



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

OFFICE OF THE
SECRETARY

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DOVER, DELAWARE 19901

PHONE: (302) 739-9000
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Secretary's Order No. 2016-W-0031

Re: Allen Harim Foods, LLC's Application for a Permit to Construct Phase II Upgrade to its Harbeson Poultry Processing Plant's Wastewater Treatment Facility at 18752 Harbeson Road, Harbeson, Sussex County

Date of Issuance: August 18, 2016

Effective Date: August 18, 2016

Background and Procedural History

Pursuant to 7 Del. C. §§6003, 6004, 6006(4) and other relevant authority, the Secretary of the Department of Natural Resources and Environmental Control ("Department") issues this Order approving Allen Harim Foods, LLC's ("Applicant") November 23, 2015 Application ("Application").

The Department's Division of Water, Surface Water Discharge Section ("SWDS") reviewed the Application, which seeks permission to upgrade the Harbeson Poultry Processing Plant's wastewater treatment facility located at 18752 Harbeson Road, Harbeson, Sussex County ("Facility"). The proposed upgrade, called Phase II Upgrade and Expansion ("Phase II") of the treatment system, would construct improvements to meet the requirements established in Secretary's Order No. 2015-W-0046 ("2015 Order").

The 2015 Order approved a permit to construct the Facility's Phase I Upgrade and Expansion of the treatment system. It also approved the issuance of a renewed and

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amended National Pollutant Discharge Elimination System (“NPDES”) permit, which required significant reductions in the Facility’s discharge of pollutants following a reasonable forty-two month period to complete the treatment system’s upgrades. These reductions include an 84% reduction in the amount of nitrogen allowed to be discharged and a 65% reduction in the allowable phosphorous. The permit also includes reductions in ammonia and concentrations of total suspended solids and oil and grease from the Facility’s discharges to Beaverdam Creek, a tributary of the Broadkill River. The new limits are consistent with the Total Maximum Daily Loads (“TMDL”) established for the Broadkill River.

The Department properly provided public notice of the Application and thereafter received one public comment that also requested a public hearing. The Department properly provided public notice of a June 9, 2016 public hearing held at the Milton Public Library, Milton, Sussex County before the Department’s presiding hearing officer, Robert P. Haynes. Approximately forty persons attended and six persons provided comments at the hearing.

The SWDS prepared a Technical Response Memorandum (“TRM”), which recommended that the Department issue the SWDS prepared construction permit attached to the TRM. The TRM also responded to the public comments, which raised issues with the Facility’s operation and opposed the Application on grounds that were unrelated to the Application such as the odor, traffic and noise from the poultry processing operations.

Mr. Haynes prepared the attached report of recommendations (“Report”), which reviews the full procedural history, summarizes and establishes the Record, proposes findings of fact, addresses the issues raised by the public comments, and provides reasons

and conclusions for the recommendation. The Report recommends that the Department approve the Application and issue the Permit consistent with the SWDS' TRM, which Mr. Haynes attached to the Report.

FINDINGS OF FACT

The Department finds that the Record, as established in the Report, supports the approval of the Application and the issuance of the permit consistent with the draft SWDS submitted with its TRM. The Department adopts the Report to the extent it is consistent with this Order.

The Application and the SWDS's TRM provide sufficient support in the record for this Order. The Application sets forth the proposed construction plans signed and sealed by a Delaware licensed engineer. The SWDS experts also reviewed the construction plans and confirmed that the plans are consistent with sound engineering practices.

The construction permit for Phase II that this Order approves is to add a Biological Nutrient Removal ("BNR") upgrade to the treatment process. The specific equipment will include the following: 1) a new nitrification reactor tank with diffused aeration equipment and air supply blowers; 2) a new anoxic reactor tank with jet recirculation pump and jet header mixing system; 3) a new aerobic reactor tank with diffused aeration equipment and air supply blowers and with mixed liquor flow division unit for final clarifiers; 4) a retrofit of an existing tank into a new waste sludge storage tank; 5) a new travelling bridge tertiary sand filters for post treatment of final clarifier effluent; 6) a new screw press for mechanical dewatering of excess thickened bio-solids pumped from the two sludge storage tanks; and 7) a new building for the new blowers,

pumps, tertiary filter, chemical equipment, an operator office, bathroom and lab. The Applicant believes the Phase I and II upgrades will allow the Facility to meet the new NPDES limits, which are set forth below along with the current permit limits that will remain in effect until the end of the forty-two month construction period that the NPDES permit authorized:

Summary of New NPDES Permit Limits for Pollutants v Old Limits				
Parameter	Units	Old Limit	New Limit	Change (+/- %)
BOD5 ¹	lbs/day	114	104.3	- 9%
	mg/L	16	6.25	- 61%
TSS ²	lbs/day	152	152	---
	mg/L	20	9.1	- 55%
Oil & Grease	lbs/day	68	83	+ 22%
	mg/L	8	5	- 38%
Total Nitrogen	lbs/day	467	73	- 84%
Total Phosphorus	lbs/day	15	5.21	- 65%
Ammonia (Summer)	lbs/day	20.5	10.4	- 50%
	mg/L	4	0.62	- 85%
Ammonia (Winter)	lbs/day	35	10.4	- 70%
	mg/L	4	0.62	- 85%

The scope of the Department's review of a construction permit application is to determine if it meets acceptable engineering standards. The Application reflects Applicant's professional and business judgment of the design and the equipment that should meet the new limits in the NPDES permit. The Department's experts in SWDS have determined that the Application satisfies acceptable engineering standards. In the

¹ 5 day Biological Oxygen Demand

² Total Suspended Solids

SWDS TRM, the experts recommend approving the Application and issuing the permit that was included with SWDS' TRM.

As the above changes indicate, the NPDES permit requires extensive upgrades to the Facility's treatment process in order to meet the new more stringent NPDES permit limits. Once the new NPDES permit limits go into effect following the forty-two month construction period, the Department expects that Beaverdam Creek's water quality will improve. Thus, the Department finds approval of the Application should allow the Applicant to construct the needed upgrades within the NPDES permit's forty-two month construction period.

REASONS AND CONCLUSIONS

The above findings support the approval of the Application and the issuance of the SWDS drafted construction permit. The public comments do not provide any evidence to support denial of the permit or meritorious comments to support including any special permit condition. None of the public comments claimed that the Application's engineering was flawed, or that the proposed construction would not work as designed, instead, most of the public comments raised issues not related to the wastewater treatment plant's operation such as the debris, odor, truck traffic and noise from the Applicant's poultry processing. The comments complain about the current poultry processing operation and do not address the subject of the public hearing, which is the construction plans for the proposed Phase II upgrade of the wastewater treatment plant.

The Department regulates air emissions that may produce unpleasant odors under its air quality regulation authority, but that air quality regulation is separate from the

regulation of a wastewater facility construction permit application. The Department does not regulate traffic problems. The Department also relies on local law enforcement agencies to enforce any violations of noise ordinances or statutes.

Some public comments complained about Beaverdam Creek's water quality. The NPDES permit approved by Secretary's Order No. 2015-W-0046 regulates what the Facility may discharge into Beaverdam Creek, and this construction permit cannot change those limits. However, the construction is designed to allow the Facility's discharges to meet the NPDES permit limits, at which point the Department expects the Beaverdam Creek water quality to improve. In sum, this record does not support denial of the Application nor does it support adding any special permit conditions based upon the public comments.

The Department concludes that the Applicant provided sufficient support for its Application and adopts the position of its experts in SWDS to approve the Application, and to issue a permit subject to reasonable conditions.

The Department concludes and directs the following:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding following a public hearing pursuant to *7 Del. C. §§6003, 6004, 6006(4)* and other relevant authority;
2. The Department provided adequate public notice of the Application and the public hearing pursuant to *7 Del. C. §6004(b)*;
3. The Department considered all timely and relevant public comments in the Record, as established in the Report, prior to issuing this Order as a final decision;

4. The Record supports approval of the Application and issuance of a permit to construct consistent with the SWDS draft permit attached to the TRM, which includes reasonable conditions to protect the environment and public health; and that

5. The Department shall publish this Order on its web page and shall provide notice of this Order to the persons affected by this Order, as determined by the Department, and as required by the laws and the Department regulations.

A handwritten signature in blue ink, appearing to read "David S. Small", written over a horizontal line.

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: Allen Harim Foods, LLC's Application for a Permit to Construct Phase II Upgrade to its Harbeson Poultry Processing Plant's Wastewater Treatment Facility at 18752 Harbeson Road, Harbeson, Sussex County

Date: July 11, 2016

I. PROCEDURAL HISTORY

On November 23, 2015 Allen Harim Foods, LLC ("Applicant") submitted to the Delaware Department of Natural Resources and Environmental Control's ("Department") Division of Water, Surface Water Discharges Section ("SWDS") an Application for a wastewater facility construction permit. The Applicant seeks a permit to construct its 'Phase II Upgrade' to its Harbeson poultry processing plant's wastewater treatment facility ("Facility") located at 18752 Harbeson Road, Harbeson, Sussex County.

The proposed Phase II Upgrade construction would follow Applicant's Phase I Upgrade construction permit, which was approved in Secretary's Order No. 2015-W-0046 issued December 18, 2015 ("2015 Order"). The 2015 Order also approved Applicant's issuance of a renewed National Pollutant Discharge Elimination System ("NPDES") permit. The NPDES permit set more stringent limits on the Facility's discharges of pollutants into Beaverdam Creek and provided the Applicant forty-two months to complete the necessary upgrades to the treatment system to meet the new limits. The NPDES permit also approved the Applicant's request to increase the allowed discharges into Beaverdam Creek up to 2 million gallons per day. The Application

reflects the second and final phase of the upgrades to comply with the new NPDES permit, and this phase will add an improved nitrogen removal treatment in order to meet the NPDES permit's requirement for significant (84%) reduction in the Facility's nitrogen discharges.

On December 6, 2015, the SWDS had legal notices of the Application published in two newspapers.¹ Maria Payan, Consultant, Socially Responsible Agricultural Project requested and received an extension of time to submit public comments and she sent a January 29, 2016 email joint public comment with Joesph Meyer of the group Protecting our Indian River and this comment included a request for a public hearing.

On March 29, 2016, separate from the public hearing on the Application the Department held a public workshop to provide a forum to discuss all issues with the Applicant's poultry processing operations. At this workshop the Department provided a handout that addressed many of the public's concerns. The Department announced at the workshop that it would hold a public hearing on the Application on June 9, 2016, at the Milton Public Library, 121 Union Street, Milton, Sussex County. On May 9, 2016, the SWDS had published legal notices of the public hearing in the same newspapers used for the Application notice.

In a June 1, 2016 letter, Kenneth T. Kristl, Esquire, sought on behalf of Maria Payan and the Social Responsible Agriculture Project at least a fifteen-day extension of the public comment period that would begin when the Department produced responses to Ms. Payan's FOIA requests. I informed Mr. Kristl that I would consider all such requests at the public hearing.

¹ The Department published public notices in *The Delaware State News* and *The Cape Gazette*.

I presided over the public hearing, which approximately forty members of the public attended. Eight persons provided comments at the hearing.

The first public speaker was Maria Payan, who requested an extension of the public comment period based upon Mr. Kristl's arguments, namely, claiming that the Department failed to provide her with information that she requested pursuant to the Freedom of Information Act ("FOIA"). I denied this request because I determined that the FOIA requests went beyond the Application and that the FOIA compliance issue was not before me. Instead, the Department of Justice is representing the Department in the FOIA dispute. I indicated that I was unwilling to grant an open-ended extension, but instead I granted a one-week extension of the public comment period, which was unopposed. This ruling was based upon my review of the FOIA requests and the Department's response to them, which I found to seek documents that were not relevant to the Application. Moreover, the SWDS did produce a considerable number of documents, but again this proceeding is not to decide the merits of the FOIA matter. I directed that the Applicant respond to Ms. Payan's requests made at the public hearing for information. The Applicant provided its response in a July 7, 2016 letter.

The Department received an email public comment from during the addition one-week extension of the public comment period.

The SWDS provided its Technical Response Memorandum ("TRM") attached hereto, which recommends approval of the Application and that the Department issue the SWDS' draft permit attached to the TRM.

II. SUMMARY OF THE RECORD²

This Report establishes the following record: 1) the verbatim transcript of the public hearing; and 2) the documents identified as exhibits herein or otherwise cited in this Report.

At the June 9, 2016, public hearing, Bryan Ashby, SWDS Program Manager, provided an overview of the Application. He explained that the Application would help the Applicant meet the stringent limits in the new NPDES permit, which should improve the water quality. The improvements primarily entail the biological nutrient removal, which should reduce nitrogen discharges by 84 %. He provided for the record the following documents, which are marked as follows: DNREC Ex. Nos. 1-5- the Application, including technical specifications, plans, and final designs; DNREC Ex. 6- public notice of the Application; DNREC Ex. 7- the public comment and hearing request, and DNREC Ex. 8- the public notice of the public hearing.

The Applicant had two representatives attend the public hearing, Elio Battista, Jr., Esquire, with the law firm of Parkowski, Guerke and Swayze, and John M. Reid, of Reid Engineering. Mr. Reid is the Delaware Professional Engineer who prepared the Application. Mr. Battista provided written statements for himself and Mr. Reid, which were marked as AH Ex. Nos. 1 and 2. These statements provided general background and details on the Application and the Facility.

The first public speaker was Maria Payan, who first raised a preliminary issue with the Department's lack of a response to certain FOIA requests. She sought an extension of the public comment period, which would begin when the Department provided her with certain FOIA responses. As noted in the procedural history, I denied

² This summary does not determine any factual accuracy.

her request because it was open ended and dependent on resolving a FOIA dispute that was not before me. I granted a one-week extension, which no one opposed.

Ms. Payan's substantive comments asked two technical questions, namely, what were the sources for the Application's claims that: 1) the new process will produce a 80% carbonation Biological Oxygen Demand ("BOD") efficiency rate, and 2) that the new process will result in 100% of TKN will be nitrified. I directed that the Applicant provide the answers after the public hearing. Ms. Payan ended her comments by stating she was glad the Applicant was doing something about the water quality but that she wanted any expansion of capacity to occur only after the upgrades to the treatment process were completed.

The second public speaker was Chaz Lickman, who talked about a proposed tax to improve water quality, that the stream's water quality was not good, and that the Facility emitted a bad odor.

The third public speaker was Bob Lawson, who stated he was President of the Parks Improvement Association. He complained about the lack of someone directing traffic from the Facility, and that the Facility caused trash and produced excessive noise. He also asked about the silos that contained water and wondered if they were covered. He also mentioned the smell from the lagoon and how it adversely affected nearby property values.

The fourth public speaker was Dan Fay who complained about the truck trailer traffic. He also mentioned how Beaverdam Creek has nothing living in it. He supported the permit to improve water quality, but he did not support the expansion.

The fifth public speaker was Scott Walker, a candidate for United States Congress. He recommended that people contact him so that he could hear their concerns.

The sixth public speaker was Susan Stringfellow, who said she has lost confidence in the Department to regulate the Applicant.

The seventh public speaker was Diane Albanese, who spoke about Beaverdam Creek's poor water quality.

The eighth public speaker was State Representative Smyk, who spoke of his efforts to get improved water quality.

The Department received email comments dated May 5, 2015 from John and Carol Kane, who expressed their opposition to any increase in expansion until the treatment plant expansion occurs. They expressed concern with contamination of the aquifer caused by the discharges. In addition, I received an email dated June 17, 2016 from Ms. Wagner, who attended the public hearing. She questioned the time that the Department allowed the Applicant to construct the upgrades.

On July 7, 2016, the Applicant responded to the two questions asked at the public hearing and its response is identified as AH Ex. 3. The response indicated that the BOD removal rate relied on computer modeling, which showed a removal rate of 90%. Consequently, the Applicant's selection of an 80% removal rate is conservative. The response also indicated that the TKN rate of 100% denitrified in the anoxic reactor nos. 1A and 1B was based on the conservative approach that assumed that all the influent TRN, with the exception of that used in biomass synthesis, is converted to Nitrate, which results in the greatest amount to be denitrified by the new equipment.

The SWDS provided me with their expert advice and opinion on the Applications in the attached Technical Response Memorandum (“TRM”). SWDS recommended approval of the Application and the issuance of a permit consistent with the draft permit SWDS provided with its TRM. I will also include in the record the 2015 Order that provides background and the SWDS’ TRM that addresses some of the public comments in this proceeding. I will also include the handout that the SWDS prepared for the workshop held on issues on the poultry processing plant’s overall operations.

III. FINDINGS OF FACT

I find that the Record, as established above, supports adopting SWDS’ recommendations to approve the Application and issue a permit for the construction. The reasons for this recommendation are that SWDS’s review of the Application finds that it satisfies engineering standards. Consequently, the Department should issue the construction permit, as prepared by SWDS. This permit will allow the Applicant to install the upgrade treatment process within the forty-two month construction period provided in the NPDES permit.

The Record in support of approving the Applicant’s wastewater facility construction permit application is based upon a complete and detailed Application. Mr. Reid, a well-qualified Delaware licensed professional engineer, prepared the Application, which includes detailed plans and specifications for the Facility’s Phase II Upgrade, which will upgrade the treatment process by adding a Biological Nutrient Removal (“BNR”) process that will reduce the nitrogen discharged into Beaverdam Creek

The BNR’s process will require the following specific construction: 1) a new nitrification reactor tank with diffused aeration equipment and air supply blowers; 2) a

new anoxic reactor tank with jet recirculation pump and jet header mixing system; 3) a new aerobic reactor tank with diffused aeration equipment and air supply blowers and with mixed liquor flow division unit for final clarifiers; 4) a retrofit of an existing tank into a new waste sludge storage tank; 5) a new travelling bridge tertiary sand filters for post treatment of final clarifier effluent; 6) a new screw press for mechanical dewatering of excess thickened bio-solids pumped from the two sludge storage tanks; and 7) a new building for the new blowers, pumps, tertiary filter, chemical equipment, an operator office, bathroom and lab. The Applicant believes the Phase I and II Upgrades will allow the Facility to meet the new NPDES limits, which are set forth below along with the current permit limits:

Summary of New NPDES Permit Limits for Pollutants v Old Limits				
Parameter	Units	Old Limit	New Limit	Change (+/- %)
BOD5 ³	lbs/day	114	104.3	- 9%
	mg/L	16	6.25	- 61%
TSS ⁴	lbs/day	152	152	---
	mg/L	20	9.1	- 55%
Oil & Grease	lbs/day	68	83	+ 22%
	mg/L	8	5	- 38%
Total Nitrogen	lbs/day	467	73	- 84%
Total Phosphorus	lbs/day	15	5.21	- 65%
Ammonia (Summer)	lbs/day	20.5	10.4	- 50%
	mg/L	4	0.62	- 85%
Ammonia (Winter)	lbs/day	35	10.4	- 70%
	mg/L	4	0.62	- 85%

³ 5 day Biological Oxygen Demand

⁴ Total Suspended Solids

The scope of the Department's review of a construction permit application is to determine if it meets acceptable engineering standards. The Application reflects Applicant's professional and business judgment of the design and the equipment that Applicant expects should meet the NPDES permit's new limits. The Department's experts in SWDS have determined that the Application satisfies acceptable engineering standards. In the SWDS TRM, the experts recommend approving the Application and issuing the permit that was included with SWDS' TRM.

As the above comparison of the old and new NPDES permit limits indicates, the Applicant needed to upgrade its treatment process. The Applicant selected the BNR process in order to reduce the nitrogen in the discharges to meet the new NPDES permit limits. Once the new NPDES permit limits go into effect following the forty-two month construction period, then the Department expects that Beaverdam Creek's water quality to improve significantly. Thus, I find approval of the Application should allow the Applicant to construct the needed upgrades within the NPDES permit's forty-two month construction period.

IV. REASONS AND CONCLUSIONS

The above findings support the approval of the Application and the issuance of the SWDS drafted construction permit. The public comments do not support any denial or including any special permit condition. None of the public comments claimed that the Application's engineering was flawed, or that the proposed construction would not work as designed. Instead, most of the public comments raised issues not related to the wastewater treatment plant's operation such as the debris, odor, truck traffic and noise from the poultry processing. These comments complain about the current operation and

do not address the subject of the public hearing, which is the construction plans for the proposed Phase 2 upgrade.

The Department regulates air emissions when they require an air permit. The Phase II construction upgrade does not require an air permit. Any complaints of unpleasant odors also would be regulated by an enforcement action and not in a construction permit application proceeding. The Department does not regulate traffic problems. The Department also relies on local law enforcement agencies and local ordinances to enforce any violations of noise ordinances.

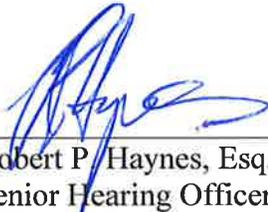
Some public comments complained about Beaverdam Creek's water quality and some recognized that the Application was proposed to improve the water quality. The NPDES permit regulates what the Facility may discharge into Beaverdam Creek, and this proceeding cannot change those limits. Nevertheless, assuming the construction does allow the Facility's discharges to meet the NPDES permit limits, then the Department expects the Beaverdam Creek water quality to improve significantly. In sum, this record does not support denial of the Application or adding any special permit conditions based upon the public comments.

I conclude that the Applicant provided sufficient support for its Application and adopts the position of its experts in SWDS to approve the Application, and to issue a permit subject to reasonable conditions.

I recommend adopting the following:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding pursuant to *7 Del. C. §§6003, 6004, 6006(4)* and other relevant authority following a public hearing;

2. The Department provided adequate public notice of the Application and the public hearing pursuant to *7 Del. C. §6004(b)*;
3. The Department considered all timely and relevant public comments in the Record, as established in the Report, prior to issuing this Order as a final decision;
4. The Record supports approval of the Application and issuance of a permit consistent with the SWDS draft permit attached to the TRM, which includes reasonable conditions to protect the environment and public health; and that
5. The Department shall publish this Order on its web page and shall provide notice of this Order to the persons affected by this Order, as determined by the Department, and as required by the laws and the Department regulations.



Robert P. Haynes, Esq.
Senior Hearing Officer
Office of the Secretary



Surface Water Discharges Section

Telephone (302) 739-9946
Fax (302) 739-8369

MEMORANDUM

TO: Robert P. Haynes, Esq. Senior Hearing Officer, Office of the Secretary

THROUGH: Virgil Holmes, Director, Division of Water *VH 7/6/16*

FROM: Bryan A. Ashby, Program Manager, Surface Water Discharges Section (SWDS) *BAA 7/6/16*

RE: Technical Response Memorandum Regarding the June 9, 2016 Public Hearing on the Application for Construction of Phase II of the Allen Harim Wastewater Treatment Plant Improvements

DATE: July 6, 2016

SWDS prepared this Technical Response Memorandum (TRM) to assist the presiding hearing officer for his Report to the Secretary of the Department of Natural Resources and Environmental Control (Department) and the final decision regarding Allen Harim's Phase II construction permit application.

The Department's Division of Water, Surface Water Discharges Section (SWDS), received an application from Allen Harim Foods, LLC., located at 18752 Harbeson Road, Harbeson, Sussex County, Delaware, to construct Phase II (Two) improvements to address Biological Nutrient Removal (BNR) upgrades of its Wastewater Treatment Facility to comply with a new NPDES permit discharge limits for Total Nitrogen, including (1) One new Nitrification Reactor #2B tank with diffused aeration equipment and air supply blowers, (2) One new Anoxic Reactor #3 tank with jet recirculation pump and jet header mixing system, (3) One new Aerobic Reactor #4 tank with diffused aeration equipment and air supply blowers and with mixed liquor flow division unit for Final Clarifiers, (4) Retrofit existing CMAS#2 tank into one new Waste Sludge Storage Tank #3, (5) New travelling bridge Tertiary Sand Filters for post treatment of Final Clarifier effluent, (6) One new Screw Press for mechanical dewatering of excess thickened biosolids pumped from the two Sludge Storage Tanks, (7) One new Wastewater Equipment Building for enclosure of new blowers, pumps, Tertiary Filter, chemical equipment and operator office, bathroom and lab. Permitting of such constructing is regulated by DE Admin C 7201 Regulations Governing the Control of Water Pollution, Section 4 Pollution Control Facilities Construction and Operation.

On May 4, 2016, the Department placed a legal notice of the Application in the News Journal, the Delaware State News and the Cape Gazette that a public hearing would be held on June 9, 2016 to provide the public an opportunity to comment on the permit application and the draft permit. The Department also provided notice on the Delaware public meeting calendar.

On June 9, 2016 a public hearing was held at the Milton Library located at 121 Union Street, Milton DE, 19968. Approximately forty people attended. Several individuals provided comments and raised concerns related to the Allen Harim Facility. The majority of these comments were unrelated to the permit that was the subject of the meeting.

The first commenter asked two very specific questions citing page numbers from Allen Harim's Final Design Summary. These questions regarded BOD and nitrate removal efficiencies, and responses were provided for the record by the facility after the hearing.

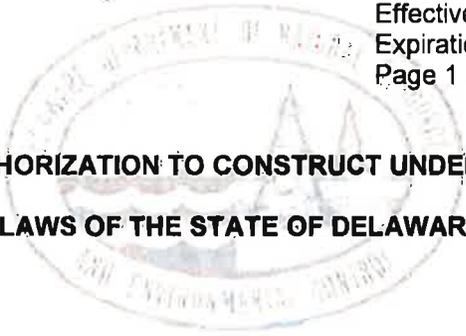
Other comments included: objections to the Department's handling of a Freedom of Information Act Request; objection to a proposed state-wide water tax; concern over the general health of the Beaver Dam Creek; suggestion that citizen water monitoring program for the Beaver Dam Creek be instituted; questioning the status of on-site wastewater ponds; request to expedite the effectiveness of the new NPDES permit limits; and concern over excessive trash, noise, and odor coming from the Allen Harim facility. These comments were not found to be materially relevant to this construction permit. However, many of these issues are being addressed outside of this permit process by Allen Harim.

One positive point was that, in spite of their issues with the facility, several speakers said that they supported the project as it would improve water quality. The installation of the Phase II upgrades will drastically improve the nutrient removal possible at this facility and will allow Allen Harim to meeting the new limits set in their NPDES permit.

Conclusions:

The permit application, final design summary, technical specifications and drawings submitted by Allen Harim Foods, LLC meets Department requirements for a Construction permit under the Regulations Governing the Control of Water Pollution. Absent two comments to be responded to by the facility, no comments provided were applicable to this permit.

The SWDS recommends that Allen Harim Foods, LLC's be issued a Construction permit for Phase II of their wastewater treatment plant upgrades. A draft permit is attached.



**AUTHORIZATION TO CONSTRUCT UNDER THE
LAWS OF THE STATE OF DELAWARE**

PART I

1. **In compliance with the provisions of 7 Del. C., §6003,**

**Allen Harim Foods, LLC
126 north Shipley Street
Seaford, DE 19973**

is authorized to construct facilities consisting of the following:

One(1) new Nitrification Reactor #2B tank with diffused aeration equipment and air supply blowers, one(1) new Anoxic Reactor #3 tank with jet recirculation pump and jet header mixing system, one(1) new Aerobic Reactor #4 tank with diffused aeration equipment and air supply blowers and with mixed liquor flow division unit for Final Clarifiers, retrofitting the existing CMAS #2 into a new Waste Sludge Storage Tank #3, new traveling bridge Tertiary Sand Filters for post treatment of Final Clarifier effluent, one(1) new Screw Press for mechanical dewatering of excess thickened biosolids pumped from the two Sludge Storage Tanks, one(1) new Wastewater Equipment Building for enclosure of new blowers, pumps, Tertiary Filter, chemical equipment and operator office, bathroom and lab and related improvements, to serve the Allen Harim Foods chicken processing facility, located at 18752 Harbeson Road, Harbeson, Sussex County, Delaware, 19951.

in accordance with plans and specifications as described below and limitations, requirements and other conditions set forth in Parts I, II and III hereof.

2. The plans and specifications consist of the following:

Thirty-eight (38) drawings* prepared by Reid Engineering Company, Inc., titled "Allen Harim Foods, LLC – Harbeson, Delaware – Wastewater Treatment System – Upgrade & Expansion – Phase Two", dated November 23, 2015, revised through October 9, 2015; the Application for the Construction of Wastewater Collection and Conveyance Systems (Phase 2), dated November 23, 2015, and any subsequent addenda thereto; the Final Design Summary of Wastewater Treatment System Upgrades & Expansion (Phase 2), dated November 23, 2015, and any subsequent addenda thereto; the Technical Specifications for Wastewater Treatment System Upgrade & Expansion (Phase 1), dated November 23, 2015, and any subsequent addenda thereto; **and related calculations.**

Bryan A. Ashby, Manager
Surface Water Discharges Section
Division of Water
State of Delaware Department of Natural Resources
and Environmental Control

Date Signed

*Sheet Nos. Cover sheet, C101 through C103, C200 through C204, F100 through F101, M101 through M103, M200 through M201, M300 through M301, M400 through M401, M500 through M501, M600 through M602, M700, M800 through M803, M900 through M901, M1000 through M1001, D100 through D200.
Sheet No. Cover, Sheet No. Index titled "Drawing Index", Sheet No. C100 titled "Wastewater treatment system existing condition site plan", Sheet No C101 titled "Location plan key sheet" Sheet No C102 titled "Location plan- southwest area", Sheet No C103 titled "Location plan northeast area", Sheet No C200 titled "Underground piping plan key sheet", Sheet No C201 titled "Underground piping plan southwest area", Sheet No C202 titled "Underground piping plan northeast area", Sheet No C203 titled "Underground piping plan area enlargement", Sheet No C204 titled "Underground piping plan area enlargement", Sheet No F100 titled "Wastewater flow schematic", Sheet No F101 titled "Hydraulic profile", Sheet No M100 titled "Southwest area plan key sheet", Sheet No M101 titled "Northeast area plan key sheet", Sheet No M200 titled "FEB/Anoxic Reactor piping plan", Sheet No M201 titled "FEB/Anoxic Reactor, sections and details", Sheet No M300 titled "Existing Nitrification Reactor No. 2A plan", Sheet No M301 titled "Existing Nitrification Reactor No. 2A section & details", Sheet No M400 titled "Nitrification Reactor No. 2B plan", Sheet No M401 titled "Nitrification Reactor No. 2B plan section & details", Sheet No M500 titled "Anoxic Reactor No. 3 plan", Sheet No M501 titled "Anoxic Reactor No. 3 section & details", Sheet No M600 titled "Aerobic Reactor No. 4 plan", Sheet No M601 titled "Aerobic Reactor No. 4 section & details", Sheet No M602 titled "Aerobic Reactor No. 4 section & details", Sheet No M700 titled "Clarifier area modifications plan", Sheet No M800 titled "Equipment building foundation & stub-up plan", Sheet No M801 titled "Equipment building equipment layout", Sheet No M802 titled "Tertiary filter equipment section & details", Sheet No M803 titled "Blower & jet pumps section & details", Sheet No M900 titled "Waste sludge storage tank plan", Sheet No M901 titled "Waste sludge storage tank section & details", Sheet No M1000 titled "Existing DAF equipment building screw press plan", Sheet No M1001 titled "Screw press sections & details", Sheet No D100 titled "Miscellaneous notes & details", Sheet No D200-General piping notes & details" and Sheet No D300 titled General Chemical notes & details"

3. The liquid waste will be discharged through the Allen Harim Harbeson Wastewater Treatment Facility which discharges treated wastewater in accordance with NPDES Permit No. DE 0000299.

A. Effluent Limitations on Pollutants Attributable to Industrial Users

The use of the constructed facility is conditioned on meeting all applicable pretreatment standards under 40 CFR, Part 403, or toxic pollutant discharge limitations under Section 307(a) of the Clean Water Act of 1977, PL 95-217.

B. Flow and Usage Limitations

This permit authorizes a daily average discharge of N/A gallons*. The flow in the system shall be measured at least every N/A.

* This permit authorizes only the construction of the wastewater collection and conveyance facilities referenced herein.

C. Monitoring and Reporting (When Required)

1. Representative sampling of the volume and nature of the monitored discharge shall be conducted at the request of the Division of Water.

2. Reporting

Monitoring results shall be reported to the:
Delaware Department of Natural Resources and Environmental Control
Division of Water, Surface Water Discharges Section
89 Kings Highway
Dover, DE 19901
302-739-9946

3. Definitions

a. "Daily average flow" means the total flow during a calendar month divided by the number of days in the month that the facility was operating.

- b. "Daily maximum flow" means the highest total flow during any calendar day.
- c. "Daily Peak Flow" means the flow which can be safely transported within the sewage system without causing an overflow or a backup into the building(s) or residence(s).
- d. "Bypass" means the intentional diversion of wastes from any portion of a treatment facility.
- e. "Measured flow" means any method of liquid volume measurement, the accuracy of which has been previously demonstrated in engineering practice, or for which a relationship to absolute volume has been obtained.
- f. "Estimate" means a value to be based on a technical evaluation of the sources contributing to the discharge including, but not limited to, pump capabilities, water meters and batch discharge volumes.

4. Recording of Results

For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

- a. The date, exact place and time of sampling or measurement;
- b. The person(s) who performed the sampling and/or measurement;
- c. The date(s) and time(s) analysis was performed;
- d. The individual(s) who performed each analysis;
- e. The analytical technique(s) or method(s) used;
- f. The results of each analysis; and
- g. Appropriate quality assurance information.

5. Records Retention

All records and information resulting from the monitoring activities required by this permit, including all records of analyses performed, all records of instrument calibration and maintenance and all charts from continuous monitoring instruments, shall be retained for three (3) years. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the Department.

6. Test Procedures

Test procedures for the analysis of pollutants shall conform to the applicable test procedures identified in 40 CFR, Part 136, unless otherwise specified in this

permit.

END OF PART I

PART II

A. Management Requirements

1. Duty to Comply

The permittee must comply with the terms and conditions of this permit. Failure to do so constitutes a violation of this permit, which is grounds for enforcement and the imposition of penalties as provided in 7 Del.C., Chapter 60, grounds for permit termination or loss of authorization to discharge or operate pursuant to this permit, grounds for permit revocation and reissuance or permit modification, or denial of a permit renewal application.

2. Notification

a. Changes in Authorized Activities

The permittee shall notify the Department of any proposed change in the activity authorized herein, of any proposed substantive change in the operation of the facility or facilities authorized herein, or of any anticipated facility expansions, production increases, or process modifications. Notification is required only when such alteration, addition or change may justify the inclusion of conditions that are absent or different from those specified in this permit. This includes, for example, the construction of additional wastewater collection, transmission or treatment facilities and changes which will result in new, different, or increased discharges of pollutants. Following such notice, the Department may require the submission of a new permit application and this permit may be reopened and modified to address the proposed changes.

b. Noncompliance

If, for any reason, the permittee does not comply with or will be unable to comply with any limitation specified in this permit, the permittee shall provide the Department with the following information, in writing, within five (5) days of becoming aware of such condition:

A description of the discharge and cause of noncompliance; and

The period of noncompliance, including exact dates and times; or, if not corrected, the anticipated time the noncompliance is expected to continue, and steps being taken to reduce, eliminate and prevent recurrence of the noncomplying discharge.

3. Facilities Operation

The permittee shall, at all times, maintain in good working order and operate as efficiently as possible all collection and treatment facilities and systems (and related appurtenances) installed or used by the permittee to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance includes, but is not limited to, effective management, adequate operator staffing and training and adequate laboratory process controls, including appropriate quality assurance procedures.

4. Adverse Impact

The permittee shall take all reasonable steps to minimize any adverse impact to waters of the State resulting from noncompliance with this permit, including such accelerated or additional monitoring as necessary to determine the nature and extent of the noncomplying discharge.

5. Bypassing

Any bypass or intentional diversion of waste streams from the facilities authorized by this permit, or any portion thereof, is prohibited, except (i) where unavoidable to prevent loss of human life, personal injury or severe property damage, or (ii) where excessive storm drainage or run-off would damage any facilities necessary for compliance with the effluent limitations and prohibitions of this permit. The permittee shall promptly notify the Department, in writing, of each such diversion or bypass.

6. Removed Substances

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewater shall be disposed of in a manner such as to prevent any pollutant from such materials from entering the surface water or groundwater.

B. Responsibilities

1. Within 90 days following the completion of construction, the permittee shall submit to the Department an "as-built" set of plans of the facility or facilities constructed, bearing the seal and signature of a licensed Professional Engineer registered in the State of Delaware.

2. Right of Entry

The permittee shall allow the Secretary of the Department of Natural Resources and Environmental Control, or his authorized representative(s), upon the presentation of credentials:

- a. To enter upon the permittee's premises for inspection of any records, flow measurements, construction or other activity authorized by this permit or any condition required under the terms of this permit; and
- b. At reasonable times, to have access to and to copy any records required to be kept under the terms and conditions of this permit; to inspect any monitoring equipment or monitoring method required in this permit; and
- c. To sample any discharge.

3. Transferability

This permit is transferable with the Department's consent, provided that an intention to transfer accompanied by a copy of the permit is provided to the Department, signed by both the transferor and the transferee at least ten (10) days prior to the actual transfer.

4. Availability of Reports

All reports submitted with the application and those reports required under the terms of this permit shall be available for public inspection at the offices of the Department of Natural Resources and Environmental Control. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in 7 Del. C., §6013. Any person who causes or contributes to the discharge of a pollutant into State waters either in excess of any conditions specified in this permit or in absence of a specific permit condition shall report such an incident to the Department required under 7 Del. C. §6028.

5. Permit Modification

This permit may be modified, suspended or revoked in whole or in part during its term for cause including, but not limited to, the following:

- a. Violation of any term or condition of this permit;
- b. Obtaining this permit by misrepresentation or failure to fully disclose all relevant facts;
- c. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized activity; or
- d. Information that the permitted activity poses a threat to human health or welfare, or to the environment.

6. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject to under 7 Del. C., Chapter 60.

7. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation.

8. Property Rights

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

9. Severability

The provisions of this permit are severable. If any provision of this permit is held invalid, or if the application of any provision of this permit to any circumstances is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

END OF PART II

PART III

A. Special Conditions

1. This permit authorizes only the construction of the wastewater facilities and related work referenced herein.
2. If wellpointing is required during construction, the wells must be installed by a licensed well driller, and a permit to construct such wells must first be obtained from the Well Permits Branch of the Water Supply Section.
3. All construction shall be in agreement with plans and specifications submitted under this project and approved by the Department of Natural Resources and Environmental Control.
4. All construction shall be in accordance with Ten States Standards and other applicable local utility construction specifications and standards.
5. Connections or additions to the proposed system, other than those proposed on the plans, will not be allowed without prior approval from the Department.

END OF PART III