

## CONCILIATORY AGREEMENT

This Conciliatory Agreement (hereinafter “Agreement”) is entered into, pursuant to 7 *Del. C.* § 6005(b)(2), by and between the Delaware Department of Natural Resources & Environmental Control (“Department”), Mountaire Farms of Delaware, Inc. (“MFODI”), and Mountaire Farms Inc. (“MFI”) (MFODI and MFI are hereinafter referred to as the “Mountaire Entities” and the Department and the Mountaire Entities are collectively referred to herein as the “Parties”).

This Agreement is the result of negotiations between the Parties to address the following alleged violations and complaints:

- (i) Discharges from Drainage Area 3 at MFODI’s Millsboro Delaware facility (“DA3 Millsboro”);
- (ii) Discharges from Drainage Area 3 at MFI’s Selbyville Delaware facility (“DA3 Selbyville”);
- (iii) Failure of 4Q Project piping weld resulting in the discharge of partially treated wastewater onto the ground near the MFODI wastewater treatment plant at MFODI’s Millsboro Delaware facility; and
- (iv) Discharge of sludge leachate from MFODI’s temporary sludge storage lagoon and elevated levels of ammonia in Monitoring Well LG-2 (“MW-LG-2”), one of three monitoring wells installed around the temporary sludge storage lagoon on MFODI’s property in Millsboro, Delaware.

The Parties have negotiated in good faith and are desirous of seeking an amicable resolution of the issues to avoid the expense, burden, inconvenience, and uncertainty of administrative proceedings or litigation, and, in exchange for the mutual considerations set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree to be bound by the terms and conditions that follow:

### **BACKGROUND**

#### **Alleged Discharge Violations – Millsboro and Selbyville:**

The Department administers and regulates stormwater discharges and process wastewater discharges from industrial facilities pursuant to the Secretary’s authority under 29 *Del. C.* Chapter 80 and 7 *Del. C.* Chapter 60. Additionally, pursuant to program authorization from the Environmental Protection Agency (“EPA”), the Department administers the National Pollution Discharge Elimination System Permit (“NPDES Permit”) Program in Delaware, codified in Delaware’s *Regulations Governing the Control of Water Pollution* (“DRGWP”).

As to the Stormwater Plan maintained by MFI for its Selbyville facility and the Stormwater Plan maintained by MFODI for its Millsboro facility, each identifies areas designated as “Drainage Area 3”<sup>1</sup> which are of concern to the Department as set forth herein:

1. DA3 Millsboro includes the area to the east side of MFODI’s Millsboro facility and includes the shed and parking lot where MFODI temporarily parks live-haul trailers loaded with chickens (“broilers”) as they await unloading at the nearby receiving dock. As a result, solid material (“Litter”) accumulates in DA3 Millsboro. During precipitation events, the first forty-five (45) minutes are captured and treated at the on-site wastewater facility. After forty-five (45) minutes of capture and treatment, MFODI manually redirects discharges from this area to flow directly through Outfall 003 into Swan Creek without treatment. The Department’s position is that this constitutes an unpermitted discharge in violation of Chapter 60.
2. DA3 Selbyville includes an area on the south side of Hosier Street directly across from MFI’s Selbyville facility receiving docks. Although live-haul trailers loaded with broilers await unloading at a special purpose building located approximately 200 meters to the southwest, MFI temporarily stages these trailers in DA3 Selbyville just prior to being moved into the receiving docks. During this staging, Litter accumulates in DA3 Selbyville. During precipitation events, flow from this “live hold staging area” discharges directly to the Town of Selbyville’s storm sewer system without treatment, which eventually discharges to surface waters. The Department’s position is that this constitutes an unpermitted discharge in violation of Chapter 60.

**Alleged 4Q Project Discharge Violation – Millsboro:**

As part of interim measures that MFODI agreed to implement to improve functionality of its wastewater treatment facility (“WWTF”) at its Millsboro, Delaware facility pending permit approval(s) for and construction of system upgrades to its WWTF, MFODI installed a series of pipes and pumps, known as the “4Q Project.” MFODI installed the 4Q Project on its primary wastewater treatment vessel for purposes of recirculating wastewater through this vessel, thereby improving treatment and reducing total nitrogen in MFODI’s wastewater.

On February 13, 2019, a single weld on the 4Q Project piping failed, causing a substantial amount of partially treated wastewater to discharge onto the ground near the WWTF and onto the adjacent spray irrigation field, in violation of Chapter 60. The discharged wastewater was reported to the Department and removed within 48 hours. An initial set of groundwater samples from June 12, 2019, did not indicate impacts to groundwater from this discharge.<sup>2</sup>

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<sup>1</sup> It is coincidence that the drainage areas in question are each designated as “Drainage Area 3.” They are unrelated.

<sup>2</sup> Mountaire provided the Department with the analytical results of samples collected June 12, 2019, from Envirocorp Labs that were included with a document referred to as “Work Plan for a site investigation as follow-up to an overflow at Mountaire Farms; Earth Data file 4940c.”

Subsequently, the Department directed MFODI to perform an additional investigation to confirm the absence of any impact to the groundwater from this failure. MFODI's consultant performed a limited assessment of the release area on September 24, 2019, in accordance with a work plan that was mutually agreed upon by the Parties.

On November 27, 2019, MFODI provided the Department with an assessment report detailing the findings of the investigation into any impacts to groundwater resulting from the 4Q Project discharge.<sup>3</sup> The assessment report concluded that the 4Q Project discharge has been effectively mitigated. Based on the assessment report, the Department is not requiring any further investigation or actions concerning the 4Q Project discharge.

**Temporary Sludge Storage Lagoon Liner Breach & Elevated NH<sub>3</sub> in MW-LG-2 – Millsboro:**

In order to expedite removal of built up solids (“sludge”) from MFODI’s WWTF’s two anaerobic treatment lagoons at its Millsboro, Delaware facility, the Department authorized MFODI to construct a temporary sludge storage lagoon in accordance with 7 Del. Admin C. § 7103, Delaware's *Guidance and Regulations Governing the Land Treatment of Waste* (“Biosolids Regulations”). On March 29, 2018, the Department’s Surface Water Discharges Section issued sludge storage permit number PS 1801-S-03 to MFODI for the operation of the aforementioned temporary sludge storage lagoon. MFODI began utilizing the temporary sludge storage lagoon in April 2018, and was projected to continue using the temporary sludge storage lagoon through December 2020.

The temporary storage lagoon was required to be constructed in accordance with the Biosolids Regulations’ requirements, which include using a lagoon base consisting of a completed 2-foot soil layer with an installed permeability of 1.0 x 10<sup>-5</sup> cm/sec. or less in combination with an artificial liner at least 30 mil in thickness with a permeability of 1.0 x 10<sup>-7</sup> cm/sec. or less. Additionally, MFODI was required to install, and installed, three (3) groundwater monitoring wells surrounding the temporary sludge storage lagoon to confirm the effectiveness of the temporary sludge storage lagoon’s construction and sludge storage activities with respect to groundwater protection. Baseline groundwater data was collected from the 3 groundwater monitoring wells surrounding the temporary sludge storage area in February 2018.

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<sup>3</sup> The assessment report was prepared by EarthData, and titled, “Results of Piezometer and Temporary Sampling Well Installation and Testing at Mountaire Farms of Delaware Millsboro, Delaware.”

Since MFODI began utilizing the temporary sludge storage lagoon in April 2018, ammonia levels in MW-LG2 showed an increasing trend and were several times higher than the baseline level measured in February 2018. A high of 83mg/l of ammonia was measured at MW-LG-2 in February 2019. It is the Department's position that increasing ammonia levels in MW-LG-2 following MFODI's commencement of temporary sludge storage activities in the new lagoon indicate that the new temporary sludge storage lagoon may be causing or contributing to the discharge of pollutants to surface or ground water, in violation of Part III.A.1 of MFODI's Sludge Storage Permit.<sup>4</sup>

Monthly sampling since March of 2019 has shown a decreasing trend in the level of ammonia in MW-LG-2; however, ammonia levels remain elevated over baseline levels in MW-LG-2. At this time, insufficient data is available for the Department to determine the specific contributing factor(s) causing the elevated ammonia levels in MW-LG-2. A hydrogeological investigation is necessary to determine the cause(s) of the elevated ammonia in groundwater near the temporary sludge storage lagoon, which MFODI agreed to perform in order to ascertain the cause of the elevated ammonia levels in MW-LG-2. MFODI's consultant performed a limited hydrogeologic assessment in the area of the sludge storage lagoon on September 24, 2019, in accordance with a work plan that was mutually agreed upon by the Parties.

In addition, on October 9, 2019, MFODI notified the Department that "gas bubbles" that had appeared beneath the synthetic liner in the sludge storage lagoon were actually comprised of both gas and liquid (i.e. water trapped between the lagoon's synthetic liner and the clay liner beneath). The Department directed MFODI to sample the liquid beneath the liner to assess if it is consistent with sludge leachate (i.e. which could indicate the synthetic liner is leaking), or if it is more consistent with stormwater or groundwater. MFODI ceased transfer of any additional materials to the temporary sludge storage lagoon and has focused all sludge disposal efforts on removing material from the temporary sludge storage lagoon. MFODI is also working with a contractor to vent the gas and drain the liquid trapped beneath the synthetic liner.

On or about November 8, 2019, MFODI provided the Department with the analytical results of the water trapped between the lagoon's synthetic liner and clay liner.<sup>5</sup> These analytical results showed that the water had 188mg/L of ammonia, 2040mg/L of total Nitrogen, and 328mg/L of Phosphorus. These significantly elevated levels of nutrients in the water are consistent with sludge leachate, which indicates that the lagoon's synthetic liner is compromised.

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<sup>4</sup> Part III.A.1. of MFODI's Sludge Storage Permit states: "The sludge storage/management facilities authorized herein shall in no way cause or contribute to the discharge of pollutants to surface water or groundwater."

<sup>5</sup> Mountaire provided the Department with the analytical results of samples collected October 24, 2019, from Envirocorp Labs that were included in a document referred to as "1905009\_1 El Standard 11 08 19 1138."

On November 27, 2019, MFODI provided the Department with an assessment report regarding the elevated ammonia levels in MW-LG-2.<sup>6</sup> This assessment report did not determine a source of the elevated ammonia levels in MW-LG-2, and did not specifically address the presence of sludge leachate beneath the lagoon's synthetic liner. However, the report recommended that MFODI:

- (a) Continue monthly monitoring in LG-1 through LG-9 until nutrient levels reach and stabilize at pre-spike levels;
- (b) Install one 2-inch diameter temporary sampling well in the vicinity of previously sampled and abandoned SB-5 to verify water quality parameters at that location. This well should be sampled monthly in general accordance with the approved sampling plan for wells LG-4 through LG-9; and
- (c) Install one 2-inch diameter temporary sampling well at the southern edge of the temporary sludge storage lagoon to verify down-gradient water quality parameters. This well should be sampled monthly in general accordance with the approved sampling plan for wells LG-4 through LG-9.

The Mountaire Entities agree to address these alleged violations and complaints as provided herein.

## **I. INTERIM BEST MANAGEMENT PRACTICES FOR MITIGATING DISCHARGES**

1. **DA3 Millsboro:** MFODI agrees to continue the following interim best management practices until the facility improvements described in Article II below are implemented:
  - a. Increase first-flush pumping from the DA3 catch basin from 30 minutes to 45 minutes following the start of a rain event to minimize the discharge of pollutants to surface waters.
  - b. Maintain and operate a sufficient number of sweeper vehicles to sweep the live hold area a minimum of four times daily. Additionally, MFODI shall use reasonable efforts to sweep the live hold area prior to forecasted precipitation events. All sweeping events shall be logged at the facility and made available to the Department upon request.

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<sup>6</sup> The assessment report was prepared by EarthData, and titled, "Results of Piezometer and Temporary Sampling Well Installation and Testing at Mountaire Farms of Delaware Millsboro, Delaware."

- c. Sample from Outfall 003 during any rain event where live hold runoff is diverted to discharge directly to surface waters. Sampling shall be performed within 15 minutes of diverting the discharge to surface waters. Samples must be analyzed for BOD5, O&G (as HEM), TSS, Ammonia (as N), Total Nitrogen, and Fecal Coliform. Results must be submitted to the Department in spreadsheet format with laboratory analytical report attached on a monthly basis in conjunction with the facility's Discharge Monitoring Report; OR, if no diversion of discharge directly to surface waters occurs for the particular month, MFODI must report "no discharge" to the Department.
2. **DA3 Selbyville:** MFI agrees to continue the following short-term best management practices until the facility improvements described in Article II below are implemented:
    - a. Acquire an additional "jockey truck" and hire an additional driver to expedite movement of live-hail trailers in the DA3 Selbyville staging area.
    - b. Manually sweep the Selbyville DA3 Staging Area at least once per hour.
    - c. Maintain and operate a sufficient number of sweeper vehicles to sweep the live hold area a minimum of four times daily.

## **II. PERMANENT DISCHARGE MITIGATION IMPROVEMENTS**

1. **DA3 Millsboro:** MFODI agrees to construct the following facility improvements:
  - a. Enclose the DA3 Millsboro live-hold area to shelter the area and its contents from runoff. This improvement project will be accomplished according to the following timeline:
    - i. Evans Construction was awarded the contract on June 5, 2019;
    - ii. All necessary approvals were received by February 2019; and
    - iii. Construction is expected to be complete by April 30, 2020.

2. **DA3 Selbyville:** MFI has reached an agreement with the Town of Selbyville to allow the use of the staging area shed in DA3 Selbyville for the temporary staging of live-haul trailers. Live-haul trailers have not been staged outside of the staging area shed since the date this verbal agreement was reached. Within 90 days of the effective date of this Agreement, MFI shall use reasonable efforts to memorialize the verbal authorization from the Town of Selbyville to use the staging area shed in a written agreement with the Town of Selbyville. MFI shall provide the Department a copy of the written agreement with the Town of Selbyville within 15 days following execution of the agreement with the Town of Selbyville.

### **III. TEMPORARY SLUDGE STORAGE LAGOON AND MW-LG-2 INVESTIGATION COMPLIANCE SCHEDULE**

#### 1. **Continuing Groundwater Monitoring and Additional Monitoring Wells:**

Consistent with the recommendations of the assessment report prepared by EarthData, titled, "Results of Piezometer and Temporary Sampling Well Installation and Testing at Mountaire Farms of Delaware Millsboro, Delaware," MFODI shall:

- (a) Continue monthly monitoring in LG-1 through LG-9 until the Department determines that monitoring is no longer required;
- (b) Within 30 days of execution of this agreement, submit all applications necessary to secure all required permits and approvals to install one 2-inch diameter temporary sampling well in the vicinity of previously sampled and abandoned SB-5 to verify water quality parameters at that location. This sampling well shall be installed and completed within 30 days of receipt of all required permits and approvals. This well shall be sampled monthly in accordance with the approved sampling plan for wells LG-4 through LG-9 until the Department determines that monitoring is no longer required; and
- (c) Within 30 days of execution of this agreement, submit all applications necessary to secure all required permits and approvals to install, install one 2-inch diameter temporary sampling well at the southern edge of the temporary sludge storage lagoon to verify down-gradient water quality parameters. This sampling well shall be installed and completed within 30 days of receipt of all required permits and approvals. This well shall be sampled monthly in accordance with the approved sampling plan for wells LG-4 through LG-9 until the Department determines that monitoring is no longer required.

2. **Temporary Sludge Storage Lagoon Mitigation and Closure:**

With respects to addressing the temporary sludge storage lagoon, MFODI shall:

(a) Complete removal of all material from the temporary sludge storage lagoon no later than May 31, 2020. All material removed from the lagoon will be disposed of properly and in accordance with all federal, state, and local requirements.

(b) On a continuing basis and in conjunction with removal of the material from the temporary sludge storage lagoon, assess the synthetic liner to determine where the liner is compromised and where the leak(s) may have occurred.

(c) Dispose of the synthetic liner within 30 days of when all material has been removed from the temporary sludge storage lagoon. The synthetic liner shall be disposed of in accordance with all federal, state, and local requirements.

(d) Within 5 days of removal of the synthetic liner, submit a work plan for the sampling and analysis of the clay liner, as well as, characterization of groundwater beneath the temporary sludge storage lagoon, to the Department for approval. Sampling of the clay liner and groundwater beneath the lagoon must be performed within 30 days of the Department's approval of the work plan and be in accordance with the approved work plan.

(e) Within 120 days of receipt of the laboratory results of the samples taken of the clay liner and groundwater beneath the temporary sludge storage lagoon, submit an assessment report and corrective action plan, which shall include assessments of, and recommendations to address: (i) removal and proper disposal of the clay liner, if necessary, (ii) the source of the elevated ammonia levels in MW-LG-2, (iii) final closure of the temporary sludge storage lagoon or conversion of the temporary sludge storage lagoon into a storm water management pond, (iv) assessment of environmental impacts and any additional investigations that may be necessary for such assessment, (v) steps to mitigate environmental impacts, if any; (vi) recommendations concerning continuing groundwater monitoring around the temporary sludge storage lagoon area; and (vii) disposal of stormwater that accumulates in the temporary sludge storage lagoon until the lagoon is closed or converted.

(f) Upon approval by the Department of the corrective action plan, complete closure or conversion of the temporary sludge storage lagoon in accordance with the corrective action plan and comply with all requirements of the approved corrective action plan.

**Continuing Obligations to Address Environmental Impacts:**

The Parties acknowledge that there are uncertainties surrounding the cause of the elevated ammonia levels in MW-LG-2 and the impacts from the breach of the lagoon's synthetic liner. MFODI agrees to perform additional investigation and corrective actions to fully resolve the elevated ammonia levels in MW-LG-2 and any issues with the temporary sludge storage lagoon as directed by the Department which may become necessary.

If an ongoing source is identified, MFODI will submit a corrective action plan within 15 days of source identification that includes a proposal to eliminate the source and mitigate any additional impact to groundwater, unless MFODI establishes that the ongoing source is unrelated to MFODI's activities.

**IV. ADMINISTRATIVE & STIPULATED PENALTIES**

1. The Mountaire Entities agree to pay an administrative penalty in the amount of \$230,000.00. This penalty is assessed for the following violations: (1) alleged violations of DRGWP arising from the unpermitted discharge of pollutants from DA3 Selbyville; (2) alleged violations of DRGWP arising from the unpermitted discharge of pollutants from DA3 Millsboro; (3) alleged violations of DRGWP arising from the unpermitted discharge of pollutants from the 4Q Project Discharge; and (4) alleged violations arising from the temporary sludge storage lagoon and elevated ammonia levels in MW-LG-2.
2. Stipulated Administrative Penalties for Missed Deadlines: In the event the Mountaire Entities miss any deadline stated herein, the Mountaire Entities shall be assessed a minimum administrative penalty of \$1,000.00 per/day for each day past the deadline until the Mountaire Entities either: (1) obtain an extension to the deadline from the Department as provided herein; or (2) satisfy their defaulted obligation. The obligation of MFI and MFODI to pay any stipulated administrative penalty that may become due shall be joint and several. The Mountaire Entities shall pay any such stipulated penalties within 7 days of receipt of the Department's demand in accordance with the procedures described in paragraph IV.3. of this Agreement.
3. The obligation of MFI and MFODI to pay the administrative penalty assessed herein, and any stipulated penalty that may become due, shall be joint and several. The Mountaire Entities shall pay the assessed administrative penalty within 7 days of this Agreement's effective date by check, made payable to the "State of Delaware" in the amount of \$230,000.00. The check shall be directed to: William J. Kassab, Deputy Attorney General, Attn: Emily Gabriellini, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904.

## V. ENVIRONMENTAL ENHANCEMENT PROJECT

1. The Mountaire Entities may offset \$115,000.00 of the administrative penalty by performing a wetlands restoration and/or enhancement project on the Indian River or Swan Creek (the "Project") with the Department's approval at a cost of at least \$115,000.00. The Mountaire Entities shall propose the Project within 180 days following the effective date of this Agreement, which proposal will include a timeline for completing the Project.

## VI. GENERAL PROVISIONS

1. Term: This Agreement shall terminate upon: (1) the Mountaire Entities' satisfactory payment of all administrative penalties that may be due under this Agreement; (2) receipt of the Department's written confirmation that the facility improvements described in Article II "Permanent Discharge Mitigation Improvements" above have been completed; (3) receipt of the Department's written confirmation that the issues concerning the temporary sludge storage lagoon and elevated ammonia levels in MW-LG-2 described in Article III above have been addressed; and (4) receipt of the Department's written confirmation that the environmental enhancement project described in Article V above has been completed, whichever shall be completed later in time.

In no event shall this Agreement extend beyond three (3) years from its effective date stated herein, unless mutually agreed to by the Parties in writing.

2. Release: The Mountaire Entities' satisfaction of their obligations under Article I, II, III, IV, and VI of this Conciliatory Agreement related to DA3 Millsboro, DA3 Selbyville, payment of the administrative penalty, and completion of the Environmental Enhancement Project shall resolve and release the Mountaire Entities from liability to the Department with respect to known past and present conditions at DA3 Millsboro, DA3 Selbyville, the 4Q Project Discharge, and the temporary sludge storage lagoon and elevated ammonia levels in MW-LG-2.

With respects to the temporary sludge storage lagoon and the elevated ammonia levels in MW-LG-2, the Department reserves the right to require the Mountaire Entities to conduct further testing or to take appropriate remedial action following the Mountaire Entities' satisfaction of their obligations under Articles III necessary to address, correct, or otherwise remediate any violations or environmental harm resulting from the temporary sludge storage lagoon or elevated ammonia levels in MW-LG-2.

Nothing in this release or this Agreement shall be construed to limit or affect the Department's right or ability to bring any action allowable by law against the Mountaire Entities for any violation(s) unrelated to those issues specifically described in this Agreement for which liability has been specifically released.

3. Breach: In the event of a breach by the Mountaire Entities of the terms and conditions of this Agreement, the Department may take such enforcement action or actions as are available to it under applicable law, including but not limited to one or more of the following: an action under 7 *Del. C.* § 6005(b)(1) for civil penalties; an action under 7 *Del. C.* § 6005(b)(2) seeking a temporary restraining order or a permanent injunction; an action under 7 *Del. C.* § 6005(b)(3) for administrative penalties; as well as recovery of the Department's costs and attorney's fees.
4. No Admission of Noncompliance: By entering into this Agreement, the Mountaire Entities do not admit to any wrongdoing, and each specifically retains and reserves the right(s) to contest any and all past, present, or future alleged violations. The Department retains and reserves the right(s) to consider all past, present, or future alleged violations in any future permitting or enforcement decisions.
5. Expenses, Costs, Attorneys Fees and Interest: The Parties shall bear their own costs, expenses, and attorney's fees incurred in connection with this Agreement.
6. Binding on Successors: It is the intention of the Parties that this Agreement shall be binding upon and enforced against the Parties and their successors, heirs, executors, administrators and assigns.
7. Governing Law; Resolution of Disputes: This Agreement shall be governed and construed under the laws of the State of Delaware. Any disputes hereunder shall be resolved in the State courts of the State of Delaware.
8. Severability: In the event that any provision (article, section, paragraph, or portions thereof) of this Agreement shall be held invalid or unenforceable for any reason, it shall not in any way invalidate, affect or impair the remaining provision(s) (articles, sections, paragraphs, or portions thereof) of this Agreement, and to this end, the provisions of this Agreement are hereby declared to be severable.
9. Authorship: No provision(s) or paragraph(s) of this Agreement shall be construed based on the authorship.

10. Executed in Counterparts: This Agreement may be executed in any number of counterparts, each of which, when executed, shall be deemed to be an original and all of which together shall constitute one and the same document.
11. Compliance with Law: Nothing in this Agreement shall relieve the Mountaire Entities of their obligation to comply with all applicable federal, state or local laws, regulations and/or permit conditions concerning operations at their respective facilities in Millsboro and Selbyville, Delaware. Additionally, unless otherwise expressly stated herein, nothing in this Agreement shall be construed as modifying the terms of any permit issued by the Department to the Mountaire Entities.

Unless specifically set forth herein, the Mountaire Entities' compliance with this Agreement does not guarantee compliance with any applicable federal, state, or local laws or regulations. Except to the extent specifically set forth herein, the Mountaire Entities' compliance with this Agreement shall be no defense to any action commenced by the Department pursuant to any such laws, regulations, or permits. Unless specifically set forth herein, nothing in this Agreement shall be construed to be a ruling on, or determination of, any issues related to any federal, state, or local permits.

12. Good Faith: The Parties agree to act in good faith and to cooperate fully with each other in carrying out the intent of this Agreement, provided that nothing in this Agreement shall alter the Department's independent statutory, regulatory, and permitting discretion, and nothing in this Agreement shall be construed to require the Department to pay or appropriate any monies or expend any funds.
13. Entire Understanding: This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement. The provisions of this Agreement supersede all prior oral and written communications, agreements and understandings of the Parties with respect to the subject matter of this Agreement.
14. Modification: The Parties acknowledge that this Agreement may not be amended except in writing executed by both Parties.

15. No Third Party Rights: This Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Agreement. This Agreement affects the rights, obligations, and duties of the Parties only. Notwithstanding any other provision of this Agreement to the contrary, nothing in this Agreement is intended to, nor shall it be interpreted or construed in a manner which shall: (a) grant any third party the right to enforce any of the terms, rights, or obligations set forth in this Agreement; (b) confer any substantive or procedural rights or privileges to any third party in relation to or arising out of any collateral civil or criminal legal proceeding; or (c) impair the legal rights of any third party; or (d) waive or otherwise affect the sovereignty of the State of Delaware or the application of 10 *Del. C.* § 4001, *et seq.* to any civil proceeding involving any officer, employee, or agent of the State of Delaware.

Notwithstanding any other provision of this Agreement to the contrary, the State of Delaware Department of Justice is not a party to this Agreement and no aspect of its legal authority is disturbed by the content herein.

16. Section Headings: Sections headings contained in this Agreement are for convenience of reference only and shall not be deemed a part of this Agreement.
17. Notices: Any notices with regards to this Agreement shall be sent via a method of mailing that provides a confirmation of delivery, such as Certified Mail, to the below listed addresses. Notice may also be sent via email to the email addresses listed below, provided the email is sent using a delivery receipt function that documents that the email was delivered to the below listed recipients on a date certain. Notices shall be deemed received on the date delivered:

- a. To the Department:

By mail to: Department of Natural Resources and Environmental Control,  
Attn: Groundwater Discharges Section, Division of Water, 89 Kings  
Highway, Dover, Delaware 19901. With a copy sent to: Delaware  
Department of Justice, Attn: Devera Scott and William Kassab, 102 West  
Water Street, Dover, Delaware 19901.

By email to:

Jennifer.Roushey@delaware.gov

John.Rebar@delaware.gov

Marlene.Baust@delaware.gov

Nicole.Smith@delaware.gov

With a copy sent to:  
Devera.Scott@delaware.gov  
William.Kassab@delaware.gov

- b. To the Mountaire Entities:

By Mail to:  
Mountaire Farms of Delaware, Inc.  
Mountaire Farms, Inc. Attn:  
Phillip Plylar,  
President  
29292 John J. Williams Highway  
Millsboro, DE 19966.

With a copy to:  
Michael W. Teichman, Esquire  
Parkowski, Guerke & Swayze, P.A.,  
1105 North Market Street, 19th Floor,  
Wilmington, DE 19801.  
mteichman@pgslegal.com

18. Extensions of Deadlines:

- a. In the event the Mountaire Entities determine that they will be unable to meet a deadline specified in this Agreement, they shall provide DNREC written notice no later than thirty (30) days prior to the deadline. The notice shall affirmatively request an extension of the deadline to a date certain by which the Mountaire Entities will complete the item for which the extension is sought and set forth: (a) the reason they anticipate they will be unable to comply with the deadline, and (b) the reasonable steps they have taken to prevent and mitigate delay. In no event shall the Mountaire Entities request that a deadline be extended by more than 120-days. The Mountaire Entities may submit subsequent extension requests if they believe they will be unable to meet the extended deadline, but in no event shall the Department extend a deadline beyond 120-days at a time.
- b. Within thirty (30) days of receipt of the Mountaire Entities' written notice specified above, the Department shall advise in writing and/or by email as specified herein whether it (i) agrees to grant the request for an extension, (ii) is denying the extension request, or (iii) is requesting additional information to evaluate the extension request.

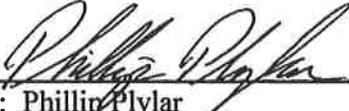
- i. If the Department requests additional information to evaluate the request, the Mountaire Entities shall reply within fourteen (14) days. Failure to respond to the Department's request for additional information shall be deemed a withdrawal of its extension request.
- ii. If the Department denies the extension request, it shall specify its reason(s).
- iii. If the Department does not respond to the extension request within thirty (30) days of receipt of the written request, the request shall be deemed granted and the deadline extended as stated in the request, but in no event shall the deadline be extended beyond 120-days.

19. Authorization: By their signatures below, the persons signing this Agreement on behalf of the Department and the Mountaire Entities acknowledge that they are fully authorized to enter into this Agreement and to bind their respective entities to the terms and conditions of this Agreement.
20. Effective Date: The effective date of this Agreement is the last date on which the Parties have all signed this Agreement.

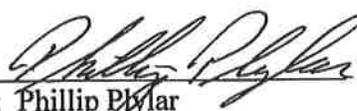
*[Signatures on following page]*

IN WITNESS WHEREOF, the Parties have executed this Conciliatory Agreement:

**MOUNTAIRE FARMS OF DELAWARE,  
INC.**

By:   
Name: Phillip Plylar  
Title: President  
Date:

**MOUNTAIRE FARMS INC.**

By:   
Name: Phillip Plylar  
Title: President  
Date:

**DELAWARE DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL  
CONTROL**

By: \_\_\_\_\_  
Name: Shawn M. Garvin  
Title: Secretary  
Date:

Approved as to form:  
William J. Kassab, I.D. No. 5914  
Deputy Attorney General  
State of Delaware, Department of Justice  
102 West Water Street  
Dover, DE 19904

IN WITNESS WHEREOF, the Parties have executed this Conciliatory Agreement:

**MOUNTAIRE FARMS OF DELAWARE,  
INC.**

**MOUNTAIRE FARMS INC.**

By: \_\_\_\_\_  
Name: Phillip Plylar  
Title: President  
Date:

By: \_\_\_\_\_  
Name: Phillip Plylar  
Title: President  
Date:

**DELAWARE DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL  
CONTROL**

By:  \_\_\_\_\_ 12/13/19  
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Title: Secretary  
Date:

Approved as to form:  
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