



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-W-0018

**Re: APPLICATION OF TO DREDGE PORTIONS OF THE DELAWARE
RIVER AND CEDAR CREEK NEAR DELAWARE CITY, NEW CASTLE
COUNTY**

Date of Issuance: June 15, 2010

Effective Date: June 15, 2010

Under the authority granted the Secretary of the Department of Natural Resources and Environmental Control (Department), the following findings, reasons and conclusions are entered as an Order of the Secretary. This Order considers an application for a permit issued under Subaqueous Lands Act, *7 Del C. Chap. 72*, and regulations thereunder, and federal Clean Water Act water quality certification. The permit is to allow the periodic dredging of portions of the Delaware River and Cedar Creek for the purpose of operating an oil refinery and associated docking and marketing terminal facilities located at 4550 Wrangle Hill Road, Delaware City, New Castle County (Facility).

Background

The application was the subject of requests for a public hearing, which was held in Delaware City on September 22, 2009. Subsequent to the public hearing, the Department issued two interim Orders, which allowed limited duration dredging of Cedar Creek's cooling water intake channel (CWIC). These Orders were issued as interim Order because of evidence of emergency low water conditions, which the Department

determined required such action prior to an entry of a final decision on the pending application, which sought approval to conduct semi-annual maintenance dredging of the CWIC and a three year cycle of dredging the navigational channel and berthing area in the Delaware River used by oil tankers supplying the Facility with unrefined petroleum products. The Department's interim Orders also directed the then Applicant, Premcor Refining Group Inc. (Premcor), a wholly owned subsidiary of Valero Energy, to submit an acceptable mitigation plan for the environmental harm resulting from the dredging, particularly related to the use of a once through cooling system and the water intake's harm to fish and other aquatic life. Premcor disputed that the adverse loss from the cooling water intake and the once through cooling system should be considered as an impact from the CWIC dredging, and never submitted an acceptable mitigation plan to the Department. Instead, Premcor appealed the second interim Order to the Environmental Appeals Board.

The Applicant ceased refining operations at the Facility in the Fall of 2009, which resulted in significant economic hardship to the Facility's employees and contractors. In early 2010, Premcor announced the pending sale of the Facility to a new owner, which would be a wholly owned subsidiary of PBF Energy, an international owner of oil refineries. As part of the transfer of ownership, the Department began extensive negotiations concerning the many air, water and other regulatory activities within the Department's jurisdiction. The negotiations culminated in a May 31, 2010 "Agreement Governing the Acquisition and Operation of Delaware City Refinery" (Agreement) between the new owner of the Facility, Delaware City Refining Company, L.L.C (DCRC) and the Department.

The Department, as part of the Agreement, transferred the pending dredging application to DCRC, which accepted the application as pending, including the record developed during the public hearing process, and the two interim Orders that directed the submission of an acceptable mitigation plan to recognize and offset the harm from the cooling water intake. In a June 14, 2010, the presiding Hearing Officer, Robert Haynes, provided a supplemental Report that recommended adoption of the draft permit prepared by experts within the Wetlands and Subaqueous Land Section in the Division of Water Resources. The Department supplemented the administrative record to reflect the change of ownership of the Facility.

Findings and Reasons

First, I adopt the Hearing Officer's initial and supplemental Report to the extent it is consistent with this Order. The initial Report, issued with the second interim Order, indicated that the administrative record supported a permit based upon Applicant submission of an acceptable mitigation plan to offset the harm from the cooling water intake, which was a harm that would result from dredging the CWIC. The Report outlined the various plans determined by the Department's experts in the Division of Water Resources and the Division of Fish & Wildlife.

The supplemental Report indicates that the proposed mitigation plan set forth in the Agreement is reasonable resolution that will provide a mitigation of the harm from the dredging. The Agreement also addresses many other air quality and water quality issues that are not relevant to this permit decision, but are nevertheless important to the Department's other areas of regulation. The supplemental Report finds that the mitigation plan is acceptable and consistent with the wetlands creation and restoration plans in the

record. The Applicant shall fund \$247,500 towards the Department's creation and restoration of wetlands. The wetlands creation and restoration concept was one method the Department's experts in the Division of Fish & Wildlife and the Division of Water Resources calculated a mitigation plan. In addition, DCRC is to provide aquatic resources mitigation compensation, which may be used for the construction of Best Technology Available (BTA) for the cooling water system. The Applicant reserves its right under the law to contest the need for any mitigation from the dredging, but the Department considers that the Agreement and this Order and the withdrawal of the appeal to the Environmental Appeals Board should resolve this issue for the duration of the permit.

The Agreement includes terms other than the dredging and these terms and conditions are considered by the Department as important to resolve and will result in improvements to the environment in the future. These terms will address the BTA used by the Facility's cooling water intake and requires that a BTA determination to be made within the first term of the Department's surface water discharge permit to be issued under the National Pollutant Discharge Elimination System (NPDES) program. that the Department administers under the state and federal water pollution control laws and regulations. DNREC also addresses the air quality environmental issues and The Agreement also addresses the air quality issues at the Facility, and will impose a facility-wide nitrogen oxide limit to regulate this important source of air pollution and set forth procedures that will allow the Department to effectively and efficiently regulate the Facility's air emissions under the federal and state air pollution control laws and regulations.

Conclusions

In sum, I adopt and direct the following as the final order of the Department:

1. The Department has jurisdiction under its statutory authority to make an interim determination in this proceeding under its state and delegated federal authority;
2. The Department provided adequate public notice of the application and the public hearing, and held the public hearing in a manner required by the law and its regulations;
3. The Department considered all timely and relevant public comments in making this interim determination and has documented a record to support its decision as identified herein and in the underlying Reports;
4. That the Applicant shall be bound by the Agreement as part of a Department agreement to issue the permits needed to comply with the permit applications assumed by the Applicant; and that
6. The Department shall publish this Order on its web site and provide such notice of it in a manner required by the law and the Department regulations.

s/Collin P. O'Mara

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 Delaware City Refining Company L.L.C., as Successor in Interest to Premcor Refining Group, Inc, to Dredge Portions of the Delaware River and Cedar Creek, Near Delaware City, New Castle County.

DATE: June 14, 2010

I. PROCEDURAL HISTORY

This Report supplements and revises the prior recommendations to the Secretary of the Department of Natural Resources and Environmental Control (Department) on Premcor Refining Group, Inc.'s¹ (Premcor) application submitted January 15, 2008 to the Department's Division of Water Resources (DWR), Wetlands and Subaqueous Lands Section (WSLS). The supplement and revisions reflect the change in the Applicant, which on May 31, 2010 sold its oil refinery and associated marketing and docking terminal facilities known as the Delaware City Refinery (Facility or DCR) to Delaware City Refining Company, L.L.C., a wholly owned subsidiary of PBF Energy. As part of the change in ownership of DCR, the Department on May 31, 2010 entered into an "Agreement Governing the Acquisition and Operation of Delaware City Refinery" dated May 31, 2010 ("Agreement"). This Agreement set forth the terms and conditions for the Department's environmental regulation of the Facility, including the pending permit application that was the subject of the prior Report. I recommend that this Agreement be included in the record to support an Order.

¹ Premcor was a wholly owned subsidiary of Valero Energy.

I prepared a Report, dated October 26, 2009, which was issued November 2, 2009 with an interim Secretary's Order No. 2009-W-0042. This Order allowed Premcor a one-time limited duration dredging of Cedar Creek's cooling water intake channel (CWIC) in order to address emergency low water conditions that threatened continued safe operation of the Facility. The Secretary's Order No. 2009-W-0042 also directed Premcor to submit an acceptable mitigation plan to offset the environmental harm from the continued operation of the cooling water intake. Premcor did not submit an acceptable mitigation plan to the Department. Instead, Premcor decided in the fall of 2009 to shut down the Facility, which caused a significant loss of jobs. The State of Delaware committed its resources, including this Department, towards re-opening the Facility. In early 2010, Premcor announced that the Facility would be sold to PBF Energy, which agreed to re-open the Facility and invest in new equipment, including pollution control equipment.

The Department entered into negotiations with the buyer to resolve the many complex regulatory issues associated with the transfer of the Facility's ownership. The sale of the Facility occurred on May 31, 2010. On June 3, 2010, I requested WSLS to provide an updated draft permit and any other documents for the administrative record to support the Department's final decision. On June 14, 2010, WSLS provided a draft permit to reflect the Department's Agreement and a list of documents to be included in the record to reflect the change of ownership of the Facility. I recommend these documents be included in the record to support the Department's decision to issue an Order directing that DCRC receive a permit based upon WSLS' draft permit. I have reviewed the draft permit and find that it is consistent with the Agreement, and will protect the environment in a manner consistent with the prior dredging permits, except that the duration of the dredging was extended to ten years based upon the same

semi-annual cycle of maintenance dredging of the CWIC and every three years for the berthing and navigational areas in the Delaware River. The deeper dredging of the Delaware River is supported by the record that indicated that it would remove harmful pollutants. I recommend that an Order be entered authorizing the issuance of a permit in the form prepared by WSLs and attached hereto. The draft permit provides the standard permit conditions included to protect the environment and recognizes for the first time that mitigation will be provided to create and restore wetlands as offset for the environmental harm from the dredging and its secondary impacts.

The Agreement transfers the pending permit application to Delaware City Refining Company, L.L.C. as the successor in interest to Premcor Refining Group, Inc. I find that such transfer is consistent with the Department's regulatory authority to act to issue a permit under the circumstances presented by the Agreement, which accepts the record developed during the public hearing process and does not change the technical support for the application. I find that WSLs's draft permit is consistent with the Department's exercise of its duties and includes terms to protect migrating fish and to monitor the water quality to ensure the dredging does not cause any pollution. The Agreement does not change the Department's duties and responsibilities to protect the environment, and I find that the draft permit will protect the environment consistent with the Department's duties and responsibilities. I find that the Agreement's date to issue the dredging permit by June 15, 2010 constitutes such an extraordinary circumstance as the time does not allow for the commencement of a new proceeding. The Department has agreed to allow the application submitted and the record developed during the public hearing process to be transferred to DCRC and DCRC accepts the transfer and has provided an acceptable level of mitigation in funding of \$247,500 towards the Department's wetlands creation and restoration

program, which resolves the impasse caused by Premcor's refusal to provide an acceptable mitigation plan. In addition, the Agreement provides environmental procedures to implement Best Technology Available and a \$1,350,000 funding towards water quality improvements, that could include reducing the water from the cooling water intake structure, which would also would reduce the loss of aquatic life from its current levels. Thus, on a whole, the Agreement, as implemented by the Subaqueous Lands Act permit and water quality certification recommended in this supplemental Report, will result in improved environmental conditions at the Facility than now are authorized by the current permits.

IV. RECOMMENDED CONCLUSIONS

Based on the record developed, I recommend that the Department approve the following conclusions:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding based upon the Agreement and the extraordinary circumstances that warranted it to issue the Applicant a permit subject to reasonable conditions related to the Department's statutory purposes;

2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;

3. The Department held a public hearing in a manner required by the law and its regulations;

4. The Department considered all timely and relevant public comments in making its determination;

5. The Department shall issue Applicant a permit for the proposed dredging consistent with the recommendation of WSLs and the proposed reasonable general and specific permit conditions recommended in its proposed permit; and

6. The Department shall publish this Order on its public web site and provide such other service and notice as it determines necessary and appropriate.

[s/Robert P. Haynes](#)
Robert P. Haynes, Esquire
Senior Hearing Officer