

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 Midway Services, Inc. ("Midway") to Amend its existing State of Delaware Non-Hazardous Liquid Waste Transporters Permit (No. DE WH-152), authorizing the transportation of septage by Midway to Clean Delaware, LLC ("Clean DE") for final disposal (Hearing Docket No. 2020-P-W-0007)

DATE: December 20, 2022

I. BACKGROUND AND PROCEDURAL HISTORY:

A virtual public hearing was held on Tuesday, July 7, 2020, at 6:00 p.m. via the State of Delaware Cisco WebEx Meeting Platform by the Department of Natural Resources and Environmental Control ("DNREC" or "Department") to receive comment on the application of Midway Services, Inc. ("Midway" or "Applicant") to amend its existing State of Delaware Non-Hazardous Liquid Waste Transporters Permit (No. DE WH-152) to authorize the transportation of septage by Midway to Clean Delaware, LLC ("Clean DE") for final disposal ("Application").

On February 9, 2019, the Department's Division of Water, Ground Water Discharges Section, issued a State of Delaware Non-Hazardous Liquid Waste Transporters Permit (No. DE WH-152) authorizing Midway to operate and maintain its vehicle(s) for the purpose of collecting, transporting through Delaware on state roads, and disposing of non-hazardous liquid waste (i.e., septage, holding tank waste, grease trap and/or cooking oil waste) to the Kent County Sewer System. Specifically, Kent County's Pump Station No. 1, located on U.S. Route 13 in Smyrna, Delaware, or at the Kent County Regional Resources Recovery Facility, located at 139 Milford Neck Road, Milford, Delaware.

On April 3, 2019, Midway's aforementioned Transporters Permit was amended to also authorize the collection, transportation, and disposal of septage and holding tank waste to the Sussex County Sewer System. Specifically, the Inland Bays Regional Wastewater Treatment Facility, located on the north side of County Road 306, between County Roads 307 and 303, Sussex County, Delaware.

Midway's existing Transporters Permit is currently in effect until February 8, 2024. The Transporters Permit includes septage pumping reporting requirements and vehicle operation, and maintenance and insurance requirements 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*. It should be noted that a Transporters Permit specifically regulates the safe hauling, conveyance, or transport of any non-hazardous liquid waste with the intention of delivering such materials from one location to another over the public roads of the State of Delaware. 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 Transporters Permits.

On January 8, 2020, the Department's Division of Water received Midway's Application to amend their existing Transporters Permit No. DE WH-152, as noted above. The septage to be transported by the Applicant from Clean DE will be lime treated and land applied, in accordance with Clean DE's Agricultural Utilization ("AGU") Permit issued by the Department.

After determining it to be administratively complete, the Department advertised receipt of Midway's Application in *The News Journal*, the *Delaware State News*, and on the Department's website on January 12, 2020. Subsequently, the Department received a request for a public hearing to be held in this matter. A proposed Draft Non-Hazardous Liquid Waste Transporters Permit Amendment ("Draft Permit") was prepared at that time by the Department's experts in the Division of Water, and the public hearing was scheduled to be held on March 19, 2020.

The Department was required to postpone the initial hearing date, however, due to an error in the legal notices that had been previously published in this matter. Subsequently, the Division of Water re-published legal notices on the DNREC website (on June 15, 2020), in the *Delaware State News* (on June 17, 2020) and the *News Journal* (on June 18, 2020), advertising that a virtual public hearing regarding Midway's Application had been rescheduled to be held on July 7, 2020.

Department staff, representatives of the Applicant, and members of the public attended the virtual public hearing on July 7, 2020. The hearing record ("Record") remained open through July 24, 2020, to allow for submission of written comment by the public. It should be noted that comments were received from the public during the post-hearing phase of this permitting process, 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 those comments in the Technical Response Memorandum ("TRM") dated July 28, 2022, received by this Hearing Officer on August 1, 2022, and 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 July 7, 2020;

(2) Thirteen (13) exhibits identified as the Department's Exhibits regarding the Midway Application as referenced above, introduced by responsible Department staff at the aforementioned hearing, and marked accordingly as "Dept. Exh. 1-13";

(3) Copy of the comments received from Keith Steck, dated July 24, 2020, regarding the Midway Application as referenced above, as identified on the hearing web page dedicated to this matter under the “Public Comments” section; and

(4) Technical Response Memorandum (“TRM”) prepared by the Department’s Division of Water, Commercial and Government Services, dated July 28, 2022, and received by this Hearing Officer on August 1, 2022. The Department’s TRM, with all of its Appendices (including, but not limited to, the associated Draft Permit Amendment, attached thereto as Appendix “V”), 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 written comments regarding Midway’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 Draft Permit Amendment attached therein as “Appendix V,” 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 July 28, 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 Midway to amend their existing Transporters Permit to authorize the collection, transportation, and disposal of septage at Clean DE. I find that the Applicant is required to obtain this permit amendment, for the reasons noted above. I further find that Midway'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 Permit Amendment that would be issued by the Department would be reflective of the Application submitted in this matter by Midway 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 Applications, 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 the concern as to why Midway would be seeking authorization to discharge septage at Clean DE, and whether the material discharged at Clean DE is considered more hazardous (and perhaps not accepted at the County facilities), the TRM notes that the issuance of Non-Hazardous Liquid Waste Transporter Permits not only authorizes the transportation of specific non-hazardous liquid waste types, but also authorizes the facilities that may be utilized for the disposal of each waste stream. Each disposal facility has specific requirements for what the facility will accept, and not every facility can or will accept every regulated stream. Therefore, it is not uncommon for a transporter to be authorized to transport and dispose of waste at multiple locations. Midway's Transporters Permit, even after amended, will still authorize the Applicant to utilize Kent and Sussex infrastructure and facilities for the disposal of septage and other waste streams.

- With regard to inquires as to why DNREC does not include requirements for random testing of the waste being hauled by transporters such as Midway, the TRM notes that a State of Delaware Transporters Permit specifically regulates the safe hauling, conveyance, or transport of any non-hazardous liquid waste with the intention of delivering such materials from one location to the other over the public roads of the State of Delaware. As noted previously, the actual treatment and disposal of the septage being transported is regulated through the treatment and disposal permits of the facilities receiving the waste. The Transporters Permit does, however, include operational and maintenance requirements to ensure that septage and other non-hazardous liquid wastes are collected and transported in a manner that is protective of public health and the environment.

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 Midway's Application complies with all statutes and regulations that govern permitting actions such as the proposed amendment to existing Permit DE WH-152, have weighed public benefits of this permit amendment against potential detriments, and have recommended approval of the same.

I find and conclude that the Record supports approval of the proposed amendment to Midway's existing Permit No. DE-WH-152, as submitted by the Applicant to the Department's Division of Water in this matter. Upon approval, the amendment to the Applicant's existing Transporters Permit to be issued by the Department would be reflective of the Application submitted by Midway, and consistent with the Draft Permit Amendment 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 the State of Delaware Non-Hazardous Liquid Waste Transporters Permit Amendment to existing Permit No. DE WH-152, authorizing Midway Services, Inc., to transport septage to Clean DE, as an additional disposal site, consistent with the Draft Permit Amendment prepared by 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 Midway 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 Midway, and of the public hearing held on July 7, 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 July 28, 2022 and all of its Appendices, including, but not limited to, the aforementioned Draft Permit Amendment, 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 Artesian, and finds that the Record supports approval of the same;
5. The Department shall issue an Amendment to Midway's State of Delaware Non-Hazardous Liquid Waste Transporters Permit No. DE WH-152, to authorize the Applicant to transport septage to Clean DE as an additional disposal site, consistent with the Draft Permit Amendment 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 Draft Permit Amendment, 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

ahear\MIDWAY Transporters Permit Amend 2022

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