



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**

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OFFICE OF THE
SECRETARY

Secretary's Order No. 2016-CZ-0016

Re: Application of Mountaire Farms of Delaware, Inc. for a Coastal Zone Act Permit To Expand its Feed Mill Manufacturing Capacity at 29106 John J. Williams Highway, Millsboro, Sussex County (CZA Project No. 423P)

Date of Issuance: **April 17, 2016**

Effective Date: **April 17, 2016**

Procedural History and Findings of Fact

Pursuant to the *Coastal Zone Act* ("CZA"), 7 Del. C. Chap. 70 and other relevant authority, the Secretary of the Department of Natural Resources and Environmental Control ("Department") the Department enters the following findings of fact, reasons and conclusions as a Secretary's Order following a March 22, 2016 public hearing. This Order approves Mountaire Farms of Delaware, Inc.'s ("Applicant") December 18, 2015 CZA permit application ("Application").

The Department hearing officer, Robert P. Haynes, presided over the public hearing, which only representatives of the Applicant and the Department's CZA Program attended. The Department received one written public comment. The public comment period closed at the conclusion of the hearing. Mr. Haynes requested assistance from the CZA Program, which provided a Technical Response Memorandum ("TRM") that recommended the issuance of a CZA permit.

Mr. Haynes prepared the attached Hearing Officer's Report ("Report"), which sets forth the complete procedural history, the findings of fact, and the reasons and

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conclusions supporting his recommendation to approve the Application. The Report is adopted to the extent it is consistent with this Order.

The Applicant seeks a CZA permit to allow increased poultry feed production (“Project”) at its Millsboro feed mill, which is on the south side of Route 24 at 29106 John J. Williams Highway, Millsboro, Sussex County and is part of a chicken processing complex (“Facility”).¹ The Facility began operating in the early 1950s in the Coastal Zone.² The Applicant acquired the Facility in 2000, and in 2010 received a CZA permit to add a resource recovery plant. *See* Secretary’s Order No. 2010-CZ-0037 issued November 3, 2010.

The feed mill’s manufacturing process entails crushing corn, blending the crushed corn with soybeans, protein meals, fat, vitamins, minerals, and feed additives, applying steam to make a feed mixture, pressing the feed mixture into pellets, cooling the pellets, and storing the pellets in bins for sale to poultry farms. The Project proposes to expand its manufacturing by replacing and upgrading the Facility’s #2 pellet mill and cooler and the hammermills’ baghouse.³

As a result of the #2 pellet mill and cooler upgrade, the Facility’s total poultry feed production will increase from 100 tons an hour (“T/hr.”) to 135 T/hr. including #1 pellet mill’s 50 T/hr. capacity. The baghouse upgrade will increase the Facility’s corn crushing capacity by 25 T/hr. or from 70 T/hr. to 95 T/hr. Thus, the Project is an

¹ The Feed Mill is part of a larger chicken processing operation that includes a hatchery, a chicken processing plant, and a resource recovery plant in an unincorporated area of Sussex County east of the Town of Millsboro.

² The CZA defines the “Coastal Zone” area, and the area includes the Facility’s land south of Route 24.

³ The Department approved amendments to the equipment’s air pollution control permits in Secretary’s Order No. 2015-A-0021.

“expansion or extension of uses for which a permit is issued pursuant to this chapter...” 7
Del. C. 7004(a).

Section 8.2 of the CZA’s Regulations, *7 DE Admin. Code 101*, requires that a CZA permit application provide an environmental impact statement, which must disclose any negative environmental impacts on the Coastal Zone. The Applicant disclosed a negative air quality environmental impact from the Project’s additional emission of 12.8 tons per year of the air pollutant, Particulate Matter (“PM₁₀”), based upon the #2 pellet mill and cooler’s 11.5 T/yr. increase and the baghouse’s 1.3 T/yr. increase.

Section 9.1.1 of the CZA Regulations require that any negative environmental impact be “more than offset” with an offset project, which the Department interprets requires an offset project to provide an environment benefit of at least 1.3 times any negative impact. In addition, an offset project should be “clearly and demonstrably more beneficial to the environment in the Coastal Zone than the harm done by the negative environmental impacts associated with the permitting activities themselves.” The Applicant proposed 17 T/yr. in air emission reductions as its offset project, which the Department accepted in the Secretary’s Environmental Assessment Report signed February 12, 2016.

Secretary’s Environmental Assessment acceptance of the offset relies on CZA Regulation’s Section 9.1.2, which allows the Department to consider the Applicant’s past voluntary improvements to reduce the otherwise applicable offset. In this case, the Applicant proposed to use as an offset its 2009 voluntary air quality improvement that provided 71 T/yr. in voluntary air emission reductions from converting two boilers from oil to natural gas. The Department previously approved the use of a portion of this

balance as an offset for Applicant's CZA permit for the resource recovery plant, which used 13.4 T/yr. as an offset. See October 27, 2010 Secretary's Environmental Assessment Report included in this Record as DNREC Ex. 4. Thus, Applicant's use of 17 T/yr. from the 57.6 T/yr. balance is an appropriate air quality offset in this CZA permit application, and will leave 40.6 T/yr. for Applicant's future CZA use.

The Department finds that the Record supports the CZA permit based upon the Application, the Report, and the CZA Program's recommendation. The CZA Program carefully reviewed the Application and determined that the proposed manufacturing expansion would be consistent with the CZA and CZA Regulations. The Report also recommended approval. The Department received one public comment, as discussed below, which did not specifically oppose the Application. The Department finds that the public comment does not support any denial or modification to the draft permit prepared by the CZA Program. Consequently, the Department finds that the Project should receive the CZA permit, as drafted by the CZA Program.

Conclusions and Reasons

The Department concludes that the Applicant has met its regulatory burden to support its Application. The Department received one written public comment submitted by the Delaware League of Women Voters ("League"). This comment requests that the Department consider carbon dioxide emissions as a negative impact. The League's comment is similar to its comments presented in other recent CZA proceedings. The Department has rejected this request in its past CZA permit decisions when the League made similar comments and based upon the CZA Program's TRM, again rejects the

League's request that the Department consider carbon dioxide emissions as a negative impact in this and all CZA permit proceedings.⁴

The CZA Program's TRM and the Report reviewed the Application and the Record and both recommend that the Department issue a CZA permit for the Project. The Department concludes that the Project is consistent with the CZA's economic development and environmental protection purposes because it will allow an existing manufacturing use to expand based upon the Applicant's environmental offset to the Project's negative impact on air quality. The Applicant met its burden to provide a satisfactory environmental offset to the Project's 12.8 ton/yr. air emission increase, which will be more than offset by the Applicant's use of 17.0 T/yr. decrease in air emission from the 2009 voluntary improvement to air quality.

In addition, the CZA permit will provide a direct economic benefit from the \$5,000 paid to install the new equipment, and an indirect benefit from the Facility's expansion and increased efficiency, which will aid the poultry-processing complex that the Department determined in the CZA permit decision for the resource recovery plant supported 3,500 local jobs and provided substantial tax revenue.

The Department enters the following conclusions:

1. The Department has jurisdiction and authority to issue a CZA Permit to the Applicant;
2. The Department provided public notices in a manner required by the law of the Application's receipt, the Department's determination that the Application was

⁴ The Record in the Project's air permit proceeding indicates that the Project will have no carbon dioxide emission.

complete, and the Department's March 22, 2016 public hearing to receive public comments on the Application;

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

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

5. The Department carefully considered all the factors to be considered in making a CZA permit decision based upon the Record established in the Report; and

6. The Department shall publish legal notice of this Order and otherwise provide notice as to all affected persons in a manner consistent with the public notice required by the law and the Department's CZA Regulations, and shall publish the Order on the Department's web site.



David S. Small
Secretary

HEARING OFFICER'S REPORT

TO: The Honorable David S. Small
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 Mountaire Farms of Delaware, Inc. for a Coastal Zone Act Permit To Expand its Feed Mill Manufacturing Capacity at 29106 John J. Williams Highway, Millsboro, Sussex County (CZA Project No. 423P)**

DATE: March 31, 2016

I. PROCEDURAL HISTORY

This Report considers the Record established for the Secretary of the Department of Natural Resources and Environmental Control (“Department”) on Mountaire Farms of Delaware, Inc.’s (“Applicant”) Coastal Zone Act¹ (“CZA”) permit application (“Application”), which the Department’s CZA Program received on December 18, 2015.

The Application seeks a CZA permit for its ‘Pellet Cooler Upgrade’ (“Project”) at Applicant’s Millsboro feed mill, which is part of the poultry processing complex at 29106 John J. Williams Highway (Route 24), west of the Town of Millsboro, Sussex County.

The Department’s CZA Program published public notices of the Application’s receipt in the January 6, 2016 *The News Journal* and in the January 8, 2016 *Cape Gazette*.

On February 12, 2016, Secretary David S. Small signed the Secretary’s Environmental Assessment Report, which determined that the Application was administratively complete. The CZA Program published in the March 2, 2016 *News Journal* public notice of this determination and that the Department would hold a March 22, 2016 public hearing at the Millsboro Civic Center, 323 Wilson Highway, Millsboro.

¹ 7 Del. C. Chap. 70.

I presided over the public hearing, which no member of the public attended. The CZA Program's Kevin Coyle, AICP CEP, Principle Planner, and Applicant's representatives, Beth Sise, Environmental Manager, Scott Hevner, Process Manager, and John Wren, Director of Engineering and Environmental Services, and the Applicant's consultant Brian Lyncha, P.E., of CABA Associates attended. The public comment period closed at the conclusion of the public hearing.

Following the public hearing, I requested that the CZA Program provide their recommendation, and the CZA Program provided the attached Technical Response Memorandum ("TRM") that recommended the Department issue the CZA Program's draft permit.

This Report recommends that the Department issue the CZA Program's draft permit based upon the Record established below, particularly the CZA Program's expert advice and recommendation.

II. SUMMARY OF THE RECORD²

I based this Report upon the following Record: 1) the documents introduced as exhibits at the public hearing and identified below, 2) the verbatim transcript of the public hearing, and 3) the information in this Report and the documents and information identified herein.

At the public hearing, Mr. Coyle submitted the following documents,³ which were marked as exhibits:

- DNREC Exhibit 1-The Application;
- DNREC Exhibit 2-Affidavit of Publication in January 6, 2016 *The News Journal* of the public notice of the Application's receipt and availability;
- DNREC Exhibit 3- Affidavit of Publication in January 8, 2016 *Cape Gazette* of the public notice of the Application's receipt and availability;
- DNREC Exhibit 4- Secretary's Environmental Assessment Report on the Application, signed February 12, 2016;

² This summary merely summarizes the Record and does not establish facts.

³ The Department provides documents for the record at the public hearing solely to assist the public in making public comments. The Department does not have a burden of proof to develop a record during the public hearing.

DNREC Exhibit 5- Secretary's Environmental Assessment Report on Applicant's Application for a CZA permit for its resource recovery plant, signed September 27, 2010;

DNREC Exhibit 6- Affidavit of publication in March 2, 2016 *The News Journal* of the public notice of an administratively complete Application and that the Department would hold a March 22, 2016 public hearing on the Application.

In addition, the Department included a letter from the League of Women Voters that sought changes to the Department's CZA regulation of carbon dioxide emissions. League of Women's Voters Ex. 1. The comment did not oppose the Application.

Following the public hearing, I requested the CZA Program for its recommendation. The CZA Program provided its TRM that recommended issuance of a CZA permit attached TRM should the Secretary decide to issue a CZA permit.

III. FINDINGS OF FACT

The feed mill is located south of Route 24 and consequently is within the Coastal Zone, as defined by the CZA. The Facility began operating in the early 1950s, which predates the CZA's June 28, 1971 effective date.

The feed mill manufactures poultry feed by crushing corn, blending the crushed corn with soybeans, protein meals, fat, vitamins, minerals, and feed additives, applying steam to the ingredients make a feed mixture, pressing the feed mixture into pellets, and cooling the pellets. The pellets are stored in bins for sale to poultry farms. This manufacturing's characteristics are not a "heavy industrial use," as defined by the CZA.

The Project proposes to replace the Facility's #2 pellet mill and cooler and the hammermills' baghouse with upgraded equipment.⁴ The replacement #2 pellet mill and cooler will increase the feed production capacity by 35 tons an hour ("T/hr."), which, when combined

⁴ The Department approved amendments to the equipment's air pollution control permits in Secretary's Order No. 2015-A-0037 issued today.

with the # 1 pellet mill's 50 T/hr. capacity, will allow the feed mill to produce 135 T/hr. of poultry feed. The Project's replacement of the hammermills' baghouse will allow the hammermills to crush an additional 25 T/hr. of corn for a new increased capacity of 95 T/hr.

Section 7004(b) of the CZA requires the Department to consider the following six factors when reviewing a CZA permit application: 1) the environmental impact, 2) the economic effect; 3) the aesthetic effect; 4) the number and type of support facilities; 5) the effect on neighboring land; and 6) the county and municipal comprehensive plans.

I considered the environmental impact based upon my review of the Application and the Secretary's Environmental Assessment Report. These documents set forth a complete analysis of the above six factors. I find that these documents support that the Department properly considered the six factors and recommend that the Department issue a CZA permit for the Project.

The Record supports finding that the expanded production capacity will result in 12.8 T/yr. increase in air emission of the pollutant Particulate Matter ("PM₁₀"). The increased emission are from the increased corn particles emitted by the increased corn crushing and the increased poultry feed particles from the increased production of poultry feed. The Applicant provided a proposed environmental offset of 17 T/yr. based upon the air emissions reductions from its 2009 voluntary air quality improvement project, which the Applicant converted two boilers from oil to gas. The conversion reduced air emissions by 71 tons a year ("T/yr."). Section 9.1.2 of the CZA Regulations allows the Applicant to apply this past air quality improvement for use an air emission reduction offset in a future CZA permit proceeding. Indeed, the Applicant previously used 13.4 T/yr. of the 71 T/yr. air emission reduction balance when the Department approved issuance of a CZA permit for the resource recovery plant. *See* DNREC Ex. 5 that is the October 27, 2010 Secretary's Environmental Assessment Report for the

resource recovery plant. In this proceeding, the Secretary's Environmental Assessment Report accepted the Applicant's proposed 17 T/yr offset from the 57.6 T/yr. remaining balance of air emission reductions. Thus, the Application fully complied with the CZA Regulations and provided an environmental offset that was at least 30% more than the Project's proposed air emissions.

In sum, I find that the Department should issue the Applicant the CZA permit because the Project will allow increased feed production from the existing manufacturing use with very little negative impact on the Coastal Zone, which is more than offset by use of the Applicant's past air quality improvements. Thus, I find that the Department should issue the Applicant a CZA permit for the Project, subject to the reasonable permit conditions included in the CZA Program's draft permit, to ensure that the permit is consistent with the CZA, and the Department's regulations and policies.

IV. REASONS AND CONCLUSIONS

Based upon the above findings, I conclude that the Project is an expansion of manufacturing in the Coastal Zone, and that the Department should issue a CZA permit approving the expansion because the Applicant fully supported it burden to show that the Project is consistent with the CZA and the CZA Regulations. I conclude that the Record supports approval of the Application and the issuance of the CZA permit, as prepared by the CZA Program. I recommend that the Secretary adopt the following concluding paragraphs:

1. The Department has jurisdiction and authority to issue a CZA Permit to the Applicant;
2. The Department provided public notices in a manner required by the law of the Application's receipt, the Department's determination that the Application was complete,

and the Department's March 22, 2016 public hearing to receive public comments on the Application;

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

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

5. The Department carefully has considered all the factors to be considered in making a CZA permit decision based upon the Record established in the Report; and

6. The Department shall publish legal notice of this Order and otherwise provide notice as to all affected persons in a manner consistent with the public notice required by the law and the Department's CZA Regulations, and shall publish the Order on the Department's web site.



Robert P. Haynes, Esquire
Senior Hearing Officer



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MEMORANDUM

TO: David S. Small, Secretary

THRU: Philip J. Cherry, Director 

FROM: Kevin F. Coyle, AICP CEP, Principal Planner 

DATE: March 31, 2016

SUBJECT: Mountaire Farms of Delaware, Inc. CZA Permit Application

The Coastal Zone Act Program has reviewed the file and the public comments submitted regarding the CZA Permit Application from Mountaire Farms of Delaware, Inc. The Program has no further comments or concerns. We recommend that the CZA Permit be issued.

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Technical Response Memorandum
Mountaire Coastal Zone Permit

TO: Robert P. Haynes, Esq., Senior Hearing Officer
FROM: Philip J. Cherry, Director, Division of Energy and Climate 
DATE: March 31, 2016

You have asked for a Technical Response Memorandum specifically addressing concerns expressed by the League of Women Voters, by Peggy Schultz.

In her testimony at the public hearing, Ms. Schultz states "...As with earlier Coastal Zone permit applications, there is no mention in the paperwork of carbon dioxide emissions, even though carbon dioxide is a known air pollutant recognized by both the Governor and by the U.S. Supreme Court. The League requests that DNREC, in line with Governor Markell's Executive Order 41 and with a relevant Supreme Court ruling, immediately implement regulation of carbon dioxide as an air pollutant in its Coastal Zone application process."

Response: Since the Regulations Governing Delaware's Coastal Zone were first promulgated back in the late 1990's, DNREC has never required offsets for Carbon Dioxide (CO₂), as we typically do for other criteria pollutants such as Oxides of Nitrogen (NO_x), Sulfur Dioxide (SO₂), Particulates (PM) or Volatile Organic Compounds (VOC's). This is due to several reasons as follows:

- A. CO₂ was not legally considered a contaminant at the time the regulations were adopted and the concept of offsets was developed.
- B. CO₂ was not considered in the goals and indicators effort conducted in the late 1990's, nor was climate change or Sea Level Rise (SLR).
- C. While it's clear CO₂ is now considered a contaminant of global significance, its release in Delaware's air is not a health concern for Delaware and does not significantly impact air or water quality in Delaware's Coastal Zone, or attainment of national or state air quality standards. Its release into the environment has no effect on the immediate surrounding community, as is the case for pollutants like NO_x, SO₂, PM and VOC's. The Coastal Zone program, therefore, treats CO₂ differently than other pollutants, and has since the regulations were adopted.
- D. We fully recognize that CO₂ emissions contribute to global warming, ocean acidification, SLR and other Climate concerns, some of which can impact our Coastal Zone; however, to make a change now, 17 years since promulgation of the

regulations, would require a formal amendment of the regulations, and we are reluctant to take that action at this time.

- E. Unlike many other contaminants for which we require offsets, there is no commercially available treatment technology for CO₂, making it difficult for industries in the Coastal Zone to impact their CO₂ emissions, other than to reduce the combustion of fuels, which may or may not be possible.

For the above reasons, we do not require offsets for CO₂ when considering coastal zone applications.

**DELAWARE
COASTAL ZONE ACT
PERMIT**

NUMBER: 423

ISSUED TO: Mountaire Farms of Delaware, Inc.

TO PERMIT: The construction and operation of a new pellet cooler in the existing feed mill and replace the existing bag house on the hammermill within the existing Mountaire complex, located on the south side of State Route 24, east of Millsboro.

SITE LOCATION: 29005 John J. Williams Highway, Millsboro, Delaware

Conditions Incorporated and Made Part of this Permit:

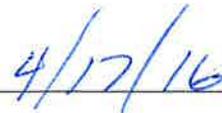
Standard:

1. This permit is conditional upon the Permittee's compliance with all other applicable permit requirements, regulations and laws of the State of Delaware.
2. Issuance of this permit does not relieve the Permittee of the legal obligation of complying with all building permits, subdivision and other applicable code requirements of the county or municipality wherein the permitted project is located.
3. If there are significant deviations from the plan and operations approved by the Secretary, the Permittee shall notify the Secretary as soon as possible. This permit may be revoked and a new permit application required if the Secretary deems the deviation to substantially change the nature of scale of the project and to be of actually or probably harm to the purposes of the Coastal Zone Act.

Signature: _____


David S. Small, Secretary

Date: _____



Department of Natural Resources & Environmental Control