



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

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OFFICE OF THE
SECRETARY

Secretary's Order No. 2012-W-0031

**Re: National Pollutant Discharge Elimination System Permit Renewal for Evraz
Claymont Steel, Inc. Claymont, New Castle County
Date of Issuance: August 30, 2012
Effective Date: August 30, 2012**

Background

This Order considers Evraz Claymont Steel, Inc.'s (Applicant) permit application to renew and modify a National Pollutant Discharge Elimination System (NPDES) permit,¹ Applicant operates a steel manufacturing facility at 4001 Philadelphia Pike, Claymont, New Castle County, (Facility), which discharges industrial process and stormwater into Naamans Creek and the Delaware River.

The Department's Division of Water, Surface Water Discharge Section (SWDS) prepared a draft permit as required by NPDES procedure and provided public notice. The Department received requests for a hearing. The Department held a hearing, but no one attended.

The Department's presiding hearing officer issued the attached August 2, 2012 Report of recommendations (Report), which is hereby adopted to the extent it is consistent with this Order.

¹ The Department issues federal and state permits in one permit document. The Department is authorized to issue a federal permit under federal delegation of NPDES permit administration in Delaware to the Department.

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Findings and Reasons

The record supports issuance of the permit based upon the draft permit, as the Report recommends. SWDS prepared a draft permit that will protect the surface waters from pollution and allow the Applicant continued access to needed water for its manufacturing operations.

The permit to be issued by this Order will reduce the number of discharge locations from five to four as a result of Applicant's closure of one of its storm water discharge locations. The permit also will consolidate the monitoring requirements for the remaining stormwater discharge locations along Naamans Creek, which will reduce the regulatory burden while still providing sufficient monitoring to safeguard the environment.

The written public comments raised concerns about the potential of pollutants (copper, iron, lead, manganese, mercury and zinc) to contaminate the water. The concerns are based upon air emissions from Applicant's manufacturing, which melts scrap metal in an electric arc furnace to make steel slabs. The comments raise a concern that the air emissions of pollutants may enter the receiving waters and these pollutants should be regulated in a NPDES permit. The draft permit should satisfy these concerns, which also were addressed by the Department's consent order that will regulate air emissions that could impact water quality.

The Report recommends having the Applicant as part of its next permit renewal submit a plan to further reduce the discharges and more support for eliminating its responsibility for NPDES regulation of other Outfalls and possibly all NPDES regulation. This move to reduce the discharge of industrial stormwater and process cooling water is

consistent with the purpose of the NPDES program and will reduce the Applicant's regulatory burden and potential impact on water quality.

In sum, the draft permit should be issued in final form and subject to United States Environmental Protection Agency review.

Conclusion

In sum, I adopt and direct the following as an Order of the Department:

1. The Department has jurisdiction under its statutory authority in *7 Del C. Chap 60* to make a determination in this proceeding;
2. The Department provided adequate public notice of the draft permit, and considered the public comments received;
3. The Department's record supports issuance of the permit in final form as prepared by SWDS;
4. The duly authorized Department official shall timely prepare and issue the NPDES permit consistent with this Order; and
5. The Department shall provide notice of this Order to the persons affected by this Order, as determined by the Department.



Collin P. O'Mara
Secretary

HEARING OFFICER'S REPORT

TO: The Honorable Collin P. O'Mara
Secretary, Department of Natural Resources and Environmental Control

FROM: Robert P. Haynes, Esquire
Senior Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: Application of Evraz Claymont Steel, Inc to Renew a National Pollutant Discharge Elimination System Permit for Surface Water Discharges from 4001 Philadelphia Pike, Claymont, New Castle County

DATE: August 2, 2012

I. BACKGROUND AND PROCEDURAL HISTORY

This Report reviews an administrative record and makes recommendations to the Secretary of the Department of Natural Resources and Environmental Control (DNREC or Department) on Evraz Claymont Steel, Inc's¹ (Applicant) December 31, 2007 National Pollutant Discharge Elimination System (NPDES) permit application to renew its June 16, 2003 NPDES permit. The current NPDES permit regulates Applicant's industrial discharges from its steel manufacturing plant located at 4002 Philadelphia Pike, Claymont, New Castle County (Facility).

The Department's Division of Water, Surface Water Discharge Section (SWDS) determined at a December 15, 2008 meeting with the Applicant that the application was not complete. In response, the Applicant submitted a letter and supplemental documents dated January 16, 2009, and subsequently the Department determined the application was complete.

In addition to the renewal, the Applicant seeks to modify the current permit to eliminate NPDES regulation of discharge locations that Applicant claims are not active. In addition, Applicant sought to change the NPDES regulatory responsibility for Outfall 004 because of the

¹ Claymont Steel, Inc. submitted the application.

claim that its discharges are from the commercial property, Tri-State Mall, which is located across Naamans Road from the Facility. Applicant claims that Outfall 004 is used exclusively by Tri-State Mall for stormwater discharges that are carried to the Facility via a pipe under Naamans Road.

On March 4, 2009, SWDS issued a draft permit for public notice and comment. This draft permit established the limits on the discharge of pollutants and proposed to eliminate Outfall 005 as requested by Applicant because SWDS's investigation confirmed that this Outfall was physically capped on January 7, 2009 so that it could not be used for any future stormwater discharges. The draft permit also proposes to delete Outfall 003's storm water monitoring, but would include the benchmark monitoring for Outfall 002 consistent with the Department's *Regulations Governing Stormwater Discharges Associated with Industrial Activities*. The deletion of monitoring for Outfall 003 was supported by the history of infrequent discharges and because Outfall 002's monitoring results would be substantially identical to and representative to Outfall's 003's based upon its down gradient location.

The Department received timely public comments and request for a hearing on the draft permit. Consequently, the Department determined to hold a public hearing. On April 28, 2010, the Department published public notice of a public hearing to be held June 23, 2010 at the New Castle County Community Activities Center at the Brandywine Town Center. No one attended the public hearing although a person contacted the Department after the hearing and was given more time to submit written comments, but did not. John DeFriece, P.E., the Department's expert from SWDS, developed the administrative record with documents from the Department's files.

II. RECOMMENDED RECORD OF DECISION

I recommend that the record include the verbatim transcript of the public hearing and the following documents introduced into the administrative record at the public hearing:

1. Public Hearing Draft – Public Notice
2. Public Hearing Draft – Permit (April 2010)
3. Public Hearing Draft – Fact Sheet
4. Request for hearing from Betty Lou and Beverly Chiffons
5. Request for hearing from George Lossé / Claymont Community Coalition
6. Request for hearing from Richard G. Myers / Delaware Riverkeeper Network
7. Riverkeeper e-mail exchange
8. EPA comments
9. DelTrip Report page re. Evraz
10. -PowerPoint Presentation files and public comment e-mails
 - E-mail from Dee Whildin, dated 9:30AM, 7/13/2009
 - Attachment to 9:30AM, 7/13/09 e-mail
 - E-mail from Dee Whildin, dated 10:09AM, 7/13/2009
 - Attachment to 10:09AM, 7/13/09 e-mail
11. All water monitoring Results (metals and flow)
12. Public Notice Draft – Public Notice
13. Public Notice Draft – Permit
14. Public Notice Draft – Fact Sheet
15. Current Permit
16. Current Fact Sheet
17. Application

III. DISCUSSION AND REASONS

This permit application is reviewed under the Department's regulations *Governing the Control of Water Pollution* (Regulations). 7 DE Admin 7201. I find that the draft permit, as prepared by SWDS, is consistent with the Regulations. Consequently, I recommend issuance of the draft permit attached hereto be issued as a final permit. The Department provided this draft permit to the Applicant following the public hearing and after minor changes and received no comments from the Applicant. The Department's experts have considered the modifications requested by the public comments, EPA and by the Applicant. I find that the draft permit will

adequately and reasonably protect the environment from the potential from pollution from the infrequent and periodic stormwater discharges. I also find the lack of any public attendance supports a finding the comments may have been informally resolved as a result of the settlement of the dust emissions.

The public comments concerned transport of pollutants from the site's air emissions via stormwater runoff into Naamans Creek and the Delaware River. The Department's SWDS experts consulted with the Department's Division of Air Quality that has primary regulatory responsibility over air emissions and concluded that a settlement of the air emissions would resolve the public comments concerns. Subsequently, the dust concerns were formally resolved by a Department Consent Decree.

The NPDES permit recommended to be issued is for the Facility's periodic point source discharges into Naamans Creek and the Delaware River. The current permit regulates five outfall discharge locations, but as noted above the Applicant seeks to reduce the number of outfalls. Outfall 001 is for contact, non-contact cooling water and stormwater discharges from the Facility's 11.4 acre pond located adjacent to the Delaware River. This pond is part of a closed loop cooling system, which includes both contact and non-contact cooling water, and manages the Facility's industrial stormwater. The Facility has a permit to withdraw water from its Delaware River intake, and the surface water discharge at Outfall 001 only occurs when water level in the pond reaches the upper limit of its capacity. The intake also is regulated under a NPDES permit and supplements the closed loop system when the stormwater pond does not provide sufficient cooling water. The current and draft permits have no volume limits for Outfall

001's discharge, but the draft permit's limits for pollutants effectively limit the volumetric flow from Outfall 001.

Applicant requested the NPDES permit to be modified to remove the Outfalls 002, 003 and 005. SWDS' draft permit agrees to remove Outfall 005 to reflect the physical change by Applicant closing the discharge point permanently, but does not agree to remove the other outfalls from the NPDES permit and the draft permit continues NPDES regulation of Outfalls 002 and 003 as point source discharge locations. The Applicant also requested no monitoring for Outfall 003, which SWDS agrees in its draft permit based upon the monitoring already included in the draft period. The Department's experts in SWDS agree that there will be sufficient monitoring from the monitoring of the results from down gradient Outfall 002.

As noted above, Applicant claims that Outfall 004 is used for stormwater from the Tri-State Mall. There is no question that Outfall 004 is on Applicant's property. I find that the record does not support providing Applicant any relief from NPDES regulation of Outfall 004. The record does not have sufficient information to support the removal of Applicant's NPDES responsibility and SWDS's experts also so not consider that change as warranted. The claim, even if true, that Tri-State Mall's stormwater is transported to Outfall 004 does not provide the Applicant any regulatory relief from its NPDES responsibility over Outfall 004. Moreover, the permit pragmatically focuses monitoring at Outfalls 001 and 002 to more directly measure the permittee's pollutant contributions, and not potential off-site sources at Outfall 004. The Department experts recommend continued NPDES regulation as an industrial discharge. I agree that the record supports continued regulation of Outfall 004 at this time pending more proof from the Applicant on the legal issues with Outfall 004. The Department experts indicate that they

have viewed the property and based upon their assessment I find that continued regulation of Outfall 004 as Applicant's responsibility appropriate until more information is provided by the Applicant to justify an amendment. Consequently I will rely on the Department experts' investigation, opinion, and conclusions.

In light with the purpose to eliminate discharges, I recommend that the Applicant's next renewal include a plan to further reduce the discharges, including enhanced use of the closed loop system and reduced use of any Delaware River water intake. Furthermore, Applicant should also provide more information to support its position on eliminating discharge locations or changing the responsibility for Outfall 004 to someone else.

In sum, I recommend that the record supports issuance to the Applicant of the revised draft permit attached here to.

IV. RECOMMENDED CONCLUSIONS

Based on the record identified herein, I find and conclude that SWDS should issue Applicant the federal and state NPDES permit. I recommend the Secretary adopt the following conclusions:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
2. The Department provided adequate public notice of the draft permit and provided the public with the opportunity to comment on the draft permit in a manner required by the law and regulations;
3. The Department considered the public comments on the draft permit;