



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
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DOVER, DELAWARE 19901

Office of the
Secretary

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Secretary's Order No. : 2010-CZ-0037

RE: Application of Mountaire Farms of Delaware, Inc., for a Coastal Zone Act Permit to construct and operate a Resource Recovery Facility within the existing Mountaire complex, located on the south side of State Route 24 at 29005 John J. Williams Highway, Millsboro, Delaware

Date of Issuance: **November 3, 2010**

Effective Date: **November 3, 2010**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control under 29 Del. C. §§8001 et seq., the following findings and conclusions are entered as an Order of the Secretary:

The Applicant, Mountaire Farms of Delaware, Inc., seeks a Coastal Zone Act Permit to construct and operate a resource recovery facility within the existing Mountaire complex, located on the south side of State Route 24 at 29005 John J. Williams Highway in Millsboro, Delaware. The proposed operation consists of recovering unused protein (i.e., blood, feathers, and offal) from the Mountaire Millsboro and Selbyville poultry processing plants, farms, and hatcheries, and transporting those raw materials to the resource recovery facility by tractor-trailer. Once at the resource recovery facility, those raw materials would be offloaded into receiving bins located within that facility, at which time said materials would be sized, conditioned, and hydrolyzed.

Delaware's Good Nature depends on you!

The final products (i.e., hydrolyzed feather and poultry meal and feed grade fat) would then be loaded onto trucks for shipping to a variety of points of use.

The Department requires a CZA Applicant to set forth in its application the proposed project's possible environmental impacts, including, but not limited to, any increased air emissions of pollutants, water quality/water quantity/water use, and the disposal of solid and hazardous wastes. Furthermore, any application for a CZA permit for an activity or facility that will result in any negative environmental impact shall contain an offset proposal, which will more than offset the proposed negative impacts of any proposed project.

In the present matter, Mountaire's project will produce approximately 355 pounds per day of Total Nitrogen, a substance regulated by DNREC Permit #LTS 5011-87-04. There will also be an increase in air emissions. There will be no discharges of stormwater to surface waters. Water (used for boiler steam, cooling tower makeup, scrubber makeup, and cleanup, averaging approximately 489,400 gallons per day) will be supplied through groundwater from the Columbia aquifer. There will be one dumpster load of solid waste per week consisting of aprons, shackles, knives, etc., which will be transported to the Delaware Solid Waste Authority landfill in Sussex County, Delaware, outside of the Coastal Zone. There will be no hazardous waste. Due to the fact that this proposed operation will be taking place within the existing Mountaire facility footprint, there will be no impacts to wildlife habitat. Odors will be abated through thermal oxidation.

As noted above, the Applicant has the burden to propose an environmental offset which shall more than offset the negative environmental impacts of any proposed project. With regard to the anticipated air emissions stemming from this project, Mountaire is voluntarily replacing two of the three complex boilers at the Millsboro site, and will fire the new boilers on natural gas

rather than No. 6 fuel oil. This replacement will reduce complex air emissions by approximately 71 tons per year.

In addition to the offset proposal for the aforementioned air emissions attributable to this resource recovery project, Mountaire will also upgrade and expand the existing wastewater treatment facility (“WWTF”) to decrease the Total Nitrogen being applied to crop land below current levels. The proposed upgrades to the WWTF would include abandoning the existing oxidation ditch and replacing it with a state-of-the-art Biological Nutrient Removal (BNR) system, which would be able to significantly reduce the total nitrogen concentration in the wastewater by increasing the de-nitrification capabilities of the WWTF. It is anticipated that, after the upgrade and the construction of the resource recovery facility, the annual nitrogen load from the WWTF would be 105,000 pounds annually. In contrast, the nitrogen load from 2009 was 292,000 pounds. That reduction of 187,000 pounds will provide a significant offset to the projected annual nitrogen load of 100,000 pounds from the resource recovery facility. The BNR upgrade will provide a 64% reduction in the nitrogen load.

Delaware’s CZA Regulations (9.1.6) require that, in the instance where an offset project itself requires one or more additional permits from program(s) 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.”

The Department’s Ground Water Discharges Section has met and communicated with both the Applicant and its consultant, CABE Associates, Inc., that Mountaire must submit to the Department the following documents prior to proceeding with its proposed offset project: (1) a revised Design Development Report (“DDR”); (2) technical plans and specifications for the treatment plant upgrade; and (3) a construction permit application. Due to the fact that the DDR

and plans and specifications provide extensive details and calculations about the project, the submittal of this information along with the permit application would satisfy DNREC.

The Department provided public notices of this CZA Application's submission and the determination of an administratively complete application following the Secretary's Assessment, which was signed on September 27, 2010. CZA Regulation 8.3.6 requires that the Secretary shall, within ninety (90) days of receipt of an administratively complete application, reply to the request for a CZA permit by "...either granting the permit, denying the permit, or granting the permit, but with special conditions. The Secretary shall state the reasons for his decision." In the present instance, the ninety (90) day deadline is December 27, 2010. The Applicant's consultant, CABE Associates, Inc., has indicated to the Department that the aforementioned requisite submissions can be made to DNREC's Ground Water Discharges Section on or before December 27, 2010.

A duly noticed public hearing was held on October 20, 2010, at the Millsboro Civic Center, Millsboro, Delaware. Members of the public attended the public hearing, but no comments were received from the public by the Department at that time. Representatives from the Department and the Applicant were in attendance at this hearing, and made presentations to develop the record, including, but not limited to, six (6) letters of support for this project from various State Legislators and State Agencies. Hearing Officer Lisa A. Vest, in a report dated November 1, 2010 ("Report"), and appended hereto and incorporated herein, recommended approval of this Coastal Zone permit, subject to the standard and reasonable conditions in a CZA permit that are included to protect Delaware's precious environment.

I find and conclude that the record developed in this matter supports approval of issuing the Applicant a CZA permit, as recommended in the aforementioned Report. Based on the

record, and the technical expertise of the Department's personnel who assisted in this application, the record supports approval of Mountaire's application for the permit, as consistent with the CZA and its regulations.

I find that Mountaire's permit application is consistent with the CZA, which is to balance the economic and environmental interests of the State of Delaware. The issuance of the aforementioned permit, along with the Applicant's subsequent procurement of the requisite additional permits in order to proceed with construction and operation of the upgraded WWTF facility, will allow Mountaire to construct and operate a resource recovery facility within its existing complex, as proposed in its application. Additionally, this project will economically benefit the State of Delaware by (1) solidifying the jobs of over 3,500 employees at Mountaire's existing Delaware plants; (2) creating in excess of thirty (30) additional manufacturing jobs once the new facility is completed; (3) creating an estimated 308 construction jobs during the construction phase of this project; and (4) infusing approximately \$5,600,000 into Delaware's economy with the purchase of the necessary construction supplies and services here in Delaware.

Accordingly, I direct that a conditional permit be issued to the Applicant, and enter the following findings and conclusions:

1. The Department has jurisdiction under its statutory authority to issue a CZA Permit to the Applicant, subject to reasonable permit conditions deemed appropriate and consistent with the CZA's purposes;
2. The Department provided adequate and lawful public notice of the Coastal Zone Act Application of Mountaire Farms of Delaware, Inc., and of the public hearing held on

3. The permit approved by this Order is for production/manufacturing activities which will take place within the defined Coastal Zone of Delaware, and is for the expansion of existing manufacturing uses of Mountaire Farms of Delaware, Inc., which requires a CZA permit for the same, to wit: to construct and operate a resource recovery facility within the existing Mountaire Farms of Delaware, Inc. complex, located on the south side of State Route 24, east of Millsboro, as described in Mountaire's application;
4. The Department has considered the factors required to be weighed in issuing a CZA permit, and finds that the proposed use is appropriate for the Coastal Zone at the proposed location, and that it should be permitted, with conditions, as set forth in Mountaire's application;
5. The Department shall issue a permit to the Applicant, Mountaire Farms of Delaware, Inc., and said permit shall include all conditions consistent with the final Order and any other reasonable conditions that the Department includes in a CZA permit, to ensure that Delaware's environment will be protected from harm, consistent with the CZA and its regulations, to wit: the Applicant shall submit to DNREC's Ground Water Discharges Section a revised DDR, technical plans and specifications for the WWTF upgrade, and a construction permit application, on or before December 27, 2010. Furthermore, pursuant to CZA Regulation 9.3.2, any and all permits required to undertake an offset project must be obtained by Mountaire within 180 days of issuance of said CZA permit;

6. The Department has carefully considered all the statutory factors to be considered in making a decision on a CZA permit and those required to be considered under the CZA regulations;
7. The Department finds that the proposed use is appropriate for the Coastal Zone at the proposed location, and that it should be permitted as set forth in detail in the application;
8. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
9. The Department shall serve and publish its Order on all affected persons in a manner consistent with the service and publication of Secretary's Orders; and
10. This proposed project will allow the Applicant to continue to expand its manufacturing business, while reducing the overall environmental impacts to the Coastal Zone area, in furtherance of the purposes of 7 Del. C., Ch. 70.



Collin P. O'Mara
Secretary

HEARING OFFICER'S REPORT

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

FROM: Lisa A. Vest
Public Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: **Application of Mountaire Farms of Delaware, Inc., for a Coastal Zone Act Permit to construct and operate a Resource Recovery Facility within the existing Mountaire complex, located on the south side of State Route 24 at 29005 John J. Williams Highway, Millsboro, Delaware**

DATE: November 1, 2010

I. BACKGROUND AND PROCEDURAL HISTORY:

On Wednesday, October 20, 2010 at 6:00 p.m., a public hearing was held at the Millsboro Civic Center, Millsboro, Delaware, in order to receive comment on Mountaire Farms of Delaware, Inc.'s ("Mountaire", "Applicant") application for a permit from DNREC under its authority in the Coastal Zone Act ("CZA"), 7 Del. C., Ch. 70. The CZA regulates new, or the expansion of existing manufacturing uses, within Delaware's "coastal zone", which is a geographic area along the Delaware Bay and Atlantic Ocean Coastlines, as defined by the CZA. This hearing was held pursuant to the aforementioned Delaware Coastal Zone Act and Delaware's *Regulations Governing Delaware's Coastal Zone*.

Pursuant to Mountaire's CZA permit application dated July 22, 2009 (which was then supplemented with additional information at the request of the Department on October 19, 2009, June 15, 2010, August 4, 2010, and again on September 16, 2010¹), the Applicant seeks

¹ The receipt date does not determine when an application is deemed administratively complete, pursuant to CZA Regulations 8.3.1 and 8.3.6. The application was deemed administratively complete on September 27, 2010, which began a 90 day time period in which the Department must render its decision concerning this matter.

permission for a resource recovery facility, which would take place within their existing facility in Millsboro, Delaware.

The proposed operation consists of recovering unused protein (i.e., blood, feathers, and offal) from the Mountaire Millsboro and Selbyville poultry processing plants, farms, and hatcheries, and transporting those raw materials to the resource recovery facility by tractor-trailer. Once at the resource recovery facility, those raw materials would be offloaded into receiving bins located within that facility, at which time said materials would be sized, conditioned, and hydrolyzed. The final products (i.e., hydrolyzed feather and poultry meal and feed grade fat) would then be loaded onto trucks for shipping to a variety of points of use.

The Department requires a CZA Applicant to set forth in its application the proposed project's possible environmental impacts, including, but not limited to, any increased air emissions of pollutants, water quality/water quantity/water use, and the disposal of solid and hazardous wastes. Furthermore, any application for a CZA permit for an activity or facility that will result in any negative environmental impact shall contain an offset proposal. Offset proposals must more than offset the proposed environmental impacts of any proposed project².

In the present matter, Mountaire's project will produce approximately 355 pounds per day of Total Nitrogen, a substance regulated by DNREC Permit #LTS 5011-87-04. There will also be an increase in air emissions. There will be no discharges of stormwater to surface waters. Water (used for boiler steam, cooling tower makeup, scrubber makeup, and cleanup, averaging approximately 489,400 gallons per day) will be supplied through groundwater from the Columbia aquifer. There will be one dumpster load of solid waste per week consisting of aprons, shackles, knives, etc., which will be transported to the Delaware Solid Waste Authority landfill in Sussex County, Delaware, outside of the Coastal Zone. There will be no hazardous waste.

² CZA Regulation 9.0, "Offset Proposals".

Due to the fact that this proposed operation will be taking place within the existing Mountaire facility footprint, there will be no impacts to wildlife habitat. Odors will be abated through thermal oxidation.

As noted above, the Applicant has the burden to propose an environmental offset which shall more than offset the negative environmental impacts of any proposed project. With regard to the anticipated air emissions stemming from this project, Mountaire is voluntarily replacing two of the three complex boilers at the Millsboro site, and will fire the new boilers on natural gas rather than No. 6 fuel oil. This replacement will reduce complex air emissions by approximately 71 tons per year.

In addition to the offset proposal for the aforementioned air emissions attributable to this resource recovery project, Mountaire will also upgrade and expand the existing wastewater treatment facility (“WWTF”) to decrease the Total Nitrogen being applied to crop land below current levels. The proposed upgrades to the WWTF would include abandoning the existing oxidation ditch and replacing it with a state-of-the-art Biological Nutrient Removal (BNR) system. According to Ron Graeber, Environmental Program Manager with DNREC’s Ground Water Discharges Section, the BNR system will be able to significantly reduce the total nitrogen concentration in the wastewater by increasing the de-nitrification capabilities of the WWTF.

Mr. Graeber calculates that, after the upgrade and the construction of the resource recovery facility, the annual nitrogen load from the WWTF would be 105,000 pounds annually. In contrast, the nitrogen load from 2009 was 292,000 pounds. That reduction of 187,000 pounds will provide a significant offset to the projected annual nitrogen load of 100,000 pounds from the resource recovery facility. The BNR upgrade will provide a 64% reduction in the nitrogen load.

Delaware's CZA Regulations (9.1.6) require that, in the instance where an offset project itself requires one or more additional permits from program(s) 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." On October 28, 2010, this Hearing Officer requested a Technical Response Document ("TRM") from Lee Ann Walling, DNREC Chief of Planning, and Kevin Coyle, Principal Planner/CZA Coordinator, to clarify the current status of the Applicant's pursuit of all additional DNREC permits that Mountaire would be required to have in their possession prior to proceeding with the proposed upgrades to the Applicant's existing WWTF, and whether such permits will be able to be deemed administratively complete within ninety (90) days of the date of the Secretary's Environmental Assessment Report (i.e., on or before December 27, 2010).³ In response to this request, the Department provided this Hearing Officer with its TRM dated November 1, 2010, based upon information provided to Ms. Walling by Mr. Graeber.

According to Mr. Graeber, Mountaire must submit to the Department a revised Design Development Report ("DDR"), technical plans and specifications for the treatment plant upgrade, and a construction permit application prior to proceeding with their proposed offset project. In the aforementioned TRM, Ms. Walling states that, because the DDR and plans and specifications provide "...extensive details and calculations about the project, the submittal of this information along with the permit application would satisfy DNREC." Ms. Walling further notes that DNREC's Ground Water Discharges Section has met and communicated with both the Applicant and its consultant, CABA Associates, Inc., on the proposed upgrade project, and CABA has indicated to the Department that "...the company can meet the December 27, 2010

³ CZA Reg. 8.3.6 requires that the Secretary shall, within 90 days of receipt of an administratively complete application, reply to the request for a CZA permit, "...either granting the permit, denying the permit, or granting the permit, but with special conditions. The Secretary shall state the reasons for his decision." In the present instance, the ninety day deadline is December 27, 2010.

deadline.” It is further noted in the Department’s TRM that CZA Regulation 9.3.2 require that an Applicant must obtain “any and all permits required to undertake an offset project” within 180 days of issuance of the permit.

The Department provided public notices of Mountaire’s submission of its CZA Application, and the determination of an administratively complete application following the Secretary’s Assessment, which was signed on September 27, 2010. Consequently, as noted above, the Department held a public hearing on October 20, 2010, at the Millsboro Civic Center, Millsboro, Delaware.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The public hearing record consists of a verbatim transcript and nine documents introduced at the public hearing and marked by this Hearing Officer as Department Exhibits 1-23. The Department’s person primarily responsible for reviewing the CZA Application, Kevin Coyle, developed the record with the relevant documents in the Department’s files. Additionally, representatives of the Applicant were present at the hearing and offered a brief presentation on the record regarding the proposed resource recovery project. As part of the Applicant’s presentation, six (6) letters of support for this project were provided to this Hearing Officer at the time of this public hearing, and the same were entered into the formal hearing record in this matter as “Applicant Exhibit 1”. While members of the public attended the public hearing, no one presented formal comments for the public hearing record at that time.

III. DISCUSSION AND REASONS:

This application is for a permit issued under the CZA. Preliminarily, I find that Mountaire’s existing facility is located within Delaware’s “Coastal Zone”, and that the proposed project would be an expansion of existing manufacturing uses within the Coastal Zone of

Delaware. Additionally, the proposed resource recovery facility is not a prohibited use, as it will not be “heavy industry use” or an “offshore bulk transfer facility”.

The Department is to evaluate a CZA application based upon a consideration of the CZA’s balancing of economic and environmental factors. The CZA requires the Department to consider the following issues of any given proposed project: (1) environmental impacts; (2) economic impacts; (3) aesthetic impacts; (4) the number and type of supporting facilities required and their impacts on all other factors; (5) the impact on neighboring land uses; and (6) the county and municipal comprehensive plans. 7 Del.C. §7004. The record developed in this matter indicates that the Department’s experts have considered these factors, and have recommended issuance of a permit, with conditions, to the Applicant in this matter. Further, the experts recommended that the application was sufficient, and that the Applicant’s proposed environmental Offset Proposals more than offset the negative environmental impacts associated with the proposed project. I agree with the recommendations of the Department’s experts.

IV. RECOMMENDED FINDINGS AND CONCLUSIONS:

Based on the record developed, I find and conclude that the Applicant has adequately demonstrated its compliance with all requirements of the Delaware Coastal Zone Act Regulations and Statutes, as noted herein, and that the record supports approval of Mountaire Farms of Delaware, Inc.’s CZA permit application, with conditions. In conclusion, I recommend that a Coastal Zone Permit consistent with the record developed in this matter be issued by the Department in the customary form, and with appropriate conditions, to ensure continued improvement of environmental quality in the Coastal Zone of the State of Delaware.

Further, I recommend the Secretary adopt the following findings and conclusions:

1. The Department has jurisdiction under its statutory authority to issue a CZA Permit to the Applicant, subject to reasonable permit conditions deemed appropriate and consistent with the CZA's purposes;
2. The Department provided adequate and lawful public notice of the Coastal Zone Act Application of Mountaire Farms of Delaware, Inc., and of the public hearing held on October 20, 2010, and held said hearing to consider public comment on the application, in a manner required by the law and regulations;
3. The permit applied for by Mountaire Farms of Delaware, Inc., is for production/manufacturing activities which will take place within the defined Coastal Zone of Delaware, and is for the expansion of existing manufacturing uses, which requires a CZA permit for the same, to wit: to construct and operate a resource recovery facility within the existing Mountaire Farms of Delaware, Inc. complex, located on the south side of State Route 24, east of Millsboro, as described in the aforementioned application;
4. The Department has considered the factors required to be weighed in issuing a CZA permit, and finds that the proposed use is appropriate for the Coastal Zone at the proposed location, and that it should be permitted as set forth in Mountaire Farms of Delaware, Inc.'s application;
5. The Department shall issue a permit to the Applicant, Mountaire Farms of Delaware, Inc., and said permit shall include all conditions consistent with the final Order and any other reasonable conditions that the Department includes in a CZA permit, to ensure that Delaware's environment will be protected from harm, consistent with the

CZA and its regulations, to wit: the Applicant shall submit to DNREC's Ground Water Discharges Section a revised DDR, technical plans and specifications for the WWTF upgrade, as well as a construction permit application, on or before December 27, 2010;

6. The issuance of the aforementioned permit, along with Mountaire's subsequent procurement of the requisite additional permits in order to proceed with construction and operation of the upgraded WWTF facility, will allow the Applicant to construct and operate a resource recovery facility within the existing Mountaire Farms of Delaware, Inc. complex, as proposed in its application, and will economically benefit the State of Delaware by (1) solidifying the jobs of over 3,500 employees at Mountaire's existing Delaware plants; (2) creating in excess of thirty (30) additional manufacturing jobs as a result of the new facility; (3) creating an estimated 308 construction jobs during the construction phase of this project; and (4) infusing approximately \$5,600,000 into Delaware's economy with the purchase of construction supplies and services here in Delaware, as described in the application;
7. The Department carefully has considered all the statutory factors to be considered in making a decision on a CZA permit and those required to be considered under the CZA regulations;
8. The Department finds that the proposed use is appropriate for the Coastal Zone at the proposed location, and that it should be permitted as set forth in detail in the application;
9. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary; and

10. The Department shall serve and publish its Order on all affected persons in a manner consistent with the service and publication of Secretary's Orders.

 /s/ Lisa A. Vest .
LISA A. VEST
Public Hearing Officer