

Widener University 
Delaware Law School

Environmental & Natural Resources Law Clinic
Kenneth T. Kristl, Esq., Director

May 13, 2021

VIA EMAIL AND OVERNIGHT DELIVERY

Environmental Appeals Board
89 Kings Highway
Dover, DE 19901
Attn: Administrative Assistant to the Environmental Appeals Board

RE: Statement of Appeal to the Environmental Appeals Board for Secretary's Order No. 2021-W-0012, Approving an On-Site Wastewater Treatment and Disposal System Operations Permit Application by Allen Harim Foods, LLC to Treat Poultry Processing Wastewater at its Harbeson Processing Facility in Harbeson, Delaware (State Permit No. 597261-01)

Pursuant to 7 Del. Admin. C. § 7201-6.36.27 and 7 Del. C. § 6008, Keep Our Wells Clean and the individual appellants identified herein (collectively, "Appellants") submit this written statement of appeal to the Delaware Environmental Appeals Board. Appellants challenge the Secretary of Delaware Department of Natural Resources and Environmental Control's ("Department" or "DNREC") Order No. 2021-W-0012 ("Secretary's Order"), dated April 27, 2021. The Secretary's Order approves Allen Harim Foods LLC's ("Allen Harim") Application for and issuance of an Operating Permit ("Permit") to treat poultry processing wastewater at its Harbeson Processing Facility in Harbeson, Sussex County, Delaware. The Permit bears State Permit No. 597261-01. The Permit allows Allen Harim to partially treat its wastewater and then to send that wastewater to the Artesian Northern Sussex Regional Water Recharge Facility near Milton, Delaware ("ANSRWRF") for spray irrigation disposal by Artesian Wastewater Management, Inc. ("Artesian"). A copy of the Secretary's Order is attached to this Statement of Appeal. A fifty dollar (\$50.00) deposit for costs accompanies this Statement of Appeal.

The Appellants in this appeal are represented by Kenneth T. Kristl, Esq. and the Environmental and Natural Resources Law Clinic (Clinic), located at the Widener University Delaware Law School in Wilmington, DE. The Clinic provides representation and legal assistance to public interest organizations and individuals on environmental matters in Delaware and other Mid-Atlantic states.

I. Interests That Have Been Substantially Affected

Appellant Keep Our Wells Clean is an association of individuals who live next to or near the Allen Harim Harbeson Facility and/or ANSRWRF is located who are concerned, both individually and collectively, about the impacts that the discharges approved by the Secretary's Order will have on their property and their persons. Members of Keep Our Wells Clean will be exposed to odors, air and groundwater impacts, and interference with their quiet enjoyment of their properties as a result of the

construction and operation of the Harbeson Facility and/or ANSRWRF. Pursuit of this appeal is germane to the purpose for which Keep Our Wells Clean was formed, and participation of individual members of Keep Our Wells Clean is not necessary for this appeal.

The individual appellants include:

- Anthony Scarpa, 15430 Pemberton Way, Milton, DE 19968
- John Hemmings 15424 Pemberton Way Milton, DE 19968
- Barbara Hemmings 15424 Pemberton Way Milton, DE 19968
- Susan Linzey 15430 Pemberton Way Milton, DE 19968
- Steve Zemanek 15418 Pemberton Way Milton, DE 19968
- Elaine Zemanek 15418 Pemberton Way Milton, DE 19968
- Richard Bolin 15423 Pemberton Way Milton, DE 19968
- Diane Bolin 15423 Pemberton Way Milton, DE 19968
- Helen Ralston 15197 Autumn Oaks Drive Milton, DE 19968
- Greg Ralston 15197 Autumn Oaks Drive Milton, DE 19968
- Deborah Carroll 15215 Autumn Oaks Drive Milton, DE 19968
- Jill Steiner 15215 Autumn Oaks Drive Milton, DE 19968
- Wendy Wright 23587 Harvest Run Reach Milton, DE 19968
- Edward Hilligoss 15217 Autumn Oaks Drive Milton, DE 19968
- Russell A. Rhodes 23591 Harvest Run Reach Milton, DE 19968
- Patricia Rhodes 23591 Harvest Run Reach Milton, DE 19968
- James Yelenovsky 23848 Dakotas Reach Milton, DE 19968
- Georgina Yelenovsky 23848 Dakotas Reach Milton, DE 19968
- Carol Remenick 23852 Dakotas Reach Milton, DE 19968
- Paul Remenick 23852 Dakotas Reach Milton, DE 19968
- Virginia Bolin 15205 Autumn Oaks Drive Milton, DE 19968
- J Michael Clary 23604 Harvest Run Reach Milton, DE 19968
- Sheila Clary 23604 Harvest Run Reach Milton, DE 19968
- Helena Angelo 15432 Pemberton Way Milton, DE 19968
- Dave Angelo 15432 Pemberton Way Milton, DE 19968
- Thomas DiOrio, 24983 Prestwick Dr., Milton, DE 19968
- Colin Marine, 15204 Autumn Oaks Drive, Milton, DE 19968

Each Appellant is a “person whose interest is substantially affected by” an “action of the Secretary” and is therefore entitled to bring this appeal under 7 Del. C. § 6008(a).

II. Allegation That The Secretary’s Order Was Improperly Issued

According to 7 Del. C. § 6008(b), in this appeal “[t]he record before the Board shall include the entire record before the Secretary.” The “entire record” before the Secretary on the issuance of the Permit is unknown to Appellants. According to the Secretary’s Order, and based on the Hearing Officer’s Report

which is adopted by the Secretary's Order, the public hearing occurred on August 21, 2019, and public comment closed on September 27, 2019. In the 19 months since the public (including Appellants) had access to information about the Allen Harim Application and a draft permit, no less than three Technical Response Memoranda ("TRM"), dated December 31, 2019, March 9, 2020, August 4, 2020, and 4 update emails were prepared by DNREC staff in response to what the Secretary's Order calls "additional information" and changing schedules provided by Allen Harim. *See* Secretary's Order at 3 – 7.¹ It is also clear that the permitting decision is based on information that the public has not seen (and, therefore, did not have the opportunity to submit additional information in order to develop a full record).² Appellants have not had access to this "additional information" or the "assortment of documents and information" used in finalizing the Permit. Faced with the 20-day deadline for filing this appeal, Appellants have been forced to draft this Statement of Appeal with the limited information available to them. Appellants request that the Board require all such information be included in the Chronology prepared by DNREC for this appeal and/or be otherwise made available to Appellants, and that Appellants be given adequate time to analyze the information before the hearing and be allowed to present evidence to respond to this as-yet undisclosed information. Anything less would deny Appellants their due process rights in this appeal.

The Secretary, in issuing the Order, has acted arbitrarily, capriciously, and contrary to law in that:

A. The Permit was issued despite numerous violations of provisions in the Regulations Governing the Design, Installation, and Operation of On-Site Wastewater Treatment and Disposal Systems, as set forth in 7 Del. Admin. Code 7101 *et. seq.* ("Regulations"), including but not limited to, the following:

1. The Permit improperly authorizes the operation of a facility and system that was not a design approved by the Construction Permit issued to Allen Harim;

¹ The December 31, 2019 TRM also indicated that "[t]he GWDS [Groundwater Discharges Section of DNREC] recognizes that during the administrative and technical review of the Allen Harim and Artesian applications there was a significant amount of correspondence and re-submission of documents. As a result the finalized applications consist of non-sequential documents which may be hard for the public to follow. In order to be more transparent additional clarifying language will be added to the proposed draft permits in the form of a 'documentation section' that will outline specific documents used to develop the permits." 12/31/19 TRM at 7. While the permit does contain a "Documentation" section, *see* Permit at p. 5 of 20, it expressly states that "[t]he application consists of the materials submitted by the Permittee and materials contained in the administrative record prior to the issuance of the Permit. This includes (**but [is] not limited to**) the following information" (emphasis supplied). In short, the Documentation section does not do what the 12/31/19 TRM promised.

² Indeed, the 12/31/19 TRM expressly disavows being limited to the application documents that were available to the public:

The GWDS is not limited to only the current application, but utilizes an assortment of documents and information to develop operations permits, including previously submitted engineering reports, construction plans and specifications (including the pipeline construction documents), monitoring data, sampling plans, nutrient management plans, and operation and maintenance manuals. Any discrepancies between these documents are ultimately resolved through the issuance of the permit which is based on regulatory requirements, analytical data, and the permit writer's best professional judgment. The permittee is duly required to comply with those conditions regardless of the information in submitted documents (e.g. sampling procedures or contingencies). In addition, certain documents such as the nutrient management plans and operation and maintenance manuals are designed to be "living" documents with frequent changes based on treatment system and farming needs. These updates can also include changes required by the permit.

2. Allen Harim failed to obtain necessary information (like certifications) required by the regulations; and
3. the proposed diversion of wastewater does not meet regulatory criteria and will not work.

B. The Permit as issued will violate the requirement that the permitted on-site wastewater treatment and disposal system is “operated and maintained so as not to create a public health hazard or cause water pollution” (7 Del. Admin. Code 7101 § 3.13), including (but not limited to) the following:

1. the permit does not regulate known pollutants of concern in the Allen Harim wastewater;
2. The use of “Unlimited Public Access” standards does not adequately protect the public or groundwater because it does not regulate pollutants of concern;
3. The Permit does not ensure that the design assumptions for protection of groundwater will in fact be met.

In addition, because DNREC, Artesian, and certain of the Appellants agreed that the appeal of the Artesian Operating Permit for ANSRWRF was to be continued until the issuance of this Permit to Allen Harim, and given the close interrelationship between the ANSRWRF and Allen Harim’s Harbeson operation, Appellants hereby incorporate by reference any and all such grounds raised in the appeal of the ANSRWRF Operating Permit as may be appropriate in this appeal.

Appellants request that, in light of these legal and factual failings, the Board reverse the issuance of the Permit and remand it to DNREC with instructions to correct these failings and comply with all applicable regulatory requirements.

III. Reasons Why The Secretary’s Order Was Improperly Issued

The Secretary’s Order is arbitrary, capricious, and contrary to law for numerous reasons.

A. The Permit Was Issued Despite Numerous Violations Of The Regulations.

The Secretary’s Order admits—as it must—that the Permit is governed by the Regulations Governing the Design, Installation, and Operation of On-Site Wastewater Treatment and Disposal Systems, as set forth in 7 Del. Admin. Code 7101 *et. seq.* Secretary’s Order p. 9. The Regulations contain numerous provisions that an applicant like Allen Harim and/or DNREC as the permitting authority must follow. Appellants respectfully suggest that the record will show that numerous provisions in the regulations were violated in the issuance of the Permit. These include (but are not limited to) the following:

1. The Permit Was Issued Improperly In That It Authorizes The Operation Of A Facility And System That Was Not A Design Approved By The Construction Permit Issued To Allen Harim.

In 2015, pursuant to Secretary’s Order 2015-W-0046, DNREC issued two permits to Allen Harim: (1) a Construction Permit to construct an on-site wastewater treatment and disposal system pursuant to plans and specifications dated 2015; and (2) an NPDES Permit to discharge the treated to Beaverdam Creek. The Secretary’s Order indicated that the Construction Permit was for “Phase I” of a 2-Phase approach, in which “the pollutants Total Nitrogen and aluminum will be reduced by Applicant’s Phase II upgrade” in order to meet the new, lower limits in the NPDES Permit. The Permit at issue in this appeal approves the operation of a very different treatment system than what the 2015 Construction Permit authorized.

7 Del. Admin. C. 7101 § 6.5.3.1 sets forth the requirements for an operations permit application. Section 6.5.3.1.3 requires certification that “the facility has been constructed in accordance with approved plans and specifications,” while § 6.5.3.1.9 requires “a set of ‘as built’ drawings of the facility bearing the seal and signature of a licensed Professional Engineer registered in the State of Delaware.” Having fundamentally altered the on-site treatment and eliminated the discharge to Beaverdam Creek, Allen Harim has failed to meet the requirement in the Regulations, and DNREC erred in issuing a Permit in light of such a regulatory failure. Section 6.5.3.1 specifically states that the “failure to submit all required information shall constitute grounds for denial of the operation permit.”

The Regulations recognize that changes to construction plans may occur, and thus contain provisions which specify what a construction permittee like Allen Harim must do in light of such changes. 7 Del. Admin. Code 7101 § 6.3.1.14.1 specifies that “a construction permit application, plan and specifications and design engineer report with applicable fees must be submitted to the Department if the construction permit has expired *or changes have occurred*” (emphasis supplied). In turn, § 6.5.2.1 requires that the completed application for a construction permit must be advertised to the public and a hearing conducted according to the requirements of 7 Del. C. Chapter 60. Appellants are aware of no such application or public notice as required by the Regulations. As a result, Allen Harim failed to follow the requirement of the Regulations, and DNREC erred in issuing the permit despite such failures to comply with the Regulations.

2. The Permit Was Issued Improperly Because Allen Harim Failed To Provide The Necessary Information.

As noted above, 7 Del. Admin. C. 7101 § 6.5.3.1 sets forth the requirements for an operations permit application. Amongst these requirements are that the application include a “Design Engineer Inspection Report(s) certifying the facility has been constructed in accordance with approved plans and specifications” (§ 6.5.3.1.3), a Contractor’s Certificate of Completion (§ 6.5.3.1.5), and that a set of “as-built” drawings bearing a Professional Engineer’s seal be submitted (§ 6.5.2.1.9). Allen Harim has failed to comply with numerous provisions of § 6.5.3.1, including (but not limited to) in the following ways:

- (a) Failing to submit documents required by the Regulations;

(b) Submitting documents that, based on their dates, could not possibly show compliance or completion with the design developed after Alen Harim decided to send treated wastewater to ANSRWRF; and

(c) Submitting documents that do not meet the regulatory requirements.

3. The Proposed Diversion Of Wastewater Does Not Meet Regulatory Criteria And Will Not Work.

Section 6.3.2.3.2.4 of the Regulations requires that “[a]utomatic diversion of wastewater that fails to meet the operating criteria must be included in the system design.” The Permit attempts to meet this requirement in Special Conditions (a) and (b) in Part III (Permit p. 17-18). These provisions fail to meet the regulatory requirements for one or more reasons, including (but not limited to) the following:

(a) The provisions do not test for all design criteria pollutants, and therefore wastewater which fails to meet the criteria for one or more of the untested pollutants will not be diverted;

(b) Certain testing methods specified are non-standard, and the Permit fails to impose necessary safeguards to assure their accuracy and utility;

(c) The frequency of testing will result in non-compliant wastewater not being diverted;

(d) The nature and timing for tests to determine if diversion should occur will result in non-compliant wastewater not being diverted;

(e) The Permit contains confusing, inconsistent, and/or incompatible requirements for concentrations of Nitrate as Nitrogen and Total Nitrogen;

(f) The system lacks adequate capacity for diversion of non-compliant wastewater, especially in light of the nature of the testing regime used to determine diversion; and

(g) The Permit—both individually and in conjunction with the ANSRWRF Operation Permit—lacks the operational protections promised by DNREC and Artesian during the proceedings on the ANSRWRF Construction Permit.

B. The Permit As Issued Will Violate The Requirement That The Permitted On-Site Wastewater Treatment And Disposal System Is “Operated And Maintained So As Not To Create A Public Health Hazard Or Cause Water Pollution” (7 Del. Admin. Code 7101 § 3.13)

Section 3.13 of the Regulations requires that “All systems shall be operated and maintained so as not to create a public health hazard or cause water pollution.” The Artesian-Allen Harim combined system operates on the assumption that wastewater treated at Allen Harim and sprayed by Artesian will not

adversely impact groundwater under Artesian's spray fields. The Permit does not provide the protection promised in numerous ways, including (but not limited to) the following:

1. The Permit Does Not Regulate Known Pollutants Of Concern In The Allen Harim Wastewater.

According to the May 5, 2017 Amended DDR submitted by Artesian in connection with its application for a construction permit, Artesian identified pollutants that were design limits. In addition to Flow, BOD₅, Total Suspended Solids, Turbidity, Fecal Coliform, Total Nitrogen, Ammonia, Nitrate/Nitrite, phosphorus, pH, and Chlorine Residual, the Amended DDR lists design influent characteristics for Lead, Zinc, Copper, Nickel, Cadmium, and Aluminum. *See* May 5, 2017 Amended DDR at 24 Table 4-1. According to Effluent Sampling from Allen Harim reported in Table 4-2 of the Amended DDR, Copper, Nickel, Zinc, and Aluminum were detected in Allen Harim wastewater. *See* May 5, 2017 Amended DDR at 24 Table 4-2. In the case of Zinc, Copper, Nickel, and Aluminum, the Table 4-2 results show measured values *at or above the design characteristics* in Table 4-1. In other words, history shows that Allen Harim has exceeded some of the design characteristics. The Artesian Permit requires monitoring for Lead, Zinc, Copper, Cadmium, and Nickel, so clearly DNREC thinks these pollutants are important.³ Nevertheless, neither the Artesian nor Allen Harim Permits not contain any limits on the discharge of Lead, Zinc, Copper, Nickel, Cadmium or Aluminum, and does not require diversion of wastewater due to the presence of these pollutants at or above design limits. Thus, these pollutants can be discharged into the environment (and drinking water of the public) without regulatory control.

2. The Use Of “Unlimited Public Access” Standards Does Not Adequately Protect The Public Or Groundwater Because It Does Not Regulate Pollutants Of Concern

While the Permit imposes a requirement that Allen Harim's effluent must meet “Unlimited Public Access Standards” (found at 7 Del. Admin. C. 7101 § 6.3.2.3.3.2), these standards only control four pollutants: BOD₅, Fecal Coliform, Total Suspended Solids, and Turbidity. It does not require treatment to any levels for contaminants that can impact groundwater, such as nitrogen, ammonia, phosphorus, or any of the metals or other contaminants listed in the Design Criteria of Artesian's May 5, 2017 Amended DDR. Thus, while it may protect persons walking on the spray fields from acute problems caused by exposure to these four pollutants, treatment to “Unlimited Public Access” tells DNREC nothing about long-term effects on soil and groundwater resources and does not protect the public from the numerous other pollutants known to be in Allen Harim's wastewater.

³ Unfortunately, the Artesian Permit does not appear to create any enforceable limits on these pollutants. Further, the ANSRWRF Operation Permit does not appear to require monitoring for these pollutants in groundwater monitoring wells around the spray fields, and thus actual impacts to groundwater will be unknown.

3. The Permit Does Not Ensure That The Design Assumptions For Protection Of Groundwater Will In Fact Be Met.

According to the Artesian permitting documents, 30 mg/l of Total Nitrogen sprayed on Artesian's fields will result in percolate containing 9.9 mg/l of Nitrogen reaching groundwater. That is 0.1 mg/l below the 10 mg/l standard applicable in this case. The Permit contains inadequate provisions to ensure that the wastewater sent to ANSRWRF does not exceed the 30 mg/l design threshold, and therefore puts the drinking water of nearby residents and the public at risk. Indeed, Secretary's Order 2021-W-0013—an Administrative Consent Order involving Allen Harim that includes penalties for Allen Harim's failures to comply with effluent limitations—further supports this concern.

IV. Estimate of Number of Witnesses and Time Involved

Appellants, DNREC, and Artesian all contemplated that this matter would be consolidated with the appeal of the Artesian Operating Permit currently pending before this Board in No. 2020-04. Indeed, the issuance of this Permit to Allen Harim was the basis for the continuance the Board granted in August 2020. Thus, Appellants anticipate that the matters will be consolidated, and provide estimates for such a consolidated proceeding. Appellants estimate they may call 12-14 witnesses (if necessary) for purposes of standing, and call an additional 1-6 witnesses on the merits, which may include 1-2 experts. Appellants estimate that approximately 10 - 16 hours of hearing may be required for their case-in-chief exclusive of cross-examination. Appellants reserve the right to present additional witnesses as a result of the State's and Permittees' cases.

Keep Our Wells Clean, et al.

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Attachment (Secretary's Order 2021-W-0012)



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**
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OFFICE OF THE
SECRETARY

PHONE
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Secretary's Order No.: 2021-W-0012

**RE: On-Site Wastewater Treatment and Disposal System Operations Permit Application
of Allen Harim Foods, LLC ("Allen Harim") to treat poultry processing
wastewater at its Harbeson Processing Facility in
Harbeson, Delaware**

Date of Issuance: April 27, 2021

Effective Date: April 27, 2021

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 *Del.C.* §§6003, 6004, 6006, Delaware's *Regulations Governing the Design, Installation, and Operation of On-Site Wastewater Treatment and Disposal Systems* (7 DE Admin. Code 7101), and all other relevant statutory authority, the Department of Natural Resources and Environmental Control ("Department" or "DNREC") issues this Order, approving the On-Site Wastewater Treatment and Disposal System ("OWTDS") Operations Permit Application of Allen Harim Foods, LLC ("Allen Harim" or "Applicant") to treat poultry processing wastewater at its Harbeson Processing Facility in Harbeson, Sussex County, Delaware ("Application").

The Application submitted by Allen Harim is subject to various state and federal regulatory requirements, including, but not limited to, Delaware's *Regulations Governing the Design, Installation, and Operation of On-Site Wastewater Treatment and Disposal Systems*, as set forth in 7 DE Admin. Code 7101 ("Regulations"), and as provided for under Delaware law in 7 *Del.C.* Chapter 60.

The Allen Harim Application is very closely aligned with another permit application submitted to the Department by Artesian Wastewater Management, Inc. (“Artesian”). Artesian applied for a State of Delaware Operations Permit to receive treated wastewater effluent from the Allen Harim Harbeson Processing Facility’s on-site wastewater treatment system for storage in a synthetically lined lagoon, and disposal via spray irrigation at the Artesian Northern Sussex Regional Water Recharge Facility (“ANSRWRF”) in Milton, Delaware.

The Department processed the permit applications of Allen Harim and Artesian together to assure transparency, and to make sure the public was afforded the ability to provide meaningful comment on the complete process of treatment of the wastewater at Allen Harim, and disposal of the same at ANSRWRF, as noted above. The Artesian Application was approved with the execution of DNREC Secretary’s Order No. 2020-W-0008, and the issuance of On-Site Permit No. 359288-02 (both dated March 18, 2020). Thus, this Order concerns only the remaining pending Application of Allen Harim, as set forth below.

Background, Procedural History and Findings of Fact

Allen Harim has applied for a State of Delaware OWTDS Operations Permit to treat poultry processing wastewater at the Allen Harim Harbeson Processing Facility via its on-site treatment system. The majority of poultry processing water is generated on-site at the Harbeson facility, with a minor amount discharged to the treatment system from the Allen Harim Pinnacle Processing Facility in Millsboro, Delaware, and the Allen Harim Hatchery in Dagsboro, Delaware. The Harbeson facility’s wastewater treatment system consists of primary screening, grit removal, dissolved air flotation (“DAF”) unit, two anoxic biological nutrient removal (“BNR”) basins, two complete mixed activated sludge (“CMAS”) aeration basins, flocculation tank, two clarifiers, and a chlorine contact tank. The treatment train also includes two aerobic digesters and a screw press unit for sludge processing.

The facility is capable of diverting non-compliant wastewater to on-site basins/lagoons, followed by recirculating and retreating the wastewater. The treated wastewater effluent will be pumped via force main to ANSRWRF for storage in a synthetically lined lagoon and disposal via spray irrigation.

The Application submitted by Allen Harim was deemed technically complete by the Department on July 24, 2019. Given the level of public interest on the Applicant's proposed activities as set forth above, the Department made the decision to schedule a public hearing. Accordingly, the Department published legal notices in the *Sunday News Journal* and the *Delaware State News* on July 31, 2019, advertising that a public hearing would be held, as referenced above. Thereafter, the Department held its public hearing on August 21, 2019.

Department staff, representatives of both Artesian and Allen Harim, and approximately one hundred members of the public attended the August 21, 2019 public hearing. Many of the hearing attendees provided comment on both permit applications. Due to the high level of public interest, and in response to requests made by the public at the time of the hearing for the Department to extend the public comment period, the hearing record ("Record") remained open for receipt of public comments through September 27, 2019. It should be noted that comments were received from the public not only at the time of the public hearing, but also during both the pre- and post-hearing phases of this permitting matter. Proper notice of the hearing was provided as required by law.

Following the close of the public comment period as noted above, and at the request of Hearing Officer Lisa A. Vest, the technical experts in the Department's Division of Water, Groundwater Discharges Section ("GWDS"), provided an initial Technical Response Memorandum ("TRM"), dated December 31, 2019, in response to the public concerns received by the Department about Allen Harim's pending Application.

Subsequent to the date of the TRM noted above, the Department's GWDS received additional information from Allen Harim regarding the proposed timelines for completion of various storage lagoon rehabilitation projects. Accordingly, an Amended TRM (dated March 9, 2020) was provided to Hearing Officer Vest to update the GWDS's previous responses to the public comments received in this matter, and to reflect revisions made at that time to the draft OWTDS Operations Permit ("Draft Permit") associated with this pending Application.

Over the next several months, the Department's GWDS continued to work with Allen Harim to ensure that all ongoing compliance requirements were being met. During that time, updated information was received from Allen Harim which, in turn, warranted further changes in the Applicant's Draft Permit conditions. Accordingly, the GWDS provided Hearing Officer Vest with a Supplemental TRM, dated August 4, 2020. The Supplemental TRM was prepared to update and revise the Record, specifically, the GWDS's Amended TRM of March 9, 2020, to reflect the updated information received from Allen Harim as noted above.

The Supplemental TRM of August 4, 2020 also updated the GWDS' previous responses to public comments received in this matter, specifically, to reflect the revisions made at that time to the Draft Permit for on-site wastewater treatment by Allen Harim in Harbeson, Delaware. The revisions were necessitated as a result of the additional information submitted by Allen Harim with regard to methods for compliance assurance with the proposed flow limits set forth in the Draft Permit. Additionally, the GWDS updated the Record at that time to reflect compliance schedule revisions that must occur in the Draft Permit due to delays in Allen Harim's submission of supplemental information, as well as the delay of the lining of the on-site stormwater pond for diversion. Finally, the Supplemental TRM confirmed that the compliance schedule for the cleanout of the old anaerobic lagoon had been adjusted in the Draft Permit, based on an extension request from Allen Harim (made due to the ongoing COVID-19 pandemic).

The Supplemental TRM of August 4, 2020 provides updated responses to the public comments specifically associated with Allen Harim's Application currently pending with the Department and remains as the formal recommendations of the GWDS at this time. It does not, however, address those comments that pertain to matters outside the permitting authority of the GWDS, nor is it responsive to any comments not specifically related to this Application, which was the subject matter of the public hearing held by the Department on August 21, 2019.

To serve as a status update for the benefit of the Record, and to confirm that the recommendations of the GWDS continued to stand as stated in the Supplemental TRM, Jennifer Roushey, Environmental Program Administrator in the Department's Division of Water, provided to Hearing Officer Vest an email dated October 8, 2020. In this email, Ms. Roushey advised that the Department continued to work with Allen Harim to ensure that the Applicant's commitments and ongoing compliance requirements were being addressed, and that any interim compliance dates that had passed would be adjusted accordingly prior to permit issuance.

On March 9, 2021, Ms. Roushey provided another status update email to Hearing Officer Vest, confirming that the Department continued to work with Allen Harim, specifically, to assure that flow reduction commitments and lagoon cleanout requirements were being addressed. Due to the moisture content of the lagoon sludge, however, Allen Harim was now seeking to dewater the sludge, utilizing geotubes within a temporary sludge storage facility on Allen Harim's property prior to proper offsite disposal. To accommodate the additional permit application and public notice processes required for the construction and operation of such a sludge storage facility, the Department made a minor adjustment at that time to the compliance schedule set forth in the Draft Permit. Previously, the Draft Permit stated that cleanout completion of the old anaerobic lagoon would occur by May 31, 2021. In lieu of the May 31, 2021 date, the Draft Permit was adjusted to state that cleanout completion shall occur no later than 6 months from the date that Allen Harim obtains a permit for the aforementioned construction and operation of the sludge storage facility.

Allen Harim proceeded to address the lagoon cleanout efforts as set forth above and submitted to the Department a permit application for the construction and operation of a temporary sludge storage facility to be built on the Applicant's property. On April 6, 2021, however, Ms. Roushey provided another status update email to Hearing Officer Vest for the benefit of the Record in this matter. In this update, Ms. Roushey advised that subsequent to March 9, 2021, Allen Harim was notified by Sussex County that a Conditional Use Approval would need to be obtained in order to construct the aforementioned sludge storage facility. Furthermore, Sussex County advised that the process to obtain such approval would further delay Allen Harim's proposed lagoon cleanout activities by at least an additional six months.

In order to avoid such a prolonged delay, Ms. Roushey advised that Allen Harim would be abandoning the previous plan for the construction and operation of the sludge storage facility, and instead proceed with the lagoon cleanout by utilizing a centrifuge to dewater the sludge and then hauling it to an approved disposal facility in Virginia. This revised path forward essentially followed the Applicant's proposal set forth at the time the Department provided original public notice of Allen Harim's permit application back in 2019. Once again, the compliance schedule as set forth in the Draft Permit was adjusted to state that the lagoon must be cleaned, lined and ready for service within six months of Operations Permit issuance (instead of within six month of temporary sludge storage permit issuance, as the sludge storage would no longer be required). At that time, the Department expected Allen Harim to reinitiate lagoon cleanout activities on or about May 1, 2021.

On April 21, 2021, Ms. Roushey provided the most recent email update to Hearing Officer Vest, with updated attachments, for the benefit of the Record generated in this matter. In that email, Ms. Roushey advised that on April 16, 2021, Allen Harim notified the Department that their lagoon cleanout contractor would require eight (8) months to complete the lagoon cleanout operations and synthetically re-line the old anaerobic lagoon, rather than then six (6) month schedule previously provided to the GWDS.

Ms. Roushey's April 21, 2021 email further advised that, due to the delays in starting the cleanout activities, the contractor's resources and equipment will not be available to reinitiate such activities until mid-June (as opposed to the previously anticipated May 1, 2021 start date noted above). Additionally, since the sludge is being dewatered, live loaded, and then hauled to an approved landfill (rather than stored onsite for dewatering), cleanout operations will be limited by the number of trucks per day of material the landfill will accept. This limiting factor will result in the need for extra time to complete the lagoon cleanout activities. To provide further documentation and clarity for the Record generated in this matter, this April 21, 2021 email also provided the Lagoon Cleanout Schedule and the updated Draft Permit as attachments thereto.

Since the lined stormwater pond remains a viable option for the wastewater diversion (if needed), there is no anticipated environmental impact from the GWDS granting the additional two months to complete the necessary anaerobic lagoon cleanout activities. Accordingly, the compliance schedule as set forth in the updated Draft Permit (hereinafter referred to as the "revised final Draft Permit") has now been adjusted to accommodate this request. Part 1, F.(2.) now states:

The Permittee shall complete cleanout operations, rehabilitate, and synthetically re-line the "old" anaerobic lagoon to be used as the permanent diversion option for non-compliant wastewater no later than 8 months from the effective date of this permit. The recently relined stormwater lagoon shall be used as a temporary diversion option in the interim.

Ms. Roushey's April 21, 2021 email concludes by confirming that the Department will continue to work with Allen Harim to assure cleanout efforts are expedited to the maximum extent practicable and that progress towards compliance with lagoon cleanout requirements continues.

The GWDS believes that the *revised final* Draft Permit addresses the technical and regulatory concerns of both the public and the permittee, while fulfilling the Department's mission to protect the public health and the environment. It should be noted that the *revised final* Draft Permit supersedes all other versions of the Draft Permit previously incorporated into the hearing record by the Department in this matter. Further, while the Artesian Operations Permit closely aligned with this matter was signed and issued back on March 18, 2020, the issuance of an Operations Permit for Allen Harim was delayed, per the GWDS's recommendation, until a viable diversion option was established for nonconforming wastewater in the event effluent limits are exceeded in the future.

Subsequent to the receipt of the Department's TRMs and email status updates referenced above, Hearing Officer Vest prepared her Hearing Officer's Report ("Report"), dated April 22, 2021, which expressly incorporated said documentation therein. Ms. Vest's Report set forth the procedural history, summarized and established the record of information ("Record") relied on in the Report, and provided findings of fact, reasons, and conclusions that recommend the Department approve Allen Harim's Application, subject to the conditions set forth in the *revised final* Draft Permit prepared by the GWDS. The Report is incorporated herein by reference. The Report also addressed the public comments received in this matter and concluded that the same did not warrant the Department's denial of Allen Harim's pending Application, nor the delay of the permit decision to receive any additional information.

Reasons and Conclusions

The OWTDS Operations Permit Application submitted by Allen Harim seeks permission to treat poultry processing wastewater at its Harbeson Processing Facility in Harbeson, Delaware. I find that the proposed project requires the Applicant to obtain an OWTDS Operations Permit, as noted above.

I further find that Allen Harim's proposed project is subject to various state and federal regulatory requirements, including, but not limited to, Delaware's *Regulations Governing the Design, Installation, and Operation of On-Site Wastewater Treatment and Disposal Systems*, as set forth in 7 DE Admin. Code 7101, 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 GWDS have concluded that Allen Harim's Application complies with all applicable federal and state laws and regulations. The OWTDS Operations Permit that would be issued by the Department would be reflective of the Application submitted by Allen Harim, and would include water quality limitations, along with operational, monitoring, and reporting requirements for the Applicant, to ensure continued protection of public health and the environment.

In response to the above referenced comments received from the public in this matter, the Department has sought to minimize the impacts to the surrounding communities. To that end, the Department's experts in GWDS have made the following determinations:

1. Allen Harim's wastewater treatment system will be required to produce the State of Delaware's highest treatment level needed for unlimited public access, which is the same level of treatment required on Delaware's golf courses and parks.
2. The wastewater will also be disinfected, and a residual chlorine content will be provided to ensure that bacteria and viruses are killed to below acceptable levels.
3. There will be nitrogen and phosphorus present in the wastewater, however, the concentrations of these constituents are accounted for in the nitrogen balance, vegetative management plan, and amount of acreage to be used for the spray irrigated wastewater at ANSRWRF.

4. Allen Harim has the ability to divert non-compliant wastewater on-site for retreatment, if needed.
5. Allen Harim has completed the synthetic lining of the former stormwater pond that will be used for effluent diversion (if needed), and therefore has system components in place, as required under the *revised final* Draft Permit.

Given the above determinations, the GWDS believes that the OWTDS Operations Permit for the Allen Harim Harbeson Processing Facility will be protective of public health and the environment.

The Record developed in this matter indicates that the Department's GWDS experts have considered all statutes and regulations that govern projects such as the Applicant's above proposed activities and have recommended approval of the OWTDS Operations Permit necessary for the same. I find and conclude that the Applicant has adequately demonstrated compliance with all requirements of the statutes and regulations and is continuing to work with the Department to assure Allen Harim's commitments and ongoing compliance requirements are met, as noted herein. I further find that the Record supports approval of the Application as submitted by Allen Harim in this matter.

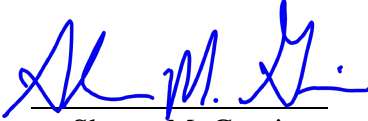
Moreover, I find and conclude that the Record supports the recommendations of the Department's experts in the GWDS, as set forth in the Amended TRM of March 9, 2020, the Supplemental TRM of August 4, 2020, and Ms. Roushey's email status updates of October 8, 2020, March 9, 2021, April 6, 2021 and April 21, 2021 (with attachments, as noted herein), including, but not limited to, the recommendation concerning the issuance of the *revised final* OWTDS Operations Permit for the Applicant, for the reasons noted above.

Accordingly, this Order approves the issuance of the *revised final* OWTDS Operations Permit for the Allen Harim Harbeson Processing Facility, located in Harbeson, Delaware, consistent with the Record developed in this matter and with appropriate conditions.

Further, the Department concludes and specifically directs the following:

1. The Department has jurisdiction under *7 Del. C. §§6003, 6004, 6006(4)*, Delaware's *Regulations Governing the Design, Installation, and Operation of On-Site Wastewater Treatment and Disposal Systems (7 DE Admin. Code 7101)*, and all other relevant statutory authority, to make a final determination on the Application 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 Application submitted by Allen Harim, and of the public hearing held on August 21, 2019, and held said 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 TRMs and email status updates provided by the Department's GWDS, 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 required by the Application, and finds that the Record supports approval of the same;

5. The Department shall issue to Allen Harim the On-Site Wastewater Treatment and Disposal System Operations Permit for the Allen Harim Harbeson Processing Facility in Harbeson, Delaware, consistent with the Record developed in this matter. Furthermore, said permit shall include all conditions as set forth in the Department's *revised final* Draft Permit for Allen Harim, to ensure that Delaware's environment and public health will be protected from harm;
6. The Department adopts the Report and its attachments as further support for this decision;
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.



Shawn M. Garvin
Secretary