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Case No. S18C-06-009 ESB



EXHIBIT I



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE)
DEPARTMENT OF NATURAL)
RESOURCES &)
ENVIRONMENTAL CONTROL,)
)
Plaintiff,)
)
v.)
)
MOUNTAIRE FARMS OF)
DELAWARE, INC., a)
Delaware Corporation,)
)
Defendant.)

Case No.:

COMPLAINT

1. Plaintiff, State of Delaware Department of Natural Resources and Environmental Control (“DNREC”) has jurisdiction and authority to regulate and protect the environment and natural resources of the State of Delaware.
2. DNREC is an administrative agency of the State of Delaware established by Chapter 80 of Title 29 of the Delaware Code.
3. DNREC has been legislatively authorized to exercise the police power of the State of Delaware in order to protect the health, safety, and welfare of the citizens of the State. In doing so, DNREC enforces numerous environmental statutes and regulations, including federal delegation of administration of the Federal Resource Conservation and Recovery Act (“RCRA”) codified at 42 U.S.C. § 6901

et seq.; federal delegation of administration of the Federal Clean Water Act (the “CWA”) codified at 33 U.S.C. 1251 *et seq.*, Delaware’s water pollution permit requirements codified in Chapter 60 of Title 7 of the Delaware Code (“Chapter 60”), Delaware’s *Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems* codified at 7 Del. Admin C. § 7101, and *Delaware’s Guidance and Regulations Governing the Land Treatment of Wastes*, 7 Del. Admin C. § 7103 (together, the “Wastewater Regulations”).

4. Defendant Mountaire Farms of Delaware, Inc., (“Mountaire”) is a corporation organized and existing under the laws of the State of Delaware with a principal place of business located at 29005 John J. Williams Highway, Millsboro, Delaware 19966.

5. DNREC brings this action against defendant Mountaire for violations of Chapter 60 and the Wastewater Regulations; for failure to comply with the effluent limitation requirements of Spray Irrigation Permit DEN No. 359191, most recently renewed on July 31, 2017 (the “Spray Permit”), and Agricultural Permit No. AGU 1402-S-03, most recently renewed on June 1, 2014 (the “Land Application Permit”) (collectively, the Spray Permit and the Land Application Permit are referred to herein as the “Permits”).

6. The Superior Court has jurisdiction over the parties and subject matter of this action pursuant to 7 *Del. C.* § 6005.

FACTUAL ALLEGATIONS

7. The allegations of paragraphs 1 – 6 are incorporated by reference as if set out in their entirety.

8. Mountaire operates a poultry processing facility at 29005 John J. Williams Highway, Millsboro, Delaware (the “Facility”).

9. The Facility operates a wastewater treatment plant (the “WWTP”) for the treatment of the Facility’s process and sanitary wastewater. The Spray Permit allows Mountaire to spray irrigate reclaimed wastewater produced by the WWTP by spray irrigation onto agricultural farmland divided into thirteen spray fields located north and south of State Route 24, Millsboro, Delaware.

10. The facility is permitted to dispose of a monthly average quantity of 2.6 million gallons per day at a rate not to exceed 2.5 inches per acre averaged over a seven-day period. The facility has been designed for monthly effluent Total Nitrogen concentration of 15.6 mg/L. The total amount of nitrogen that may be applied annually to each spray field acre is 320 pounds. (The Spray Permit is attached as Exhibit A).

11. The Land Application Permit allows Mountaire to operate a land treatment system for the agriculture utilization of sludge generated by the WWTP. The Land Application permit limits the application of stabilized sludge from the

WWTP at agronomic rates specified in the Land Application Permit. (The Land Application Permit is attached hereto as Exhibit B).

12. On or about the end of August, 2017, Mountaire discovered that the WWTP was in failure due to a buildup of solids throughout the WWTP, as well as a depletion of oxygen in the aerobic portions of the WWTP (the "System Failure") caused by Mountaire's failure to maintain the WWTP. This System Failure caused Mountaire's wastewater to exceed effluent limitations contained in the Spray Permit.

13. On September 5, 2017, DNREC's Groundwater Discharge Section ("GWDS") received a notice via cover letter attached to Mountaire's July 2017 Discharge Monitoring Report ("DMR") indicating that Mountaire operations staff discovered that an effluent composite sample had been collected at an invalid sampling point that was not representative of the total combined effluent at the Facility. (Letter attached hereto as Exhibit C).

14. On September 7, 2017, the GWDS received verbal notice from the Facility's operational staff regarding the discovery of additional non-compliance items, which caused the WWTP to apply constituents in treated wastewater effluent that exceeded allowable levels in the Spray Permit. These constituents include total nitrogen, five-day biologic oxygen demand, fecal coliform, and total suspended solids.

15. The Facility continues to spray treated wastewater onto its spray fields at constituent levels that exceed certain Spray Permit limits.

16. Mountaire also exceeded treated wastewater effluent Spray Permit limits in 2015 for certain constituents.

17. In September, 2017, DNREC personnel were informed that Mountaire was applying biosolids in violation of the Land Application Permit, specifically: (i) without submitting a cropping plan to the Department that would show an appropriate loading rate for plant available nitrogen, (ii) without providing prior notice to DNREC of the application of biosolids, (iii) without planting appropriate crops within 30 days of land application, and (iv) without marking proper buffer zones.

18. In November, 2017 Mountaire submitted a Corrective Action Work Plan (“CAWP”) setting forth interim and long-term measures designed to bring the Facility into full compliance with the Spray Permit.

19. The CAWP is updated to show progress being made and items completed, and Mountaire provides bi-weekly reports to DNREC and participates in monthly meeting with DNREC staff, and such actions having commenced in September 2017, and are continuing to date.

20. On November 2, 2017, DNREC issued Notice of Violation No. W-17-GWD-13 (the “NOV”) identifying a total of seventeen categories of permit

violations, including thirteen categories of Spray Permit violations, and four categories of Land Application Permit violations. (The NOV is attached hereto as Exhibit D).

21. On December 22, 2017, DNREC supplemented its NOV with a letter to Mountaire requiring additional corrective actions for violations of the Spray Permit and the Land Application Permit. (DNREC's December 22, 2017 letter attached as Exhibit E).

22. As a result of the System Failure, Mountaire will be unable to maintain full compliance with the Spray Permit until such time that the long-term improvements to the WWTP are completed.

23. The interim measures implemented by Mountaire after the occurrence of the System Failure have resulted in improvements in the quality of the effluent from the WWTP. However, Mountaire cannot maintain 100% compliance with the Spray Permit until the long-term WWTP upgrades are completed.

COUNT I

Violation of Spray Permit Effluent Limitations for Total Nitrogen

24. The allegations of paragraphs 1 – 23 are incorporated by reference as if set out in their entirety.

25. The Spray Permit references the 2011 Design Development Report Addendum, indicating the WWTP has been designed to treat wastewater to a

monthly average total nitrogen concentration of 15.6 mg/L. Under the Spray Permit, if this design value is exceeded by 25% or more in any calendar month, Mountaire is required to resample the wastewater and submit it to the GWDS. If it exceeds this design value in any three-month period, the WWTP must be evaluated and a Design Engineer Report prepared and submitted to the GWDS.

26. Mountaire exceeded the monthly design concentration value for total nitrogen by over 25% during multiple months during 2017, and did not notify DNREC until September 2017.

27. The Spray Permit imposes the following total nitrogen related limitations on the spray effluent: (1) the facility has been designed for a monthly effluent total nitrogen concentrations of 15.6 mg/l, and (2) the total of nitrogen in the effluent allowed to be sprayed on the spray fields is 320 lbs/acre/year.

28. For calendar year 2015, this limit was exceeded on 11 of Mountaire's 13 spray fields. For Calendar year 2017, this limit was exceeded for all of Mountaire's 13 spray fields.

29. Therefore, defendant Mountaire is liable for violations of the effluent limits on total nitrogen as set forth in the Spray Permit. Accordingly, DNREC seeks civil penalties and enforcement pursuant to 7 *Del. C.* § 6005.

COUNT II

Violation of Spray Permit Effluent Limitations for Five-Day Biochemical Oxygen Demand

30. The allegations of paragraphs 1 – 29 are incorporated by reference as if set out in their entirety.

31. The Spray Permit establishes a daily permissible average effluent limitation concentration for five-day biological oxygen demand at 50 mg/L (the “BOD5 Limit”).

32. Mountaire exceeded the BOD5 Limit on at least 29 days during 2015, 2016 and 2017.

33. Therefore, defendant Mountaire is liable for violations of the BOD5 Limit as set forth in the Spray Permit. Accordingly, DNREC seeks civil penalties and enforcement pursuant to *7 Del. C. § 6005*.

COUNT III

Violation of Spray Permit Effluent Limitations for Total Suspended Solids

34. The allegations of paragraphs 1 – 33 are incorporated by reference as if set out in their entirety.

35. The July 31, 2017 renewal of the Spray Permit establishes a daily permissible average effluent concentration for total suspended solids of 50 mg/L. Prior versions of the Spray Permit allowed 90 mg/L (together, the “TSS Limits”).

36. Mountaire exceeded these TSS Limits on at least 24 occasions during 2016 and 2017.

37. Therefore, defendant Mountaire is liable for violations of the TSS Limits as set forth in the Spray Permit. Accordingly, DNREC seeks civil penalties and enforcement pursuant to *7 Del. C. § 6005*.

COUNT IV

Violation of Spray Permit Effluent Limitations for Fecal Coliform

38. The allegations of paragraphs 1 – 37 are incorporated by reference as if set out in their entirety.

39. The Spray Permit requires sufficient disinfection of wastewater such that the daily permissible average concentration will yield a discharge not to exceed 200 colony forming units/100 ml (the “Fecal Coliform Limit”).

40. Mountaire exceeded the Fecal Coliform Limit as set forth in the Spray Permit on at least nine occasions in 2017.

41. Therefore, defendant Mountaire is liable for violations of the Fecal Coliform Limit as set forth in the Spray Permit. Accordingly, DNREC seeks civil penalties and enforcement pursuant to *7 Del. C. § 6005*.

COUNT V

Violation of Spray Permit Effluent Requirements for Residual Chlorine

42. The allegations of paragraphs 1 – 41 are incorporated by reference as if set out in their entirety.

43. The Spray Permit establishes a daily required minimum concentration of residual chlorine of 1 mg/L (the “Total Chlorine Minimum”).

44. Effluent from Mountaire’s WWTP failed to meet the Total Chlorine Minimum on at least 16 days during 2017.

45. Therefore, defendant Mountaire is liable for violations of the Total Chlorine Minimum as set forth in the Spray Permit. Accordingly, DNREC seeks civil penalties and enforcement pursuant to *7 Del. C. § 6005*.

COUNT VI

Operation of the WWTP and Application of Effluent onto the Spray Fields has Caused Groundwater to Exceed Drinking Water Standards in Violation of the Spray Permit

46. The allegations of paragraphs 1 – 45 are incorporated by reference as if set out in their entirety.

47. The Spray Permit prohibits Mountaire’s operation of the WWTP and spray fields (the “Spray Irrigation System”) from causing the quality of Delaware’s groundwater resources to be in violation of applicable Federal and State drinking water standards.

48. Mountaire's excessive loading of nitrogen onto its spray fields is a contributing factor in the presence of nitrates in groundwater under and nearby the Facility that exceeds the drinking water standard of 10mg/L.

49. Therefore, defendant Mountaire is liable for violating this provision of the Spray Permit. Accordingly, the Department seeks civil penalties and enforcement pursuant to 7 *Del. C.* § 6005.

COUNT VII

Failure to Submit a Plan of Corrective Action by August 31, 2017

50. The allegations of paragraphs 1 – 49 are incorporated by reference as if set out in their entirety.

51. The Spray Permit as renewed by DNREC on July 31, 2017 acknowledged that defendant Mountaire's WWTP was not meeting the design value concentration for total nitrogen of 15.6 mg/L. Accordingly, this Spray Permit gave Mountaire until August 31, 2017, to submit a plan of corrective action for reducing total nitrogen.

52. Mountaire failed to submit a plan of corrective action by August 31, 2017.

53. Defendant Mountaire is liable for failing to submit a plan of corrective action for total nitrogen by August 31, 2017 as required under the Spray Permit.

Accordingly, the Department seeks civil penalties and enforcement pursuant to 7 *Del. C.* § 6005.

COUNT VIII

Failure to Maintain and Operate All Structures, Pipelines, Systems and Equipment

54. The allegations of paragraphs 1 – 53 are incorporated by reference as if set out in their entirety.

55. The Spray Permit requires Mountaire to properly maintain and operate all structures, pipelines, systems, and equipment for collection, treatment, control, and monitoring which are used by Mountaire to achieve compliance with the terms and conditions of the Spray Permit.

56. Mountaire failed to properly waste and otherwise manage biosolids in the WWTP on a routine basis, leading to the System Failure. Accordingly, Mountaire failed to properly maintain and operate the WWTP in violation of the Spray Permit.

57. Defendant Mountaire is liable for failing to properly maintain and operate all structures, pipelines, systems, and equipment for collection, treatment, control, and monitoring which should have been used by Mountaire to achieve compliance with the terms and conditions of the Spray Permit. Accordingly, the Department seeks civil penalties and enforcement pursuant to 7 *Del. C.* § 6005.

COUNT IX

Failure to Provide Five-Day Non-Compliance Notification

58. The allegations of paragraphs 1 – 57 are incorporated by reference as if set out in their entirety.

59. The Spray Permit requires Mountaire to provide DNREC with certain information regarding any instance of non-compliance with the terms and conditions of the Spray Permit.

60. Mountaire verbally advised DNREC of non-compliance with effluent limitations in the Spray Permit for total nitrogen as well as residual chlorine minimum requirements on September 7, 2017, but failed to provide the requisite five-day notification until September 20, 2017.

61. Defendant Mountaire is liable for failing to provide a complete notice of non-compliance with Spray Permit terms and conditions within five days of becoming aware of the non-compliant condition as required under the Spray Permit. Accordingly, the Department seeks civil penalties and enforcement pursuant to 7 *Del. C.* § 6005.

COUNT X

Wastewater Bypassing Permitted Process Flows

62. The allegations of paragraphs 1 – 61 are incorporated by reference as if set out in their entirety.

63. The Spray Permit sets forth the wastewater flow throughout the WWTP. Under the terms and conditions of the Spray Permit, diversion of wastewater flows from any portion of the WWTP processes is prohibited unless: (i) the bypass is unavoidable to prevent personal injury, death, severe property damage, (ii) the bypass is unavoidable to prevent a condition materially adversely affecting public health and/or the environment, or (iii) there are no other alternatives available. A bypass condition must be reported to DNREC within five days of its occurrence.

64. Mountaire verbally advised DNREC of a system bypass of process flows on September 7, 2017, but failed to provide the requisite five-day notification until September 20, 2017.

65. Defendant Mountaire is liable for failing to provide a complete notice of system bypass within five days of becoming aware of the bypass condition as required under the Spray Permit. Accordingly, the Department seeks civil penalties and enforcement pursuant to *7 Del. C. § 6005*.

COUNT XI

Failure to Monitor and/or Report Complete Representative Data

66. The allegations of paragraphs 1 – 65 are incorporated by reference as if set out in their entirety.

67. The Spray Permit prescribes detailed monitoring and reporting requirements for influent, effluent, groundwater, lysimeter, vegetation and operations. The constituents and parameters required to be monitored and reported are required to be reported in a monthly “Discharge Monitoring Report” (a “DMR”).

68. Mountaire’s DMRs for the WWTP for June 2017, July 2017 and August 2017 each fail to report, or report inaccurately, multiple constituents and parameters required to be reported in the DMR accurately and completely under the terms and conditions of the Spray Permit.

69. Defendant Mountaire is liable for failing to report complete and accurate information as required under the Spray Permit. Accordingly, the Department seeks civil penalties and enforcement pursuant to 7 *Del. C.* § 6005.

COUNT XII

Application of Biosolids Without Submitting a Cropping Plan

70. The allegations of paragraphs 1 – 69 are incorporated by reference as if set out in their entirety.

71. Under the Land Application Permit, a cropping plan and a calculation of the nutrient requirement for the planned crop must be submitted to DNREC for review and approval prior to land application of sludge.

72. During all of 2017, Mountaire applied approximately 2,000,000 gallons of return activated sludge without submitting to DNREC a cropping plan or nutrient calculation for such planned crop as required under the Land Application Permit.

73. Defendant Mountaire is liable for land applying sludge from the WWTP without submitting the cropping plan or nutrient requirement calculations as required under the Land Application Permit. Accordingly, the Department seeks civil penalties and enforcement pursuant to 7 *Del. C.* § 6005.

COUNT XIII

Failure to Plant Crops at Conclusion of Application Activities

74. The allegations of paragraphs 1 – 73 are incorporated by reference as if set out in their entirety.

75. Under the Land Application Permit, sludge fields must be planted with appropriate vegetation or a cover crop within one month of completing sludge application, unless prohibited by weather conditions, in which case vegetation must be planted as soon as practicable.

76. During 2017, Mountaire failed to plant an appropriate crop within one month of sludge application to fields designated Frame Farm 880-C and 880-D.

77. Defendant Mountaire is liable for failing to plant an appropriate crop or groundcover within one month of completing sludge application as required under the Land Application Permit. Accordingly, the Department seeks civil penalties and enforcement pursuant to 7 *Del. C.* § 6005.

COUNT XIV

Failure to Mark Buffer Zones Prior to Sludge Application

78. The allegations of paragraphs 1 – 77 are incorporated by reference as if set out in their entirety.

79. Under the Land Application Permit, prior to land application of sludge, buffer zones and the areas on which the sludge is to be applied must be clearly marked with stakes or other suitable markers acceptable to DNREC.

80. During 2017, Mountaire applied sludge to sludge fields designated Thorogood East, Frame Farm 20, and Thorogood West without marking buffer zones as required under the Land Application Permit.

81. Defendant Mountaire is liable for land applying sludge from the WWTP without first marking buffer zones as required under the Land Application Permit. Accordingly, the Department seeks civil penalties and enforcement pursuant to 7 *Del. C.* § 6005.

COUNT XV

Application of Biosolids to Application Sites without Notifying DNREC

82. The allegations of paragraphs 1 – 81 are incorporated by reference as if set out in their entirety.

83. Under the Land Application Permit, Mountaire is required to notify DNREC at least two working days prior to commencing land application of sludge.

84. During 2017, Mountaire applied return activated sludge to sludge fields designated Thorogood East, Frame Farm 20, and Thorogood West without first notifying DNREC.

85. Defendant Mountaire is liable for land applying sludge from the WWTP without first notifying DNREC as required under the Land Application Permit. Accordingly, the Department seeks civil penalties and enforcement pursuant to 7 *Del. C.* § 6005.

PRAYER FOR RELIEF

WHEREFORE, the Secretary respectfully requests the Court enter an order imposing appropriate civil penalties and directing and authorizing enforcement pursuant to 7 *Del. C.* § 6005 for the violations identified above and any future violations and such other and further relief as the Court may deem just and proper.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

/s/ Devera B. Scott

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