



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

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OFFICE OF THE
SECRETARY

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Secretary's Order No.: 2023-W-0002

RE: Permit Application of Midway Services, Inc. ("Midway"), requesting an Amendment to existing State of Delaware Non-Hazardous Liquid Waste Transporters Permit No. DE WH-152, authorizing the transportation of septage by Midway to Clean Delaware, LLC ("Clean DE") as an additional site for final disposal

Date of Issuance: January 3, 2023

Effective Date: January 3, 2023

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 permit application of Midway Services, Inc. ("Midway" or "Applicant"), requesting an Amendment to existing State of Delaware Non-Hazardous Liquid Waste Transporters Permit No. DE WH-152 to authorize the transportation of septage by Midway to Clean Delaware, LLC ("Clean DE") as an additional site for final disposal ("Application").

Background, Procedural History and Findings of Fact

On February 9, 2019, the Department's Division of Water issued State of Delaware Non-Hazardous Liquid Waste Transporters Permit No. DE WH-152 (hereinafter referred to as, "Transporters Permit"), authorizing Midway to operate and maintain vehicle(s) for the purpose of collecting, transporting through Delaware, and disposing of non-hazardous liquid waste (i.e., septage, holding tank waste, grease trap and/or cooking oil waste) to the Kent County Sewer System (specifically, Kent County's Pump Station No. 1 located on US-13 in Smyrna or at the Kent County Regional Resources Recovery Facility located at 139 Milford Neck Road in Milford, Delaware). On April 3, 2019, the aforementioned Transporters Permit issued to Midway was amended to also authorize the collection, transportation, and disposal of septage and holding tank waste to the Sussex County Sewer System, specifically, the Inland Bays Regional Wastewater Treatment Facility, located on the north side of County Road 306, between County Road 307 and 303 in Sussex County, Delaware.

Midway's existing Transporters Permit is currently in effect until February 8, 2024. The Transporters Permit includes septage pumping reporting requirements and vehicle operation, and maintenance and insurance requirements designed for the protection of public health and the environment, as required by 7 DE Admin. Code 7101, *Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems*. It should be noted that a Transporters Permit specifically regulates the safe hauling, conveyance, or transport of any non-hazardous liquid waste with the intention of delivering such materials from one location to another over the public roads of the State of Delaware. The actual treatment and disposal of such waste is regulated through the treatment and disposal permits of the facilities receiving the waste, and not through a Transporters Permit.

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

After determining it to be administratively complete, the Department advertised receipt of Midway's Application in *The News Journal*, the *Delaware State News*, and on the Department's website on January 12, 2020. Subsequently, the Department received a request for a public hearing to be held in this matter. A proposed Draft Non-Hazardous Liquid Waste Transporters Permit Amendment ("Draft Permit Amendment") was prepared at that time by the Department's experts in the Division of Water, and the public hearing was scheduled to be held on March 19, 2020. The Department was required to postpone the initial hearing date, however, due to an error in the legal notices that had been previously published in this matter. Subsequently, the Division of Water re-published legal notices on the DNREC website (on June 15, 2020), in the *Delaware State News* (on June 17, 2020) and the *News Journal* (on June 18, 2020), advertising that a virtual public hearing regarding Midway's Application had been rescheduled to be held on July 7, 2020.

Department staff, representatives of the Applicant, and members of the public attended the virtual public hearing on July 7, 2020. The hearing record ("Record") remained open through July 24, 2020, to allow for submission of written comment by the public. It should be noted that comments were received from the public during the post-hearing phase of this permitting process, and the same were posted on the DNREC hearing web page dedicated to this matter. Proper notice of the hearing was provided as required by law.

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 provided a Technical Response Memorandum ("TRM") in response to the public comments received by the Department about Midway's pending Application. The TRM, received by Hearing Officer Vest from the Division of Water on July 28, 2022, provides a summary of the public comments received by the Department in this permitting matter, and offers detailed responses to the same.

Subsequent to the receipt of the Department's TRM referenced above, Hearing Officer Vest prepared her Hearing Officer's Report ("Report"), dated December 20, 2022. The Report expressly incorporated the aforementioned TRM, along with all of its Appendices, including, but not limited to, the Department's Draft Permit Amendment, as Appendix "A." Ms. Vest's Report set forth the procedural history, summarized and established the record of information relied on in the Report, and provided findings of fact, reasons, and conclusions that recommend the approval of Midway's Application currently pending before the Department, subject to the conditions set forth in the Draft Permit Amendment.

The Report, along with its Appendix, 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 Midway's pending Application, nor the delay of the decision regarding this requested permit amendment to receive any additional information.

Reasons and Conclusions

Currently pending before the Department is the pending Application submitted by Midway, requesting the amendment of existing Non-Hazardous Liquid Waste Transporters Permit No. DE WH-152 to authorize the collection, transportation, and disposal of septage at Clean DE. I find that the Applicant is required to obtain the amendment of the aforementioned existing permit, for the reasons noted above. I further find that Midway's Application is subject to various state and federal regulatory requirements, including, but not limited to, 7 DE Admin. Code 7101, *Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal*, and as provided for under 7 Del.C. Ch. 60.

In reviewing the applicable statutes and regulations, as well as weighing public benefits of this project against potential detriments, the Department's experts in the Division of Water have concluded that the pending Application complies with all applicable federal and state laws and regulations.

The amendment to existing Permit No. DE WH-152 to be issued by the Department in this matter will be reflective of the Application submitted by Midway and will be appropriately conditioned to ensure continued protection of public health and the environment.

The Department's TRM acknowledges the comments received from the public concerning the Midway Application, and thoroughly responds to the same. For the purposes of brevity, this Order defers to the Division of Water's TRM in its entirety for a complete understanding of the concerns raised in the public comments received by the Department in this matter, as well as the Department's formal responses to the same. Rather than attempting to relay each concern voiced by the public in the comments received in this matter, this Order will highlight the Department's responses to the public's concern as provided for in full within the aforementioned TRM.

In response to the concern as to why Midway would be seeking authorization to discharge septage at Clean DE and whether the material discharged at Clean DE is considered more hazardous (and perhaps not accepted at the County facilities), the TRM notes that the issuance of Non-Hazardous Liquid Waste Transporter Permits not only authorizes the transportation of specific non-hazardous liquid waste types, but also authorizes the facilities that may be utilized for the disposal of each waste stream. Each disposal facility has specific requirements for what the facility will accept, and not every disposal facility will accept every regulated waste stream. Therefore, it is not uncommon for a transporter to be authorized to transport and dispose of waste at multiple locations. Midway's Transporters Permit, even after amended, will still authorize the Applicant to utilize Kent and Sussex infrastructure and facilities for the disposal of septage and other waste streams.

Regarding inquires as to why DNREC does not include requirements for random testing of the waste being hauled by transporters such as Midway, the TRM notes that a State of Delaware Transporters Permit specifically regulates the safe hauling, conveyance, or transport of any non-hazardous liquid waste with the intention of delivering such materials from one location to the other over the public roads of the State of Delaware.

As noted previously, the actual treatment and disposal of the septage being transported is regulated through the treatment and disposal permits of the facilities receiving the waste. The Transporters Permit does, however, include operational and maintenance requirements to ensure that septage and other non-hazardous liquid wastes are collected and transported in a manner that is protective of public health and the environment.

I find that the Division of Water's TRM offers a thorough review of all aspects of the Applicant's pending Application, addresses those concerns germane to the subject matter of the aforementioned public hearing held by the Department in this matter, and responds to them in a balanced manner, accurately reflecting the information contained in the Record. The Record developed in this matter indicates that the Department's experts in the Division of Water have concluded that Midway's Application complies with all statutes and regulations that govern permitting actions such as the proposed amendment to existing Permit DE WH-152, have weighed public benefits of this permit amendment against potential detriments, and have recommended approval of the same.

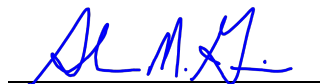
I find and conclude that the Record supports approval of the proposed amendment to Midway's existing Permit No. DE-WH-152, as submitted by the Applicant to the Department's Division of Water in this matter. The amendment to the Applicant's existing Transporters Permit to be issued by the Department will be reflective of the Application submitted by Midway, and consistent with the Draft Permit Amendment prepared by the Department's experts in the Division of Water, to ensure continued protection of public health and the environment, and consistent with the Record developed in this matter.

Accordingly, this Order approves the issuance of the State of Delaware Non-Hazardous Liquid Waste Transporters Permit Amendment to existing Permit No. DE WH-152, authorizing Midway Services, Inc., to transport septage to Clean DE as an additional disposal site, consistent with the Draft Permit prepared by the Department's Division of Water, and consistent with the Record developed in this matter.

Further, the Department concludes and specifically directs the following:

1. The Department has jurisdiction, as provided for under *7 Del.C. Ch. 60, 7 DE Admin. Code 7101, Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems*, and all other relevant statutory authority, to make a final determination on the aforementioned pending permit applications submitted by Midway after holding a public hearing, considering the public comments, and all information contained in the Record generated in this matter;
2. The Department provided proper public notice of the aforementioned Application submitted by Midway, and of the public hearing held on July 7, 2020, and held the hearing to consider any public comments that may be offered on the Application, in a manner required by the law and regulations;
3. The Department considered all timely and relevant public comments in the Record, as established in the Department's TRM of July 28, 2022, and the aforementioned Draft Permit, both of which have now been expressly incorporated into the Record generated in this matter;
4. The Department has carefully considered the factors required to be weighed in issuing the permit amendment required by the aforementioned Application submitted by Artesian, and finds that the Record supports approval of the same;
5. The Department shall issue to the Applicant the State of Delaware Non-Hazardous Liquid Waste Transporters Permit Amendment to existing Permit No. DE WH-152, authorizing Midway Services, Inc. to transport septage to Clean DE, as an additional disposal site, consistent with the Draft Permit Amendment prepared by the Department's Division of Water, and consistent with the Record developed in this matter;

6. Furthermore, said Transporters Permit shall include all conditions as set forth in the Department's TRM, along with the aforementioned Draft Permit Amendment, to ensure that Delaware's environment and public health will be protected from harm;
7. The Department adopts the Report and its attachments as further support for this decision;
8. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
9. The Department shall serve and publish its Order on its internet site.



Shawn M. Garvin
Secretary