



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

PHONE: (302) 739-9000
FAX: (302) 739-6242

**NOTICE OF CONCILIATION
AND SECRETARY'S ORDER**

Pursuant to 7 Del. C. § 6005(b)(2)

Order No. 2011-W-0012

***PERSONALLY SERVED BY
AN ENVIRONMENTAL
PROTECTION OFFICER***

Issued To:

Ms. Beth Sise, Environmental Manager
Mountaire Farms of Delmarva, Inc.
P.O. Box 710
Hoosier Street and Railroad Avenue
Selbyville, DE 19975-0710

Dear Ms. Sise:

WHEREAS, Mountaire Farms of Delmarva, Inc., referred to herein as Mountaire, operates a poultry processing facility at Hoosier Street and Railroad Avenue in Selbyville, Delaware; and,

WHEREAS, the noncontact cooling water and stormwater run-off from this site are permitted under a National Pollution Discharge Elimination System (NPDES) Permit No. DE0050326 and State Permit No. WPCC 3026D/75, last re-issued on May 20, 2004, by the Department of Natural Resources and Environmental Control's (Department) Division of Water; and,

WHEREAS, Federal Regulations under 40CFR §432, "Subpart K – Poultry First Processing," promulgated in 69 FR 54541 on Sept. 8, 2004 and effective on October 8, 2004, includes requirements that apply to water from animal holding areas at this facility; and,

WHEREAS, pursuant to 7 Del. Admin. C. § 7201-6.14.3.2, Mountaire had timely submitted its application for permit re-issuance to the Department; and,

WHEREAS, pursuant to 7 Del. Admin. C. § 7201-6.14.3.3, the terms and conditions of NPDES Permit No. DE0050326 were continued beyond the permit's expiration date and would remain fully effective and enforceable until the permit was re-issued by the Department; and

Delaware's Good Nature depends on you!

WHEREAS, upon reissuance the referenced NPDES permit will include new limits for the run-off from the animal holding area, per the aforementioned "Subpart K – Poultry First Processing" requirements; and, WHEREAS, the Department expects that Mountaire will need and should be provided a reasonable compliance schedule to design and construct improvements in the animal holding area in order to achieve full compliance with those new limits; and,

WHEREAS, the Department and Mountaire desire and commit to work cooperatively and communicate regularly to effectuate the purposes of this Notice of Conciliation and Secretary's Order (Notice); and,

WHEREAS, the Department and Mountaire agree that the performance of the actions identified in this Notice will result in improving the environmental management and oversight of run-off from the animal holding area.

NOW THEREFORE, without any admission of fact or law and without any admission to alleged violations of Delaware law or regulations, Mountaire agrees to enter into this Notice as set forth below.

REGULATORY AND STATUTORY PROVISIONS

7 *DeI.C.* § 6003(b)(2) states:

"No person shall, without first having obtained a permit from the Secretary, construct, install, replace, modify or use any equipment or device or other article which may cause or contribute to the discharge of a pollutant into any surface or ground water."

The May 8, 2004 promulgation of Federal Regulations under *40CFR* §432, "Subpart K – Poultry First Processing" requires and provides, in relevant part:

"New and reissued NPDES permits to direct dischargers must include these effluent limitations, and the permits must require immediate compliance with such limitations. If the permitting authority wishes to provide a compliance schedule, it must do so through an enforcement mechanism." (*69 FR 54536, Part XII.A.1*)

FINDINGS

The referenced NPDES Permit DE000086 became effective on June 1, 2004, and required run-off from the animal holding area to be monitored at a place designated "Outfall 002." Monitoring results since then indicate that the actual run-off will not immediately meet the new limits for Outfall 002 in the NPDES permit, as public noticed on August 4, 2010.

Considering the scope of improvements that will be necessary for the animal holding run-off to achieve compliance with the new Outfall 002 limits, the Department finds that Mountaire should be provided sufficient time to meet these new requirements.

CONCLUSION

The Department has determined that Mountaire Farms should be provided a Schedule of Compliance for achieving the new requirements of the re-issued NPDES Permit No. DE0000086 for Outfall 002. The permittee must achieve those requirements as soon as possible but no later than three years from the re-issued permit effective date.

NOTICE OF CONCILIATION AND ORDER

In consideration of the foregoing findings, notice is hereby given that it is proposed, pursuant to 7 Del. C. §6005 (b)(2) and 40CFR §432, "Subpart K – Poultry First Processing," Mountaire shall achieve compliance with NPDES Permit No. DE0000086 limits for Outfall 002 in accordance with the following:

Schedule of Compliance

1. The permittee shall comply with the requirements of NPDES Permit No. DE0000086 for Outfall 002 as soon as possible **but in no event** later than the dates set forth in the following schedule:
 - a. No later than one (1) year after the effective date of this permit, the permittee shall submit a proposal to the Department describing plans and including a schedule for achieving compliance with the final effluent limits for Outfall 002. That proposal is subject to the written approval of the Department.
 - b. No later than two (2) years after the effective date of this permit, the permittee shall submit an annual report to the Department describing progress towards achieving compliance with the final effluent limits for Outfall 002.
 - c. No later than three (3) years after the effective date of this permit, the permittee shall achieve compliance with the final effluent limits for Outfall 002.
2. No later than 14 calendar days following a date identified in the above schedule of compliance, the permittee shall submit either a report of progress or, in the case of specific actions being required by identified dates, a written notice of compliance

or noncompliance. In the latter case, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

FORCE MAJEURE

If any *Force Majeure* Event occurs that causes or may cause a delay or impediment to performance by Mountaire, its contractors, or any entity controlled by Mountaire in complying with any provision of this Notice due to a cause or causes that are outside Mountaire's control and could not be avoided by the exercise of due care, Mountaire shall notify the Department in writing as soon as practicable or, in any case, within twenty (20) business days of when Mountaire first knew of the event or should have known of the event by the exercise of due diligence. In its written notice, Mountaire specifically shall reference this provision of this Notice and describe the anticipated length of time the delay may persist, the cause or causes of the delay, and the measures taken or to be taken by Mountaire to prevent or minimize the delay and the schedule by which those measures will be implemented. Mountaire shall adopt all reasonable measures to avoid or minimize such delays, and the Department shall provide Mountaire with such extension of time as Mountaire reasonably estimates is needed to fully perform its obligations described herein. Unanticipated or increased costs and expenses associated with the performance of Mountaire's obligations under this Notice shall not constitute circumstances beyond Mountaire's control or serve as a basis for an extension of time.

Failure by Mountaire to comply with the notice requirements of the immediately preceding paragraph shall render this section voidable by the Department as to the specific event for which Mountaire failed to comply with such notice requirements. And if voided, it shall be of no effect as to the particular event involved.

ENFORCEMENT

In the event Mountaire fails to meet the deadlines as established in the final and effective Notice or fails to complete any work plan required by the Notice, the Department reserves the right to bring additional administrative, civil, or criminal enforcement actions against Mountaire pursuant to 7 Del. C. § 6005.

PUBLIC HEARING

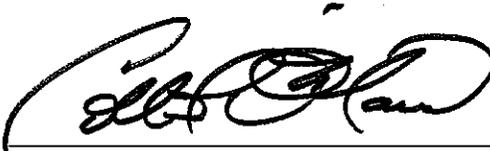
This Notice shall become effective and final unless the Secretary receives from Mountaire, no later than thirty (30) days from receipt of this Notice, a written request for a public hearing on these matters as provided in 7 Del.C. § 6005(b)(2). In the event Mountaire requests a hearing, the Secretary reserves the right to withdraw this Notice and to take additional enforcement

actions regarding these and other potential violations at the Mountaire facility, including but not limited to, the imposition of civil penalties and recovery of the Department's costs and attorneys' fees. The Department does not otherwise intend to convene a public hearing on these matters but reserves the right to do so at its discretion.

In lieu of requesting a public hearing, Mountaire may sign the attached waiver and return it to the Department. By so doing, Mountaire waives its right to a hearing and the opportunity to appeal or contest the Notice of Conciliation and Secretary's Notice.

If you have any questions, please contact Mr. John R. DeFriece in the Surface Water Section, Division of Water, at (302) 739-9946.

Date: 3 July 2011



Collin P. O'Mara, Secretary

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cc: Kevin Maloney, Deputy Attorney General
Laura Gerard, Deputy Attorney General
Kathy Bunting-Howarth, Director, DNREC Division of Water
Robert G. Underwood, Program Manager, Division of Water
John R. DeFriece, Environmental Engineer, Division of Water
Roy W. Heineman, Paralegal, Division of Water
Jennifer M. Bothell, Enforcement Coordinator

WAIVER OF STATUTORY RIGHT TO A HEARING

Mountaire Farms of Delmarva, Inc. hereby waives its right to a hearing and its opportunity to appeal or contest this Notice of Conciliation and Secretary's Notice and agrees to perform each of the actions listed in the attached Notice within the time periods set forth therein.

Mountaire Farms of Delmarva, Inc.

Date: _____

By: _____
(Signature)

Title: _____

Name: _____
(Print)