

HEARING OFFICER'S REPORT

TO: The Honorable Shawn M. Garvin
Cabinet Secretary, Department of Natural Resources and Environmental Control

FROM: Lisa A. Vest
Regulatory Specialist, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: Application of Allen Harim Foods, LLC (“Allen Harim”), requesting a State of Delaware Non-Hazardous Liquid Waste Transporters Permit authorizing the collection, transportation and disposal of non-hazardous liquid waste to Allen Harim’s Harbeson Processing Facility for treatment and disposal (Hearing Docket No. 2019-P-W-0030)

DATE: January 4, 2023

I. BACKGROUND AND PROCEDURAL HISTORY:

A public hearing was held on Wednesday, January 8, 2020, at 6:00 p.m. at the Indian River Senior Center in Millsboro, Delaware, by the Department of Natural Resources and Environmental Control (“DNREC” or “Department”) to receive comment on the application of Allen Harim Foods, LLC (“Allen Harim” or “Applicant”), requesting a State of Delaware Non-Hazardous Liquid Waste Transporters Permit to authorize the collection, transportation and disposal of non-hazardous liquid waste (i.e., poultry process wastewater) from both the Applicant’s Hatchery No. 2 in Dagsboro, Delaware, and its Pinnacle Processing Facility in Millsboro, Delaware, to Allen Harim’s Harbeson Processing Facility for treatment and disposal (“Application”).

The Department issues Non-Hazardous Liquid Waste Transporters Permits (hereinafter referred to as a “Transporters Permit”), such as the one requested by Allen Harim in the aforementioned Application, to specifically regulate the safe hauling, conveyance, or transport of any non-hazardous liquid waste, with the intention of delivering such liquid waste from one location to another, over the public roads of the State of Delaware.

The Transporters Permit does include operational, maintenance and insurance requirements to ensure that non-hazardous liquid wastes are collected and transported in a manner designed for the protection of public health and the environment, as required by 7 DE Admin. Code 7101, *Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems* (“Regulations”). It should be noted that the actual treatment and disposal of such waste is regulated through the treatment and disposal permits of the facilities receiving the waste, and not through the Transporters Permit.

On October 4, 2019, the Department’s Division of Water received the Application submitted by Allen Harim, seeking the aforementioned Transporters Permit, to specifically authorize the transportation of non-hazardous liquid waste (i.e., poultry process wastewater) from both the Applicant’s Hatchery No. 2 in Dagsboro, Delaware, and its Pinnacle Processing Facility in Millsboro, Delaware, to its Harbeson Processing Facility for treatment and disposal. After determining it to be administratively complete, the Department advertised receipt of the Application in both the *News Journal* and the *Delaware State News* on December 19, 2019. The legal notice also advertised that the Department had scheduled a public hearing to be held regarding this Application on January 8, 2020.

Department staff, representatives of the Applicant, and members of the public attended the public hearing held on Allen Harim’s Application, and on the proposed Draft Permit prepared by the Department regarding this matter, at the Indian River Senior Center in Millsboro, Delaware, on January 8, 2020. It should be noted that comments were received from the public at the time of the public hearing, and the same were posted on the DNREC hearing web page dedicated to this matter. Proper notice of the hearing was provided as required by law.

The Division of Water’s experts subsequently provided responses to the aforementioned comments received by the Department in the Technical Response Memorandum (“TRM”) dated October 5, 2022. The same is discussed herein in greater detail below. It should be noted that proper notice of the hearing was provided as required by law.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The Record consists of the following documents:

(1) The official verbatim Transcript of Proceedings from Wilcox & Fetzer, Ltd., generated from the virtual public hearing of January 8, 2020;

(2) Four (4) exhibits identified as the Department's Exhibits regarding the Allen Harim Application as referenced above, introduced by responsible Department staff at the aforementioned hearing, and marked accordingly as "Dept. Exh. 1-4";

(3) Copy of the comments received from Shelly Cohen via email, dated January 8, 2020, regarding the Application as referenced above, as identified on the hearing web page dedicated to this matter under the "Public Comments" section;

(4) Copy of the written comments received from Andrea Green at the time of the public hearing, dated January 8, 2020, regarding the Application as referenced above, as identified on the hearing web page dedicated to this matter under the "Public Comments" section;

(5) Copy of the written comments received from Maria Payan at the time of the public hearing on January 8, 2020, regarding the Application as referenced above, as identified on the hearing web page dedicated to this matter under the "Public Comments" section;

(6) Copy of the written comments received from Keith Steck at the time of the public hearing on January 8, 2020, regarding the Application as referenced above, as identified on the hearing web page dedicated to this matter under the "Public Comments" section; and

(7) Technical Response Memorandum (“TRM”) prepared by the Department’s Division of Water, Commercial and Government Services, dated October 5, 2022. The Department’s TRM, with all of its Appendices (including, but not limited to, the finalized Draft Permit, attached thereto as Appendix “IV”), is expressly incorporated into this Report and attached hereto as Appendix “A.”

The Department’s persons in the Division of Water primarily responsible for reviewing this Application, Katharyn Potter, Engineer II, and John Rebar, Jr., Environmental Program Manager II, developed the Record with the relevant documents in the Department’s files.

As set forth previously herein, the Record generated in this matter indicates that public comments regarding Allen Harim’s Application were received by the Department. At the request of this Hearing Officer, the technical experts in the Department’s Division of Water prepared the aforementioned TRM to (1) specifically address the concerns associated with the Application, as set forth in the public comments received by the Department; and (2) offer conclusions and recommendations regarding this pending permitting matter for the benefit of the Record. The TRM, which includes the Department’s finalized Draft Permit attached therein as “Appendix IV,” provides a summary of the public comments received by the Department in this matter and offers detailed responses to the same.

I find that the aforementioned TRM, as provided by the Department’s experts in the Division of Water, addresses the areas of concern voiced by the public comments received by the Department in this permitting matter, and provides responses to those comments in a balanced manner, accurately reflecting the information contained in the Record. Accordingly, the Department’s TRM of October 5, 2022, with all of its Appendices, is attached hereto for the Secretary’s review as Appendix “A,” and is hereby expressly incorporated herein.

III. RECOMMENDED FINDINGS AND CONCLUSIONS:

Currently pending before the Department is the above-described Application submitted by Allen Harim, requesting a State of Delaware Non-Hazardous Liquid Waste Transporters Permit to authorize the collection and transportation of non-hazardous liquid waste (i.e., poultry process wastewater) from both the Applicant's Hatchery No. 2 in Dagsboro, Delaware, and its Pinnacle Processing Facility in Millsboro, Delaware, to Allen Harim's Harbeson Processing Facility for treatment and disposal. I find that the Applicant is required to obtain the aforementioned Transporters Permit, for the reasons noted above. I further find that Allen Harim's above-described Application is subject to various state and federal regulatory requirements, including, but not limited to, including, but not limited to, 7 DE Admin. Code 7101, *Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems*, and as provided for under 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 Division of Water have concluded that the pending Application complies with all applicable federal and state laws and regulations. Upon approval by the Secretary, the Transporters Permit that would be issued by the Department would be reflective of the Application submitted in this matter by Allen Harim and would be appropriately conditioned to ensure continued protection of public health and the environment.

The Department's TRM acknowledges the comments received from the public concerning this Application, and thoroughly responds to the same. For the purposes of brevity, this Report defers to the attached TRM in its entirety for a comprehensive understanding of the concerns raised in the public comments received by the Department in this matter, as well as the Department's formal responses to the same, as provided by the technical experts in the Department's Division of Water.

The following provides a brief summary of the responses to each of the public comments received in this matter:

In response to multiple comments expressing concern that the Application provided limited information, the TRM not only confirmed that all required information and documents were submitted to the Department by the Applicant, but also noted that wastewater hauling from Allen Harim's Hatchery No. 2 and Allen Harim's Pinnacle Processing Facility is restricted to 40,000 gallons per day from each site. This hauling limitation is in accordance with Allen Harim's Onsite Wastewater Treatment and Disposal System ("OWTDS") Operations Permit for the wastewater treatment system receiving the wastewater at the Allen Harim Harbeson Processing Facility. Additionally, pursuant to the Applicant's OWTDS Operations Permit, Allen Harim will be required to record the volume of wastewater received from the Hatchery and Pinnacle Facility daily. The daily and total volumes from each site will be submitted to the Department in monthly monitoring report submittals.

Multiple commenters expressed concerns with the water quality to be transported to the Allen Harim Harbeson Processing Facility's wastewater treatment system. Specifically, concerns were raised about the presence of quaternary ammonium compounds ("QACs"), potential impacts on the wastewater treatment process and environment, and the need for sampling wastewater prior to hauling. In response, the TRM notes that Allen Harim is seeking the authorization to transport poultry processing wastewater from one location to another over the public roads of the State of Delaware. While poultry processing wastewater contains high levels of organic and inorganic constituents, it is considered a non-hazardous liquid waste, and the treatment and disposal of such waste is regulated through the treatment and disposal permits of the facilities receiving the waste, and not through the Transporters Permit. Additionally, poultry processing wastewater, as a waste stream, is well characterized in scientific literature (as set forth in Table 1 of the TRM), and therefore the Department does not require routine or random sampling under the Transporters Permit.

In response to multiple comments that raised concerns regarding the environmental safety of hauling activities and impacts to traffic patterns, the TRM notes that the Transporters Permit does include operational and maintenance requirements to ensure that non-hazardous liquid wastes are collected and transported in a manner that is protective of public health and the environment. Once a transporter safely delivers non-hazardous liquid waste to an authorized facility, it is that facility's responsibility to safely treat and/or dispose of the waste. All disposal facilities that receive non-hazardous liquid waste are permitted by the Department. The permits issued to such facilities include effluent limitations (if applicable), monitoring, reporting, and operational requirements.

Facilities that discharge or land apply wastes have permit requirements that include effluent composite sampling for nutrients, metals, pH, and other inorganics, soil monitoring, groundwater monitoring, and authorize land application at specific agronomic rates. Additionally, Section 3.20 of the aforementioned Regulations authorizes the Department to require Permittees such as Allen Harim to take all necessary actions to eliminate and correct any adverse impact on public health or the environment resulting for Permit noncompliance.

It should be noted that the Department does not regulate traffic impacts and travel routes associated with Transporter Permits. Traffic impacts, travel routes, and general truck safety requirements are regulated under the authority of the Delaware Department of Transportation and/or the Delaware State Police.

I find that the Division of Water's TRM offers a thorough review of all aspects of the Applicant's pending Application, addresses those concerns germane to the subject matter of the aforementioned public hearing held by the Department in this matter, and responds to them in a balanced manner, accurately reflecting the information contained in the Record. The Record developed in this matter indicates that the Department's experts in the Division of Water have concluded that Allen Harim's Application complies with all statutes and regulations that govern such permitting actions, have weighed public benefits of the issuance of a Transporters Permit to the Applicant against potential detriments, and have recommended approval of the same.

I find and conclude that the Record supports approval of the Application submitted to the Department by Allen Harim, as set forth above. The Transporters Permit to be issued by the Department will be reflective of the Application submitted by Allen Harim, and consistent with the finalized Draft Permit prepared by the Department's experts in the Division of Water, to ensure continued protection of public health and the environment, and consistent with the Record developed in this matter.

Accordingly, this Report recommends the issuance of a State of Delaware Non-Hazardous Liquid Waste Transporters Permit to Allen Harim, authorizing the collection, transportation and disposal of non-hazardous liquid waste (i.e., poultry process wastewater) from both the Applicant's Hatchery No. 2 in Dagsboro, Delaware, and its Pinnacle Processing Facility in Millsboro, Delaware, to Allen Harim's Harbeson Processing Facility for treatment and disposal, consistent with the finalized Draft Permit prepared by the technical experts in the Department's Division of Water, and consistent with the Record developed in this matter.

Further, the Department concludes and specifically directs the following:

1. The Department has jurisdiction, as provided for under *7 Del.C. Ch. 60, 7 DE Admin. Code 7101, Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems*, and all other relevant statutory authority, to make a final determination on the aforementioned pending permit applications submitted by Allen Harim 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 aforementioned Application submitted by Allen Harim, and of the public hearing held on January 8, 2020, and held the hearing to consider any public comments 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 Department's TRM of October 5, 2022 and all of its Appendices, including, but not limited to, the aforementioned finalized Draft Permit, all of 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 amendment required by the aforementioned Application submitted by Allen Harim, and finds that the Record supports approval of the same;
5. The Department shall issue to the Applicant a State of Delaware Non-Hazardous Liquid Waste Transporters Permit, authorizing the collection, transportation and disposal of non-hazardous liquid waste (i.e., poultry process wastewater) from both the Applicant's Hatchery No. 2 in Dagsboro, Delaware, and its Pinnacle Processing Facility in Millsboro, Delaware, to Allen Harim's Harbeson Processing Facility for treatment and disposal, consistent with the finalized Draft Permit prepared by the Department's Division of Water, and consistent with the Record developed in this matter;
6. Furthermore, said Transporters Permit shall include all conditions as set forth in the Department's TRM, along with the aforementioned finalized Draft Permit, to ensure that Delaware's environment and public health will be protected from harm;
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.

/s/Lisa A. Vest
LISA A. VEST
Regulatory Specialist

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Appendix A: TRM with all Appendices (including, but not limited to, the associated finalized Draft Permit, attached thereto as Appendix "IV")