

In The Matter Of:

*Department of Natural Resources & Environmental Control
Wastewater Facilities Construction Permit*

*Public Hearing
June 13, 2019*

*Wilcox & Fetzer, Ltd.
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DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL
OF THE STATE OF DELAWARE

RE: Wastewater Facilities Construction)
Permit Public Hearing: Artesian)
Wastewater Management, Inc.)

..

Mariner Middle School
16391 Harbeson Road
Milton, Delaware 19968

Thursday, June 13, 2019
6:00 p.m.

..

BEFORE: Lisa Vest, Hearing Officer

ALSO PRESENT: Bryan Ashby, Program Manager, DNREC

-- Transcript of Proceedings --

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1 MS. VEST: We are going to go ahead
2 and get started. The time is 6:02 p.m. on
3 Thursday, June 13, 2019. And I want to thank
4 you guys for coming out and spending your
5 time this evening.

6 We are here this evening to provide
7 a formal platform for DNREC to receive public
8 comment on a pending permit application of
9 Artesian Wastewater Management.

10 It's a very specific permit. It's
11 a permit to construct approximately 5,589
12 linear feet of 16-inch PVC C900 forcemain.

13 Pursuant to the notice that was
14 issued about this matter, the forcemain is
15 proposed to run from the Sussex Regional
16 Recharge Facility located just north of
17 Milton and run northward parallel to Isaacs
18 Road, which is Route 30, and then northwest
19 and parallel to Reynolds Point Road, which is
20 State County Road 231.

21 Near the intersection of Reynolds
22 Pond Road and Isaacs Road, the proposed
23 forcemain will branch into two segments, one
24 across Reynolds Pond Road and running north



1 to a spray field, and the other segment
2 across Isaacs Road and running west to
3 another spray field.

4 For those of you that may not have
5 met me, my name is Lisa Vest, and DNREC's
6 Secretary Garvin has appointed me to serve as
7 the hearing officer for these proceedings.

8 As I mentioned before, we are in a
9 unique little room here, so I think most
10 people forgot or ignored the sign-up sheet,
11 so I have asked the gentleman to just pass it
12 around.

13 If you would like to offer comment,
14 please indicate on that sheet. Even if you
15 don't want to offer comment, I still would
16 ask that you would sign up so that we have an
17 accurate record of attendance for this
18 evening.

19 As soon as I get done with these
20 introductory remarks, I will be turning the
21 hearing over to Department staff, who will be
22 saying a few words and offering the
23 Department's exhibits for the hearing record.

24 I believe that the applicant then



1 has a brief presentation that they want to
2 put on the record. And then, following that,
3 I will open the floor up to accept comment
4 from those here tonight who wish to do so.

5 With regard to the comment wishing
6 to be offered tonight, there are, as is the
7 case for all DNREC hearings, some formal
8 protocols which must be adhered to. I just
9 want to take a couple of minutes and go over
10 that.

11 Consistent with all hearings held
12 by DNREC, all comment must be limited solely
13 to the subject matter of tonight's hearing,
14 which again is a very specific proposed
15 construction of the forcemain, as I just
16 described.

17 Pursuant to the subject matter of
18 this hearing, all comments pertinent to that
19 specifically proposed construction will be
20 incorporated into the hearing record being
21 generated in this matter.

22 As is DNREC's policy at all
23 hearings such as this, each person wishing to
24 offer comment is asked to do so in as precise



1 a manner as possible.

2 In order to treat everyone at all
3 DNREC hearings across the state equally, each
4 person is granted a total of three minutes'
5 time to offer comment.

6 Normally I have a monitor with a
7 visual comment thing going on. We don't have
8 that tonight. It's a rather small matter.
9 But I do have a timer on my phone. So there
10 will be a timer. And when it's down to one
11 minute, I will indicate that so you will have
12 time to sum up your comments.

13 If you have brought prepared
14 written comments or statements with you, you
15 can certainly present them to me. I will
16 incorporate them into the record and mark
17 them on the record for the hearing. You can
18 then use your three minutes to simply sum up
19 what your written statements are.

20 There will be no yielding of time
21 from one commenter to another.

22 There is only one authenticated
23 record of this proceeding tonight, and it is
24 the official court reporter's transcript. As



1 is the case with all transcripts, the court
2 reporter can only hear and accurately
3 transcribe one voice at a time, so I would
4 ask that everyone give everybody else
5 courtesy and do not speak while another
6 person is speaking and do not call out from
7 the audience for any reason.

8 If there is anyone from the media
9 tonight, they are permitted to audio or video
10 record, but I don't think there is anyone
11 here tonight.

12 Whether listening or speaking, we
13 do ask that everyone be respectful and
14 considerate of all comment offered, even
15 though some may differ in opinion from your
16 own.

17 I would also ask that all cell
18 phones be either turned off or muted during
19 the course of the proceedings tonight.

20 And, again, the statutory purpose
21 of tonight's hearing is to allow citizens to
22 offer comment on this specific permit
23 application that's currently pending with the
24 Department.



1 A record consisting of the
2 transcript of the comments given tonight, all
3 written comments received, all exhibits, and
4 eventually the hearing officer's report will
5 all be reviewed by the Secretary.

6 The Secretary is the one who will
7 ultimately issue an order following that
8 review process, and it will contain his
9 decision on this application and the reasons
10 for that decision.

11 Myself and other DNREC staff
12 members are present to facilitate the receipt
13 of this comment, but we are not participating
14 in the proceedings. As such, there will be
15 no Q and A session permitted during the
16 course of tonight's hearing.

17 And, lastly, it is important to
18 note that no decision has already been made
19 by the Department, nor will any decision be
20 made tonight with regard to this pending
21 application.

22 We are simply here to provide a
23 platform to come and offer comment if you
24 wish to do so. The ultimate decision with



1 regard to this application is made by
2 Secretary Garvin.

3 This proceeding tonight acts as a
4 mechanism to enable the Department to
5 thoroughly vet this application to the public
6 and again to receive comment if any wishes to
7 be given.

8 That being said, I am now going to
9 turn the floor over to Bryan Ashby, who is
10 speaking on behalf of the Department at this
11 time. Thank you.

12 MR. ASHBY: Good evening. I'm
13 Bryan Ashby. I am the program manager for
14 the Surface Water Discharges Section.

15 Under Section 4 of the regulations
16 governing the control of water pollution,
17 anyone looking to construct a wastewater pipe
18 must apply for a permit from the Department.

19 As outlined in Section 4, the
20 requirements are largely technical. The
21 review is done by an engineer, and there are
22 not a great deal of requirements beyond the
23 fact that the pipe be designed properly to
24 transport wastewater from one facility to



1 another.

2 As was mentioned earlier, this pipe
3 is 5,589 feet long, 16-inch forcemain,
4 connecting the Southern Regional Recharge
5 Facility to a spray field.

6 Artesian submitted a complete
7 application that was public noticed on
8 February 20, 2019.

9 A hearing request came in on
10 March 9th of 2019. And a notice for our
11 hearing that we are having tonight was
12 published on May 22, 2019.

13 And that is really all I have to
14 say. You already covered all the other stuff
15 about the facility.

16 MS. VEST: Okay.

17 MR. MCNELIS: So I do have exhibits
18 for the record.

19 The Delaware Administrative Code
20 7201, which is the regulations.

21 The application submitted by
22 Artesian, the drawings submitted by Artesian.

23 The legal notice, both in the News
24 Journal and the Delaware State News from



1 February 20.

2 The hearing request, itself.

3 And a legal notice of this hearing,
4 published in the News Journal and State News
5 on May 22nd.

6 MS. VEST: Okay. Does that
7 complete the Department's presentation
8 tonight.

9 MR. MCNELIS: It does.

10 MS. VEST: Okay. Let the record
11 reflect that the exhibits identified just now
12 by Mr. Ashby are hereby entered into the
13 hearing record. And thank you.

14 At this point I believe the
15 applicant wished to offer some comment.

16 MR. KONSTANSKI: I'm Daniel
17 Konstanski, P.E., the principal engineer of
18 Artesian Water -- excuse me -- wastewater in
19 this case.

20 I was the one who was responsible
21 for the design of this pipeline.

22 I don't know that we have much to
23 add. This is again, as has been said, pretty
24 straightforward: A pipeline connecting the



1 existing serve discharge and pump station to
2 some existing spray rigs on fields that were
3 permitted under separate permit.

4 So it's strictly a pipeline we are
5 talking about here.

6 That's pretty much all we had to
7 say. You all covered it pretty thoroughly.
8 Thank you.

9 MS. VEST: Okay. Thank you, sir.
10 At this point I will go ahead and offer the
11 floor to those who wish to offer comment.
12 I'm just going in the order people signed up.
13 Keith Steck?

14 MR. STECK: Any particular spot you
15 want me?

16 MS. VEST: Nah. (Laughter)

17 MR. STECK: Okay. I will stay
18 here.

19 MS. VEST: I do have to keep with
20 the protocol for three minutes. So when you
21 are getting close, I will wave my hand or
22 something.

23 MR. STECK: Okay. I apologize for
24 the scratchy voice. It's allergies acting



1 up.

2 Um, I have a question to start.
3 There are signs at spray field E that
4 basically say this field is being irrigated
5 using wastewater, and people should not drink
6 it because it's not drinkable water.

7 Does that mean the field is being
8 used as a spray field now?

9 I have some general questions, some
10 general comments, specific comments. I will
11 submit them for the record. I am going to
12 give highlights of them.

13 One of the key questions I have is
14 the status of the parcel on Route 30 at the
15 intersection of Reynolds Pond Road, because
16 that parcel, which is 235.6.1101, that is not
17 on the list of approved parcels for the
18 conditional use. And I don't understand why
19 it's included in the design if it's not
20 approved and hasn't been approved since the
21 beginning of this process.

22 Again, I don't understand why it's
23 being evaluated. I don't understand why it's
24 included in the design of the field and other



1 calculations et cetera as part of the
2 process, given it has not been approved for
3 this.

4 Another question is one of the key
5 points in that conditional use in that
6 ordinance four was, "Irrigation rates shall
7 be determined by crop utilization update
8 limits rather than by wastewater disposal
9 needs."

10 Again, a lot of this design, a lot
11 of the calculations in the design mention and
12 focus on disposal of the wastewater as
13 opposed to the crops. The crops are supposed
14 to be the driver in all of this, and I don't
15 see that in these documents.

16 Some of the other questions have to
17 do with the facility where the force main is
18 going in. Is it going in along the road in a
19 public easement? Is it going behind the
20 properties? Because the question is where is
21 it located? And it's important, given that
22 the -- the importance of DNREC
23 hydrogeological review dated March 25, 2010,
24 all the spray fields have to be located at



1 least 150 feet from any off-site drinking
2 water supply well.

3 So I don't think that allows them
4 to run along the road, but I don't know
5 exactly where all the wells are. That's
6 something you guys have to look at.

7 If it does set back behind the
8 property, is there a setback? Is there a
9 setback behind the property? What is that
10 setback requirement?

11 Similarly, there is a host of other
12 questions regarding the location of that.

13 Are these things going to have
14 above-ground lift stations, pumping stations,
15 et cetera?

16 Are they going to make noises?

17 Are they going to be visible from
18 homes?

19 The construction of it: When would
20 the construction start? How long would it
21 take? Will this be done over the weekends?
22 Will it be allowed over the -- during the
23 early morning hours, et cetera?

24 Similarly, if this is operating, is



1 that going to be allowed to operate seven
2 days a week, 24 hours a day, et cetera? I
3 will submit my comments for the record.

4 MS. VEST: Okay. Do you have them
5 now?

6 MR. STECK: I just marked these up.

7 MS. VEST: Okay.

8 MR. STECK: So I will e-mail them
9 to you this evening, if that's okay.

10 MS. VEST: That's fine. And when I
11 get them, they will be entered into the
12 record as Steck Exhibit 1. So thank you.

13 MR. STECK: And thank you for the
14 opportunity to comment.

15 MS. VEST: No problem. Shelly
16 Cohen?

17 MS. COHEN: I don't have questions
18 as detailed as Keith specific to the
19 pipeline. That's why I really -- I can ask
20 some general questions about the operation.

21 MS. VEST: If you wish.

22 MS. COHEN: I'm Shelly Cohen. I
23 live in Milton.

24 Driving up the road there near



1 where the booms are, I noticed last week that
2 there was a lot of water. In fact, there
3 were pumps on both sides of the road, lots of
4 water gushing out, I guess on the northbound
5 side. I'm not sure if the road runs north or
6 south. But there was lot of water gushing
7 out. There were crews on both sides.

8 So my question, is this operational
9 now? And is there water in that lagoon at
10 this point? And is it wastewater, or what is
11 it? And why did they have pumps and water
12 coming out?

13 I don't suppose anybody can answer
14 my question while I'm standing here.

15 MS. VEST: No, but it's entered
16 into the record, so the Department will
17 address it.

18 MS. COHEN: And it's because I
19 just -- and I'm not clear on this. I thought
20 there were separate permits for starting
21 operations, and I didn't think those permits
22 had been issued yet. So that would be
23 another question. Are the operational
24 permits issued, or whatever they call them?



1 I'm not sure of that.

2 That's pretty much it.

3 MS. VEST: Okay. Thank you,
4 Shelly.

5 Cale? Cabe? Who wants to speak
6 next? It's C-A something E. Okay. Can you
7 spell your name?

8 MR. ADAMS: I'm Chuck Adams. I'm
9 one field over from there. I just -- it's
10 nothing about the forcemains or that, and I
11 don't know if I can make the comment.

12 But it was stated that they were
13 going to use the spray irrigation existing on
14 the fields now.

15 And the way I understood it was the
16 heads were supposed to be dropheads that were
17 supposed to be lowered to the ground so that
18 if it does have some odor to the spray, it
19 would be closer to the ground and not
20 airlifted into the air.

21 I understood that not only those,
22 but all the sprays were drophead for the
23 spray irrigation and the effluent.

24 Also, I just want to say that I



1 understand that the spray irrigation will
2 only occur during the growing season. And
3 that's it. That's all I have to say.

4 MS. VEST: Okay. Thank you, sir.

5 At this point I have gone through
6 everyone that wished to offer comment.

7 Is there anyone else that maybe
8 said no that wishes to say anything on the
9 record now?

10 Okay. Well, again, there are a lot
11 of moving parts to any organization. This
12 specific permit is very narrow in scope. It
13 just has to do with the forcemain, but,
14 Mr. Steck, I do appreciate your comments.

15 And we are moving forward as a
16 whole with the Department. I have been
17 saying this at every hearing. We are trying
18 to get as much on the web for the public to
19 view as possible.

20 The court reporter's transcript
21 usually takes about a week to get, but once
22 we get it, it will go up on the web, Mr.
23 Steck's comments will go up on the web. We
24 are trying to be as open and as transparent



1 as possible with all of these matters, and I
2 do appreciate the input.

3 If you go on DNREC's website,
4 basically on the home screen right in the
5 middle, you will see a thing called
6 "Administrative Law."

7 You click on that. There is a
8 drop-down tab. You go to public hearings.
9 And every single hearing that we do now will
10 have its own web page, so the transcript, the
11 exhibits, the questions, everything
12 pertaining to that matter will go.

13 And that's going to be the case
14 moving forward for all of our hearings. So
15 please do try to check that out.

16 If you can't find it when you go
17 look for it, by all means send me an e-mail,
18 and I'd be happy to send you the link and
19 point you in the right direction.

20 There being no additional comments
21 wanting to be offered for the record, I am
22 going to go ahead and conclude the
23 proceedings. I want to thank everybody for
24 coming. This meeting is adjourned. (6:21)



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CERTIFICATE

I, Lorena J. Hartnett, a Notary Public and Registered Professional Reporter, do hereby certify that the foregoing is an accurate and complete transcription of the proceeding held at the time and place stated herein, and that the said proceeding was recorded by me and then reduced to typewriting under my direction, and constitutes a true record of the testimony given by said witnesses.

I further certify that I am not a relative, employee, or attorney of any of the parties or a relative or employee of either counsel, and that I am in no way interested directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office on this 14th day of June 2019.



Lorena J. Hartnett
Registered Professional Reporter

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