

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: Wastewater Facilities Construction Permit Application of Artesian Wastewater Management, Inc., seeking permission to Construct an Effluent Force Main to Spray Fields "D" and "E" at Artesian's Sussex Regional Recharge Facility ("SRRF") located north of Milton, Delaware.

DATE: December 15, 2020

I. BACKGROUND AND PROCEDURAL HISTORY:

A public hearing was held on Thursday, June 13, 2019, at 6:00 p.m. by the Department of Natural Resources and Environmental Control ("DNREC" or "Department") at Mariner Middle School, located at 16391 Harbeson Road, Milton, Delaware, to receive comment on the Wastewater Facilities Construction Permit Application submitted to the Department by Artesian Wastewater Management, Inc. ("Artesian" or "Applicant"), seeking permission to construct an effluent force main to spray fields "D" and "E" at Artesian's Sussex Regional Recharge Facility ("SRRF") located north of Milton, Delaware ("Application"). It should be noted that SRRF was formerly known as the Artesian Northern Sussex Regional Water Recharge Facility ("ANSRWRF") in prior permitting actions.

The Application submitted by Artesian is subject to various state and federal regulatory requirements, including, but not limited to, Delaware's *Regulations Governing the Control of Water Pollution*, as set forth in 7 DE Admin. Code 7201, and as provided for under Delaware law in 7 *Del.C.* Ch. 60.

On February 13, 2019, the Department's Division of Water, Surface Water Discharges Section ("SWDS"), received an application for a State of Delaware Wastewater Facilities Construction Permit from Artesian, pursuant to the requirements of Section 4 of 7 DE Admin. Code 7201, seeking permission to construct approximately five thousand, five hundred and eighty nine linear feet of sixteen inch (5,589 LF of 16) PVC C900 force main from the SRRF, located north of Milton, Sussex County, Delaware, and run northwards to two wastewater spray fields (identified above as spray fields "D" and "E") that are permitted for treated effluent disposal under State Permit DEN No.: 359288-02 for onsite wastewater disposal via spray irrigation. Once constructed, the force main will not be utilized to transport treated effluent to Fields "D" and "E" at SRRF until all items of Part I.F.1 under State Permit DEN No. 359288-02 (On-Site Wastewater Treatment and Disposal Operations Permit for SRRF) have been completed to the satisfaction of the Department and written authorization has been granted to place Fields "D" and "E" into service.

The Department published legal notices in both the *Sunday News Journal* and the *Delaware State News* on February 20, 2019, advertising that Artesian's Wastewater Facility Construction Permit Application for the above-described construction project had been received. A request for a public hearing was received from Mr. Keith Steck on March 6, 2019. Accordingly, the Department published legal notices, once again in both the *Sunday News Journal* and the *Delaware State News*, on May 22, 2019, advertising that a public hearing would be held concerning this matter at Mariner Middle School, located at 16391 Harbeson Road, Milton, Delaware, on June 13, 2019. Additionally, the Department notified Mr. Steck of the hearing date, time and location via email.

Department staff, representatives of Artesian, and several members of the public attended the June 13, 2019 public hearing. During the public hearing, three individual members of the public provided comments related to the pending Artesian Application. Additionally, the Department received supplemental written comment from Mr. Steck during the post-hearing phase of this matter. 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 public hearing of June 13, 2019;
- (2) Eight exhibits, introduced by responsible Department staff at the aforementioned hearing, and marked accordingly by this Hearing Officer as “Dept. Exh. 1-8”;
- (3) Written comment offered by Mr. Keith Steck subsequent to the time of the public hearing, marked in advance as “Steck Exh. 1”;
- (4) Technical Response Memorandum (“TRM”) from the Department’s experts in the Division of Water, Surface Water Discharges Section, (“SWDS”) including, but not limited to, Bryan A. Ashby, Program Manager II, Surface Waters Discharges Section, dated October 23, 2020.

The Department’s person primarily responsible for reviewing this application, Mr. Ashby, as referenced above, developed the Record with the relevant documents in the Department’s files.

The Record generated in this matter indicates that three members of the public offered oral comments at the time of the public hearing on June 13, 2019. Additionally, Mr. Steck provided written comments immediately following the hearing (in support of his verbal comments given at the time of the hearing).

At the request of this Hearing Officer, the technical experts in the Department's SWDS prepared its TRM to (1) specifically address the verbal and written concerns raised by the public; and (2) offer conclusions and recommendations with regard to Artesian's pending Application for the benefit of the Record generated in this matter. The Department's TRM, dated October 23, 2020, provided a summary of the public comments received by the Department in this matter, and offered responses to those comments specifically associated with the Application pending before the Secretary at this time. It does not, however, address those comments that pertain to matters outside the permitting authority of the SWDS, nor is it responsive to any comments not specifically related to the Application, which was the subject matter of the public hearing held by the Department on June 13, 2019.

I find that the SWDS's TRM offers a thorough and detailed review of all aspects of the pending Application, addresses those concerns germane to the subject matter of the aforementioned public hearing, and responds to them in a balanced manner, accurately reflecting the information contained in the Record. Thus, the TRM dated October 23, 2020 is attached hereto as Appendix "A" and is expressly incorporated herein as such.

III. RECOMMENDED FINDINGS AND CONCLUSIONS:

Currently pending before the Department is the Wastewater Facilities Construction Permit Application submitted by Artesian for the construction of an effluent force main to spray fields "D" and "E" at Artesian's SRRF located in Milton, Delaware. I find that the proposed project requires Artesian to obtain a Wastewater Facilities Construction Permit, as noted above. I further find that the Applicant's proposed project is subject to various state and federal regulatory requirements, including, but not limited to, Delaware's *Regulations Governing the Control of Water Pollution*, as set forth in 7 DE Admin. Code 7201, and as provided for under Delaware law in 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 SWDS have concluded that the pending Application submitted by Artesian is complete, and that it complies with all applicable state laws and regulations. Should this Application be approved, the SWDS permit that would be issued by the Department would be reflective of the Application submitted by Artesian. Once constructed, the force main will not be utilized to transport treated effluent to Fields "D" and "E" at SRRF until all items of Part I.F.1 under State Permit DEN No. 359288-02 (On-Site Wastewater Treatment and Disposal Operations Permit for SRRF) have been completed to the satisfaction of the Department and written authorization has been granted to place Fields "D" and "E" into service.

The Record developed in this matter indicates that the Department's SWDS experts have considered all statutes and regulations that govern projects such as the Applicant's above proposed activities and have recommended approval of the Wastewater Facilities Construction Permit necessary for the same.

I find and conclude that the Applicant has adequately demonstrated compliance with all requirements of the statutes and regulations, as noted herein, and that the Record supports approval of the Application as submitted by Artesian in this matter. In conclusion, I recommend the Wastewater Facilities Construction Permit for an effluent force main to spray fields "D" and "E" at Artesian's SRRF located in Milton, Delaware, as set forth in the Application submitted by Artesian, be issued at this time by the Department in the customary form, consistent with the Record developed in this matter and with appropriate conditions; and

Further, I recommend the Secretary adopt the following findings and conclusions:

1. The Department has jurisdiction under *7 Del. C. §§6003, 6004, 6006(4)*, Delaware's *Regulations Governing the Control of Water Pollution (7 DE Admin. Code 7201)*, and all other relevant statutory authority, to make a final determination on the Application 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 Application submitted by Artesian, and of the public hearing held on June 13, 2019, and held said hearing to consider any public comment 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 TRM provided by the Department's SWDS, 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 required by the Application, and finds that the Record supports approval of the same;
5. The Department shall issue to Artesian the Wastewater Facilities Construction Permit to construct an effluent force main to spray fields "D" and "E" at Artesian's SRRF located in Milton, Delaware, consistent with the Record developed in this matter. Furthermore, said permit shall include all conditions as set forth in the Department's Draft Permit for Artesian, to ensure that Delaware's environment and public health will be protected from harm;
6. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
7. The Department shall serve and publish its Order on its internet site.

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



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

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**SURFACE WATER
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MEMORANDUM

TO: Lisa Vest, Hearing Officer, Office of the Secretary

THROUGH: Virgil Holmes, Director, Division of Water *VRH* 10/26/2020
Jennifer S. Roushey, Environmental Program Administrator, Division of Water *JSR* 10/26/2020

FROM: Bryan A. Ashby, Program Manager II, Surface Water Discharges Section *BAA*
10/23/2020

RE: Technical Response Memorandum Regarding the June 13, 2019 Public Hearing on Artesian Wastewater Management, Inc.'s Wastewater Facilities Construction Permit Application for an Effluent Force Main to Spray Fields D and E at Artesian's Sussex Regional Recharge Facility.

DATE: October 23, 2020

This Technical Response Memorandum (TRM) was prepared at the request of the presiding Hearing Officer to assist in the completion of the Hearing Officer's Report to the Secretary of the Department of Natural Resources and Environmental Control (Department). In addition, this TRM provides information to help inform the final decision on the Wastewater Facilities Construction Permit Application by Artesian Wastewater Management, Inc. for the construction of a wastewater force main that will transport treated effluent to Spray Fields D and E at Artesian's Sussex Regional Recharge Facility (SRRF). Please note, SRRF is also known as the Artesian Northern Sussex Regional Water Recharge Facility (ANSRWRF) in prior permitting actions.

On February 13, 2019, the Department's Division of Water, Surface Water Discharges Section (SWDS), received an application for a Wastewater Facilities Construction Permit from Artesian Wastewater Management, Inc., pursuant to the requirements of Section 4 of 7 DE Admin. Code 7201, *Regulations Governing the Control of Water Pollution* to construct approximately five thousand, five hundred and eighty nine linear feet of sixteen inch (5,589 LF of 16) PVC C900 force main from the Sussex Regional Recharge Facility (SRRF) located north of Milton, Sussex County, Delaware, and run northwards to two wastewater spray fields that are permitted for treated effluent disposal under State Permit DEN Number: 359288-02 for onsite wastewater disposal via spray irrigation.

On February 20, 2019, the Department placed a legal notice for Artesian Wastewater Management, Inc.'s Wastewater Facility Construction Permit Application for the above-referenced force main project in the News Journal, the Delaware State News, and on the Department's website. The Department received requests for a public hearing from Mr. Keith Steck on March 6, 2019.

On May 22, 2019, the Department placed a legal notice for the public hearing on Artesian Wastewater Management, Inc.'s Wastewater Facility Construction Permit Application for this force main project in the News Journal, the Delaware State News, and on the Department's website. Additionally, the Department notified Mr. Steck of the hearing date, time, and location via email.

On June 13, 2019 a public hearing was held at Mariner Middle School located at 16391 Harbeson Rd, Milton, DE 19968. During the public hearing, three individuals provided comment related to the Artesian Wastewater Management, Inc's Wastewater Facility Construction Permit Application. Additionally, the Department received written comment from one individual.

This TRM will focus on addressing public comments and questions received from the public that are directly related to Artesian Wastewater Management, Inc's Wastewater Facility Construction Permit Application for the construction of a wastewater force main that will transport treated effluent to Spray Fields D and E at Artesian's Sussex Regional Recharge Facility (SRRF).

Verbal comments given at the hearing:

1. Mr. Keith Steck, beginning on transcript page 13, provided several comments to the Department. Comments include:

Comment 1.a: Mr. Steck stated, "There are signs at spray field E that basically say this field is being irrigated using wastewater, and people should not drink it because it's not drinkable water. Does that mean the field is being used as a spray field now?"

Response: Currently Spray Field E is not being used for the spray irrigation of treated wastewater effluent. Informational signs were placed up in advance of any such use initiating in accordance with State Permit DEN Number: 359288-02 for the spray irrigation of treated wastewater. The force main necessary to supply treated wastewater effluent to Field E of SRRF for spray irrigation has not yet been built and is the subject of this permit application.

Comment 1.b: Mr. Steck stated, "One of the key questions I have is the status of the parcel on Route 30 at the intersection of Reynolds Pond Road, because that parcel, which is 235.6.1101, that is not on the list of approved parcels for the conditional use. And I don't understand why it's included in the design if it's not approved..."

Response: Though included in the maps of the application, there is no proposed construction on Parcel 235-6.00-11.01. Sheet FM-5 of the application drawings gives the best view of where construction will occur in the vicinity of this tax parcel. The proposed force main comes across parcel 235-6.00-11.00 and comes close to the property line with parcel 235-6.00-11.01 but does not cross onto the property.

Comment 1.c: Mr. Steck stated, “Another question is one of the key points in that conditional use in that ordinance four was, "Irrigation rates shall be determined by crop utilization update limits rather than by wastewater disposal needs."

Response: This is a question regarding operation of SRRF and is not relevant to the construction of the force main which this application pertains to. Operational requirements for SRRF are detailed in the Spray Operations State Permit DEN Number: 359288-02 issued on March 18, 2020.

Comment 1.d: Mr. Steck stated. “Some of the other questions have to do with the facility where the force main is going in. Is it going in along the road in a public easement? Is it going behind the properties? Because the question is where is it located?”

Response: The intended path of the force main is detailed with specificity and clearly depicted on the application drawings. Although the proposed force main does run along Isaacs Road and Reynolds Pond Road for brief periods, most of the force main is run across the middle of the identified properties.

Comment 1.e: Mr. Steck asked, “If it does set back behind the property, is there a setback? Is there a setback behind the property? What is that setback requirement?”

Response: The force main is set 10 feet away from the property line.

Comment 1.f: Mr Steck asked, “Are these things going to have above-ground lift stations, pumping stations, et cetera? Are they going to make noises? Are they going to be visible from homes?”

Response: This force main project does not include any lift or pump stations. A pump station would be needed at or beyond the terminus of this project to keep the force main pressurized. Given its location beyond this terminus of this project the noise or aesthetic impact from a pump station should be minimal for the property owners affected by this force main project.

Comment 1.g: Mr. Steck stated, “The construction of it: When would the construction start? How long would it take? Will this be done over the weekends? Will it be allowed over the -- during the early morning hours, et cetera?”

Response: DNREC’s Wastewater Facility Construction Permit is limited to force main design and does not dictate timing and duration of the project. Local ordinance and DelDOT regulations (for the parts of the projects adjacent to roads), would contribute to determining timing of the construction work.

Artesian has indicated that this project does not currently have a scheduled start date. The start date would be scheduled to address customer demands and the needs of the farmers on the leased fields. Once construction does begin it is estimated to have a two month construction timeline.

2. Ms. Shelly Cohen's, beginning on transcript page 16, provided two comments to the Department. Comments include:

Comment 2.a:Ms. Cohen stated, "Driving up the road there near where the booms are, I noticed last week that there was a lot of water. In fact, there were pumps on both sides of the road, lots of water gushing out, I guess on the northbound side. I'm not sure if the road runs north or south. But there was lot of water gushing out. There were crews on both sides. So my question, is this operational now? And is there water in that lagoon at this point? And is it wastewater, or what is it? And why did they have pumps and water coming out?"

Response: *Questions regarding operation of SRRF are not relevant to the construction of the force main which this application pertains to. The observed water was found to be from an unrelated dewatering project. The spray fields and wastewater lagoon for SRRF were not operational at the time of the hearing.*

Comment 2.b: Ms. Cohen asked, "Are the operational permits issued, or whatever they call them?"

Response: *This is a question regarding operation of SRRF and is not relevant to the construction of the force main which this application pertains to.*

An operations permit had not been issued at the time of this hearing. However, Spray Operations State Permit DEN Number: 359288-02 was issued on March 18, 2020. The operations permit requires submission of a variety of documents demonstrating that construction of Field D and E and associated infrastructure have been constructed as planned and are ready for operation to the Groundwater Discharges Section (GWDS) for review. It also requires that Artesian receive written approval from the GWDS before commencing operations on these fields. To date, no such approval has been provided.

3. Mr. Chuck Adams, beginning on transcript page 18, provided one comments to the Department. The comment was:

Comment 3a: Mr. Adams stated, "I just -- it's nothing about the forcemains or that, and I don't know if I can make the comment. But it was stated that they were going to use the spray irrigation existing on the fields now. And the way I understood it was the heads were supposed to be dropheads that were supposed to be lowered to the ground so that if it does have some odor to the spray, it would be closer to the ground and not airlifted into the air. I understood that not only those, but all the sprays were drophead for the spray irrigation and the effluent. Also, I just want to say that I understand that the spray irrigation will only occur during the growing season. And that's it. That's all I have to say.

Response: *As Mr. Adams acknowledges, this is a question regarding operation of the spray fields and is not relevant to the construction of the force main which this application pertains to. SRRF's operational requirements can be found in State Permit DEN Number: 359288-02 issued on March 18, 2020.*

Written Comments:

4. Mr Keith Steck, provided four pages of comments to the Department. Many of the comments mirrored those which he provided verbally at the hearing. Written comments provided that were not addressed in the above hearing section include:

Comment 4.a: Mr Steck states, “The DNREC notice about the “forcemain” project should have been more “user-friendly.” What I mean is that probably 99 percent of the populations don’t know what the term is or means. It would have been useful to the public for the notice to have said “underground pipeline” in parentheses. Further, the notice should have identified the spray fields—if this is pertaining Artesian’s spray field E on the west side of the Isaacs Road (Rte 30) and Reynolds Pond road intersection, say that. Likewise, it’s not clear which spray field north of Reynolds Pond road is involved – is it spray field A, B, or D—and simply saying “a spray field” isn’t especially helpful. Please consider more definitive descriptions in the future; that would help with building some good will with the Public.”

Response: DNREC provided clear and concise information in their public notice. It identified information relevant to the Wastewater Facilities Construction Permit application. DNREC sought to identify the physical location of the proposed force main, which was subject of the application, using field locations as part of that description. This construction permit is not associated with the operation of Artesian’s SRRF spray fields. Those matters are addressed in Spray Operations State Permit DEN Number: 359288-02 issued on March 18, 2020. The force main that is the subject of this application does terminate at Spray Field D and E, as identified in the application.

Comment 4.b: Mr. Steck asks, “How is DNREC ensuring Artesian complies with laws and regulations pertaining to this project? For EXAMPLE, IF Artesian needs easements for the installation of the forcemains, what is DNREC doing to ensure Artesian obtains easements and has private property owner’s permission, if the forcemain have to go on Private property?”

Response: Wastewater Facilities Construction Permits have a couple of standard conditions which make it clear that the permit does not give the permittee any additional rights under property law, other laws, or regulations. Those conditions state:

State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation.

Property Rights

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

The permittee is required to meet all applicable laws and regulations. The Department regularly works in cooperation with federal, and local jurisdictions to help to ensure all

applicable laws and regulations are being met. However, the scope of the Department's direct authority is limited to enforcing DNREC's regulations.

Comment 4.c: Mr. Steck states, “Another issue to do with the 100 foot flood plain in the area. What design considerations are being taken into account for the forcemain project, especially regarding the pipeline installation, the lift/pumping station, electrical equipment, and other appurtenances? While documents identify and mention the flood plain, I don't see any designed in this project for any water table issues and expected sea-level rise?”

Response: Although DNREC recognizes sea-level rise as an important pending threat, we have not added any additional design requirements to the applicable regulations at this time. Nor have additional requirements been added to the "Recommended Standards for Wastewater Facilities: Policies for the Design, Review and Approval of Plans and Specifications for Wastewater Collection and Treatment Facilities", published by: Health Education Services, Albany, N.Y. which are used as industry standard engineering requirements while evaluating Wastewater Facilities Construction Permit applications.

Comment 4.d: Mr. Steck states, “Regarding this actual forcemain/pipeline running along Reynolds Pond Road and Rte 30, will it run in front of homes along that road or behind this properties? If it goes behind the properties, what kind of setback is there from the homeowners' property lines—50 feet, 100 feet, something else?”

Response: As mentioned, only a small portion of this force main runs adjacent to the road. During these portions there are no residence directly adjacent to the road. Most of the pipeline runs across properties and a 10 foot setback is maintained from property lines.

Comment 4.e: Mr. Steck asks, “Similarly because homes in this area use private drinking wells and have septic systems, what kind of separation is required between the pipelines and septic systems and drinking wells?”

Response: The required separation is identified in 7 DE Admin. Code 7301, Regulations Governing the Construction and Use of Wells. It states that wells must be separated “50 feet from any underground sewer forced main or gravity sewer lines but no less than ten feet if the well is constructed in a confined aquifer or if cased and grouted to a minimum of 100 feet below ground surface except public wells. Public wells shall be located the maximum distance possible allowed by the well site, but no less than 75 feet from an underground sewer forced main or gravity sewer lines. The Department may approve a lesser distance on a case by case basis for public well sites provided the well can be screened in a confined aquifer or can be cased and grouted at least 100 feet below land surface. Sewer laterals are not to be interpreted as forced main or gravity sewer lines.”

Comment 4.f: Mr. Steck asks, “Regarding the electrical service to the pipeline, will there be signs identifying where the pipeline is so that people know there's potential danger is they play, dig or otherwise mess around with the pipeline?”

Response: There will be manholes throughout the force main which will be visible aboveground, providing some bearing on where the force main is located. There will be no other permanent aboveground marking delineating the path of the force main. For safety, whenever you dig you should call Miss Utility before you begin. A wide variety of unmarked

underground utilities, including wastewater force mains, are present underneath the ground surface. Miss Utility will assist in identifying the location of those utilities to prevent harm to human health or the infrastructure.

Comment 4.g: Mr. Steck states, “The construction of the pipeline is close to the Reynold Church cemetery. What safeguards are designed into the project to ensure there’s no disturbance of the graves or damage to the cemetery?”

Response: Artesian’s application identifies several safety measures to be taken for the protection of human health, the environment and others property. Artesian will control the construction stake-out for the project, which will clearly indicate the boundaries of the work areas. In this case the work area will be 250 feet away from the nearest cemetery boundary. Artesian will also have inspectors on-site. The inspectors will make contractors aware of sensitive areas such as the cemetery during pre-construction meetings, and oversee the construction.

Comment 4.h: Mr. Steck asks, “According to 7101 on the Design, Installation, and Operation of Onsite Wastewater and Disposal Systems, surface water monitoring can be undertaken for the surface waters near irrigation systems? What design plans are there for Reynolds Pond, which is very close to spray Field D and E? I don’t see any plans or mention in documents.”

Response: This is a question regarding operation of the SRRF and is not relevant to the construction of the force main which this application pertains to. Operational requirement can be found by reviewing Spray Operations State Permit DEN Number: 359288-02 issued on March 18, 2020.

Division of Water - Surface Water Discharges Section Recommendation

Artesian’s Wastewater Facilities Construction Permit application is complete and the applicable Department regulatory requirements have been met. The Department’s SWDS believes all public comments submitted on Artesian’s application have been satisfactorily addressed and that the draft Wastewater Facilities Construction Permit is protective of human health and the environment while being consistent with applicable State and Federal regulations.

The SWDS recommends the issuance of Artesian’s Wastewater Facilities Construction Permit consistent with the draft permit.