

would not adversely effect the environment. Appellant disagreed with that conclusion and appealed primarily out of concern for the potential adverse environmental effects, especially the potential effects on groundwater and air quality.

Ms. Wisniewski and her witnesses testified to a general distrust of New Castle County and DNREC and the fear of human or mechanical errors in the design and operation of the Facility. Their testimony raised questions regarding the future environmental effects of the Permitted activities and the desire of the government entities to prevent environmental damages and future violations. Ms. Wisniewski wanted the Board to revoke the Permit since New Castle County has allowed the Sheets family, who farm the property at issue, to continue farming and spreading manure, etc. The manure and nitrates therein would enter the soil along with the spray irrigation wastewater. While reed canary grass will be planted to absorb these chemicals, Ms. Wisniewski feared that the groundwater would become contaminated. Other witnesses also testified to a concern for quality drinking water, since they drink from wells which draw water from the aquifers below the Facility area. Appellants fear contamination and, by the time it is discovered, the entire aquifer will be contaminated and such contamination is not easily remedied. Representative Bruce Ennis testified that a number of nearby residents oppose the Facility. The residents do not want to be the subjects of an experiment or University of Delaware research project. As an alternative, it was suggested that the wastewater

could be discharged into a nearby river or stream.

Robert Zimmerman, a DNREC engineer and Environmental Program Administrator testified that spray irrigation was the preferred alternative for disposal of this wastewater. The land in the Facility will make beneficial use of the nitrogen and phosphorus in the wastewater whereas these nutrients discharged into a stream will contribute to algae growth and consume available oxygen. Mr. Zimmerman admitted that the older spray irrigation facilities were not problem free, but the latest technology has produced successful facilities. He also testified that DNREC will take action if the Permittee exceeds the Permit's pollution discharge limits or other conditions.

Ron Graber, an Environmental Program Manager for DNREC, explained that the nutrients in the spray irrigation wastewater act as a fertilizer when sprayed on land, however, these items act as pollutants when discharged into streams and rivers and contribute to stream eutrophication. He also testified that the system has the capacity to handle the wastewater being stored in the lagoons, since the limits for land treatment are greater than the limits for lagoon storage. See Permit. Also, the application rate is extremely conservative. Mr. Graber testified that the system could handle more waste and it was an environmentally sound alternative; and furthermore, the salts content of influent water will not exceed the standards for safe drinking water.

FINDINGS OF FACT

1. Prior to the Secretary's approval of the Permit, DNREC employees reviewed the location, topography, soil chemistry and hydrology aspects of the Permitted site. The testimony and the Permit itself indicate that DNREC has carefully considered the potential adverse environmental impacts.

2. The Permit contains additional requirements such as chemical application limits, monitoring wells and double lined lagoons which should insure that the Facility functions as intended and the groundwater in the aquifers below the Facility does not become contaminated. The system planned by New Castle County is state-of-the-art. While there are no guarantees that the Facility will function properly and that no contamination will occur, the evidence supports the decision to issue the Permit. The Secretary has acted reasonably in issuing this Permit, based upon the information in the record before the Board.

3. The Board did not find evidence of any fraud or errors in the application process or other misconduct by DNREC or the Permittee. Appellants offered Secretary Clark's advance public statement of support of the Facility to show bias. See Appellants Exhibit 2. Despite the Secretary's advance statement, the evidence reveals that the Permit was fairly evaluated. The Secretary did add restrictions in the Permit which will protect the environment. The Board did not find evidence of improper bias or arbitrary action in favor of the Facility.

CONCLUSIONS OF LAW

Under 7 Del. C. §6008(b), appellants have the burden of proof to show that the Secretary's decision was not supported by the evidence. While the Board empathizes with the concerns of the nearby homeowners and their desire to protect the environment and their groundwater, the evidence does not reveal that the Secretary erred in issuing this Permit. Ms. Wisniewski did not satisfy her burden on appeal.¹ Further, local land use and zoning issues are not within the Board's jurisdiction and will not be addressed by the Board. Here, the Secretary granted New Castle County's permit application, but he added restrictions to the Permit as a result of the public hearings and input from appellants and other sources. The Order reveals that the Secretary considered the relevant factors such as topography, location, and soil chemistry before issuing the Permit. Spray irrigation appears to be the most rational method of sewage disposal in this area.

State policy requires water resources to be utilized and protected to benefit the State and its citizens. See 7 Del. C. §6001. The Board accepts the scientific testimony which indicates that the Facility will be operated without harm to the environment. While government cannot provide any guarantees that appellants' groundwater will never be harmed, DNREC has followed

¹Appellant raised an issue regarding compliance with the Coastal Zone statute. While public sewage facilities are apparently excluded from the Coastal Zone prohibition, see 7 Del. C. §7003, this Board does not have jurisdiction to consider Coastal Zone issues.

reasonable procedures and arrived at a decision which is supported by the evidence in the record.

Appellant contends it was reversible error to allow farming on the site when the design development report does not contemplate farming. Apparently the decision to allow farming occurred after the issuance of the Permit. It is important to note that the spreading of manure and related activities on site are not excluded from the Permit limits. For example, the Permit limits nitrogen per acre to 500 lbs./year. Permit, p. 6. See also Reservation of Farming Rights, Appellant's Exhibit 10(b).

The Permit contains reasonable safeguards and operation restrictions and DNREC regulations also apply. These parameters will substantially decrease the likelihood of environmental harm. If the monitoring wells reveal contamination, or if other problems develop, the various regulatory agencies should reevaluate the Facility or take enforcement action. For example, the Delaware River Basin Commission documents state that if the project affects or interferes with domestic wells, "the applicant, at its own cost, shall provide an alternative supply of water or other mitigating measures." Appellant's Exhibit 1. (DRBC Dec. at 6). In the event that New Castle County fails to operate within the Permit limitations, DNREC indicated that it would initiate enforcement proceedings.

CONCLUSION

The Board unanimously affirms the decision of DNREC to issue the Permit.



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Clifton H. Hubbard, Jr.

Joan Donoho

Mary Jane Willis

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RE: APPEAL
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CONCLUSION

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