STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
OFFICE OF THE SECRETARY
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February 25, 2010

Mr. Lee J. Beetschen, PE, DEE
CABE Associates Inc.
144 S. Governors Ave.
Dover DE 19903

Dear Lee:

We apologize for the delay in processing Mountaire's application for a Coastal Zone Act Permit. However, this application is unique in several ways – most notably, the proposal to use unbanked air emissions "credits" from a soybean extraction plant shut down almost 10 years prior to this application; and two, a proposed treatment plant upgrade that, in the applicant's view, would preclude the need to provide an offset for land-applied nitrogen in the treated wastewater.

The application did require some research into previous offset proposals and consultation with our Air Quality Management Section. We find your offset proposal to be problematic for a number of reasons. We will address them one by one and provide some alternatives for your consideration.

1) **Treatment plant upgrade.** According to your application, the proposed resource recovery project at the Mountaire processing facility will result in an additional 0.24 MGD of wastewater discharges, with a net discharge potential of 27,500 pounds of nitrogen, after treatment. These new discharges require an offset under the Regulations Governing Delaware's Coastal Zone. In this case, you have offered as an offset, the upgrade to the wastewater treatment plant that will reduce Total Nitrogen load to the spray sites by 176,000 pounds per year – clearly more than compensating for the new wastewater discharge of 27,500 lbs of Nitrogen resulting from the expansion of the resource recovery plant.

   This proposed treatment plant upgrade and the discharges as you've described them, should clearly and demonstrably more than offset the new wastewater emissions, however, Coastal Zone Act regulations, Section I (1)(f) states:

> *Where an offset project in itself requires one or more permits from a program or programs within DNREC, the Secretary shall issue the Coastal Zone Permit only after all applicable permit applications for offsetting projects have been received and deemed administratively complete by DNREC.*

As of this writing, DNREC's Groundwater Discharges Section has not received a permit application for this treatment plant upgrade. According to the regulations, there needs to be an agreed-upon schedule for completion of the offset project, which would be an enforceable condition of the Coastal Zone Permit, according to Section I (3)(a); and related permits would have to be obtained within 180 days of the issuance of the permit.

You have asked previously if Section I (1)(f) of the Regulations has been applied equally across all previous Coastal Zone applicants. As you might imagine, no two coastal Zone permit applications are the same, and a review of our files does not reveal any directly analogous situations to that at Mountaire. The files do, however, reveal a consistent application of the requirement that a permit application be filed with DNREC for offset projects that require a permit. These would include the following recent Coastal Zone Act (CZA) permits:

CZA #372 Voight Schweitzer
CZA #374 Peninsula Composting
CZA # 377 Alma Properties
CZA # 378 Premcor refining
CZA # 381 Grantham Lane Associates
CZA #384 Magco

The requirement was placed in the Regulations in 1999 to ensure that DNREC would have adequate technical information (in the form of a permit Application) to render an informed decision on whether the offset project proposed by applicants in a Coastal Zone Act permit context was indeed achievable. In this case, the assertion by Mountaire of a 176,000 pound decrease in wastewater discharges needs to be reviewed and considered by the experts in the Groundwater Discharges section of DNREC, after submission of administratively complete application. The Coastal Zone Act program will look to them to verify the proposed offset offered by Mountaire, just as we have in the cases noted above, and many others.

While we may be able to exercise some flexibility in applying the "complete application" required under Section I (1)(f) for offset projects, we cannot do so in the absence of detailed wastewater discharge calculations expected from the upgrade to the wastewater treatment plant.

2) **Air emissions credit.** Your application proposed to use air emissions from a soybean oil extraction and refinery plant that it voluntarily shut down in 2000 as its air offset. However, Mountaire did not apply for an emissions credit per regulation No. 1134 – Emission Banking and Trading Program. In addition, since the soybean extraction plant

shut down in 1999, the emissions from the process were not included in the 2002 baseline air emission inventory, which is used to determine emissions reductions needed to meet Delaware's rate of progress plan. As such, we are not in a position to accept the air credits you offer in your application as an offset for the new air emissions associated with the resource recovery project.

I would note that the 88 tons (176,000 lbs) of wastewater emission reductions is 6.4 times the new discharge of 13.75 tons (27,500), well in excess of the customary 1.3:1 offset ratio we often seek in Coastal Zone offset projects. While Section (I) (1)(c) of our Regulations clearly states a preference for offsets in the same environmental medium as the environmental impact, the relatively small increase in air emissions, combined with the significant reduction in nutrients into the Inland Bays watershed, may offer an opportunity for the Secretary to consider use of the "excess" of reduced nutrients as an offset for the new air emissions. I offer this an idea for your consideration. Another idea worth considering by Mountaire might be installation of biofilters and alternative oxidizers for the control of odors at the facility, or some combination of these two ideas.

While our path to this point has been lengthy, I'm confident we can meet Mountaire's needs moving forward and that these offset issues can be successfully resolved to our mutual satisfaction. As always, we welcome the opportunity to discuss these remaining issues in person with you and company representatives, so we can arrive at an administratively complete application.

Please contact myself or Lee Ann by e-mail or at 739-9000 to discuss next steps, and thank you again for your patience.

Sincerely,

Philip Cherry
Policy Director

cc: Lee Ann Walling
file