted in lines 5 through 9 on transcript page 8: "It is important to note that no decisions have already been made by the Department, nor will any decisions be made tonight with regard to these pending permitting matters." She continued, explaining that Sec. Garvin will make the final decision

(various lines, transcript page 9). I am not impugning the integrity of Ms. Vest, the hearing officer; I believe this is standard agency language as I have heard her read and make these statements at other hearings. Rather, the documents and behavior of agency officials collectively lead a reasonable person to believe DNREC did not go into the hearing without a preconceived and favorable opinion about both applications. Consider:

- Artesian is a major provider of sewer and other water services throughout the state, frequently applies for and almost always receives approval of applications of all types, and has a well-known long-term strategy for developing "interconnectivity" to provide sewage services throughout Sussex County.
- The application for the pipeline project had substantive flaws, including missing key information, and the public record did not include two key documents. Even information about what is being conveyed is not stated clearly. The application was accepted as-is, despite application instructions that state: "Please note that incomplete application packages will be returned in their entirety and not reviewed until such time as all required information is received." Why was this lax oversight allowed? More details about this appear below.
- How did DNREC know what details to include in a draft pipeline construction permit or a revision to the Artesian operating permit without first ascertaining from the Artesian exactly (1) what the wastewater will consist of and (2) which Artesian pipeline near the Hawthorne community without knowing what's in the undisclosed wastewater.
- Without having a full and complete pipeline application, how could DNREC spend its time and limited resources developing a draft pipeline construction permit going to Artesian's Beaver Creek WWTP in Harbeson and developing revisions to that facility? Without Artesian providing details in the pipeline article or discussions going on between DNREC and Artesian staff, how did DNREC know which Artesian pipeline near the Hawthorne community" to tie into--the Artesian pipeline going to Beaver Creek WWTP or the one going from the Harim chicken processing plant in Harbeson to Artesian's Milton facility?
- While DNREC claims it has not made a decision one way or the other regarding permits, the mere fact that DNREC has drafted the pipeline permit and a revised Beaver Creek operations permit indicates otherwise. The agency comes across as already knowing what was coming and took action because it had already decided to approve it.

- The pipeline project application and requests for a hearing were held up until the Beaver Creek modification application was available, as noted at the hearing by a DNREC official.
- A single hearing was held covering both the pipeline application and proposal to modify the Beaver Creek WWTP.

Key Deficiencies in Pipeline Project Documentation

The pipeline project, as described, has considerable shortcomings in its application and is missing two key documents. The application does not identify the source of what's being conveyed and does not clearly describe what is to be conveyed--sewage. Also, while it does note the end point being a connection to an existing 8-inch pipeline near the Hawthorne community, it does not identify the final destination or terminus of what's being transported. The starting point is somewhere on Park Avenue outside of Georgetown but does not indicate what the true source is--residential, industrial, or something else--and of whatever is being conveyed; even the drawings do not indicate that. Only looking at the details of the construction permit application provides some indication, but even that is somewhat confusing because it mentions the word "industrial" (Part I, Subpart 3.A. discussion of liquid waste). It's only straightforward and clear once you look at the Beaver Creek WWTP documents. The public should be able to easily determine what's being conveyed and where it will end up by looking at the application.

Worse, other key information is not on the application. Starting at the top of the application, the watershed was not selected. The full length of the project--16,735 feet, over 3 miles--is not readily apparent in the description block; and only the length of one segment--11,735 of the Rte 9 stretch--is on the application. Similarly, there's no description of where the waste stream is going to end up; it's implied by the name of the facility shown on the document but unless you know that the pipeline by the Hawthorne community is tied into the Beaver Creek WWTP you would have no idea of the connection (no pun intended), especially because the Beaver Creek WWTP is hidden behind the Meadows at Beaver Creek and not visible from the road.

Moreover, the application instructions clearly state that two items must be submitted prior to the issuance of the permit: Item 6, Verification from the appropriate county or municipal planning authority that the project has the proper zoning approval and Item 7, A letter from the owner/operator confirming it has approved the project , it will take responsibility for treating and disposing of the wastewater and the downstream facilities have the capacity to manage the

additional flows without causing or contributing to violations of Delaware's Environmental Protection Act, including not violating NPDES permit. There's no documentation included in this docket's portfolio to support either of these requirements. Item 6 in particular is very concerning because not having this document raises a question about whether Sussex County ever approved this project. And the County Engineer's Nov. 4 email in support of this project is not sufficient for a project of this size, scope, and environmental implications.

Despite all of these problems, DNREC accepted the pipeline application and did not return it to Artesian. This lack of oversight is unacceptable; if it happened with this application, how many other slipshod applications is DNREC accepting?

At the very least, the application should have been returned until key information-- the watershed, the total length of pipeline, etc.--was provided and two key documents were submitted as required by the instructions. Moreover, had the application been rejected as instructions say should have been done, it would have demonstrated to Artesian the seriousness of the issue and it would have demonstrated that the good of the public was being put ahead of Artesian's interest.

Further, the fact that DNREC management made the decision to combine both the pipeline hearing and the WWTP modification hearing shows a bias in favor of these projects.

In addition to the missing information and documents, the application did not clearly state what the destination of the conveyed sewage would be. Given that Artesian has two service pipelines by the Hawthorne community, it was not a given to the public exactly where the wastewater would end up--the Artesian facility north of Milton or the Beaver Creek WWTP. Had DNREC required a separate hearing on the pipeline, it would have meant Artesian would have had to provide the missing information and residents and other concerned citizens would have known more about Artesian's ultimate plans for the Beaver Creek treatment plant. Further, having a separate hearing would have provided the public the opportunity to see Sussex County's documentation approving the pipeline and Artesian's official letter committing to responsibility for the pipeline, neither of which are part of the public docket for these two projects despite the application instructions requiring them.

While the apparent destination of the sewage is the Beaver Creek WWTP, it's not a foregone conclusion that Artesian may change its mind later and seek to connect to the Artesian pipeline going to Milton. Yes, Artesian has spent considerable time developing this pipeline plan and modification designs, but Artesian has changed its mind before. Having a separate hearing on the facility would have gone a long way to allaying public concern about what's being done.

Instead, having a combined hearing reinforces the perception that "it's a done deal," that "DNREC is in Artesian's pocket," and "DNREC does not care about the little guy." Combining the two hearings might have been an efficiency move on DNREC's part, but this move comes across as clear favoritism towards Artesian. Whether intentional or not, the November 17th hearing buttressed this perception because "DNREC management" made a decision to combine the the hearings, as noted on page 14 of the transcript in lines 2 through 8 where it states Mr. Ashby said: "a management decision was made that it would be best to have it in context with the wastewater treatment plant that it was serving, so it was held over until the Beaver Creek Wastewater Treatment Plant was ready to go at this hearing tonight."

Had there been separate hearings, many questions arose around each but have not been answered by the documents provided. In fact, the hearings should have presented sufficient information that answered many or most questions and allayed residents' concerns, especially if they addressed questions and issues raised in emails and letters sent to DNREC requesting the pipeline hearing. Similarly, had a separate Beaver Creek modification hearing been held, information about it could have addressed other questions and concerns. DNREC should very seriously consider reinstating separate hearings to help create better relations with the public and begin rebuilding trust with the public.

Comments on Beaver Creek Wastewater Treatment Plant

I have fewer concerns about the Beaver Creek draft permit because there's fewer changes from the existing permit and pertain to special conditions. I and others particularly appreciate that the issue of industrial waste is addressed, although it should specify that if consideration is made in the future to accept industrial wastewater that the public be notified. Right now, it's not clear whether any future consideration would require public notification, especially if permit limits would need to be set. Also, there's some disconnect between mention of industrial waste in the

pipeline permit under Part I, Subpart 3.A. on page 2 and the special condition regarding industrial or commercial wastewater in the Beaver Creek WWTP Part III, Subpart A.q.

Regarding Project 2--changes to Artesian's Beaver Creek Wastewater Treatment Plant. Because I'm almost out of time, I will say that some of my earlier comments apply but here are some other quick points.

Closing

I appreciate the opportunity to comment on the two proposals. I believe it is crucial for the public to not only have the chance to comment, but the public has the responsibility to provide sound, reasonable, and informed comments on public projects and decisions. To that end, I believe comments should add value and not just be viewed as "a chance to vent." I hope my comments are taken in that vein. I further urge DNREC to go back to having single hearings.

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