



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

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OFFICE OF THE
SECRETARY

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Secretary's Order No.: 2020-W-0037

RE: Perdue Foods, LLC's Application to Renew National Pollutant Discharge Elimination System ("NPDES") Permit No. DE 0000469 (State No. WPCC 301F/74) for its Poultry Processing Plant at 20621 Savannah Road in Georgetown, Delaware

Date of Issuance: December 23, 2020

Effective Date: December 23, 2020

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 *Del.C.* §§6003, 6004(b), 6006(4), and all other relevant statutory authority, the Department issues this Order, approving the renewal of the National Pollutant Discharges Elimination System ("NPDES") permit governing discharges at Perdue Foods, LLC's poultry processing plant located at 20621 Savannah Road, Georgetown, Delaware ("Applicant" or "Perdue").

Background, Procedural History and Findings of Fact

The Applicant seeks to renew its existing NPDES Permit No. DE 0000469 (State No. WPCC 3011F/74), which authorizes Perdue to discharge treated process wastewater, sanitary wastewater, boiler blowdown water, and process area stormwater from Outfall 002 of Perdue's poultry processing plant noted above to Savannah Ditch (also in Georgetown, Delaware), a freshwater, non-tidal stream. The permit also authorizes Perdue to discharge stormwater runoff from a grassy non-process area of the Applicant's property from Outfall 004 to a tributary of Savannah Ditch that also runs through the property.

The discharges from both Outfall 002 and Outfall 004, as referenced above, are subject to certain effluent limitations, along with operational, monitoring, and reporting requirements, as set forth in the NPDES permit.

The Department has jurisdiction under its State and delegated federal authority, pursuant to 7 *Del.C.* Chapter 60, and the Department's *Regulations Governing the Control of Water Pollution*, 7 DE Admin. Code 7201 ("NPDES Regulations"), to make a determination regarding the draft NPDES Permit regarding this matter. The Applicant's NPDES permit reissuance is subject to the requirements of the NPDES Regulations, as well as Section 402 of the federal *Clean Water Act* (33 U.S.C. 1251) and 7 *Del.C.* Ch. 60.

Perdue's facility is a poultry processing plant that operates a wastewater treatment system, consisting of screening, anaerobic lagoons, activated sludge, chemical precipitation, clarification, and ultraviolet disinfection. Sanitary wastewater is treated in a batch aerobic treatment system and is then pumped to the ultraviolet disinfection unit. The facility has two outfalls that discharge to Savannah Ditch. The discharge from the treatment plant (Outfall 002) consists of treated process wastewater, sanitary wastewater, boiler blowdown, and treated stormwater. The stormwater from a grassed, non-process area (Outfall 004) does not receive any treatment. Savannah Ditch flows down into Ingram Branch, which in turn flows into Diamond Pond. Diamond Pond flows down into Wagamons Pond, and then to the Broadkill River. The Broadkill River then flows down into the Delaware River.

The Applicant's current NPDES permit had an effective date of August 1, 2006, and an expiration date of July 31, 2011. Perdue's application for the renewal of its NPDES permit ("Application") was received by the Department on January 13, 2011. In accordance with the Department's NPDES Regulations, Perdue's existing NPDES permit is considered administratively extended while its Application for renewal is under review. During this review time, all terms and conditions under the existing NPDES permit are considered to be continued and remain fully in effect and enforceable by the Department.

The Department's Division of Water, Surface Water Discharges Section ("SWDS"), reviewed Perdue's Application and prepared a Draft NPDES Permit and Fact Sheet, pursuant to Section 6.0 of the Department's NPDES Regulations as referenced above. On August 26, 2018, *The News Journal* and the *Delaware State News* published public notices of the Application, the Draft Permit, and the Fact Sheet, which commenced the 30-day public comment period.

On September 24, 2018, the Department received a request for a public hearing from Mr. Keith Steck. Accordingly, by public notices published in the October 24, 2018 *The News Journal* and the *Delaware State News*, and by posting the same on its website, the Department announced that it would hold a public hearing regarding this matter beginning at 6:00 p.m. on November 27, 2018, at Georgetown Middle School, 301 West Market Street, Georgetown, Delaware. The publication of these public notices also re-opened the public comment period for written comment, which remained open through the conclusion of the public hearing.

Members of the public attended the aforementioned public hearing held on November 27, 2018, with four people offering comments regarding this pending Application at the hearing. The hearing record formally closed for comment at the conclusion of the public hearing. It should be noted that all noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

At the request of Hearing Officer Lisa A. Vest, a Technical Response Memorandum ("TRM") was prepared by the technical experts in the Department's SWDS. Specifically, the TRM was asked to (1) address the questions and concerns voiced by the public at the time of the public hearing; (2) provide a formal regulatory review of the Applicant's request for a renewal of its NPDES permit; and (3) offer the SWDS's conclusions and recommendations with regard to the reissuance of the NPDES permit to Perdue for the benefit of the Record generated in this matter.

Subsequent to the Department's TRM having been received for inclusion into the hearing record, Hearing Officer Vest prepared her Hearing Officer's Report ("Report"), dated November 30, 2020, which expressly incorporated the TRM therein. Ms. Vest's Report set forth the procedural history, summarized and established the record of information ("Record") relied on in the Report, and provided findings of fact, reasons, and conclusions. The Report is incorporated herein by reference. The Report recommends the Department reissue the NPDES permit to Perdue, with the revisions proposed by SWDS, as set forth therein.

Reasons and Conclusions

The Applicant seeks renewal of existing NPDES Permit No. DE 0000469 (State No. WPCC 3011F/74), which authorizes Perdue to (1) discharge treated process wastewater, sanitary wastewater, boiler blowdown water, and process area stormwater from Outfall 002 at its poultry processing plant located at 20621 Savannah Road in Georgetown, Delaware to Savannah Ditch, a freshwater, non-tidal stream; and (2) discharge stormwater runoff from a grassy non-process area at Outfall 004 at the aforementioned property. As stated previously, the discharges referenced above are subject to certain effluent limitations, along with operational, monitoring, and reporting requirements, as set forth in the permit. Furthermore, the NPDES permit itself is governed by both state and federal *Clean Water Act* laws and regulations.

I find that Perdue currently requires a renewal of its existing NPDES permit, as referenced above. I further find that the above-described discharges from both Outfall 002 and Outfall 004 at the Applicant's processing plant in Georgetown, Delaware are subject to various state and federal regulatory requirements, including, but not limited to, the aforementioned NPDES Regulations, Section 402 of the federal *Clean Water Act* (33 U.S.C. 1251), and as provided for under Delaware law in 7 *Del.C.* Ch. 60.

In its renewal Application, Perdue (1) proposed to work with the Department to develop a reasonable schedule of compliance for total nitrogen and phosphorus limits; and (2) requested the Department to consider elimination of monitoring and limits for aluminum, copper and zinc if the same do not prove to be toxic. In reviewing the applicable statutes and regulations, as well as weighing public benefits against potential detriments, the Department's experts in the SWDS have concluded that Perdue's Application for renewal of its NPDES permit complies with all applicable federal and state laws and regulations. Additionally, the Department's TRM states that no information presented during the November 27, 2018 hearing demonstrated the Application as being deficient.

The Department's SWDS recommends the reissuance of the NPDES Permit No. DE 0000469 (State No. WPCC 3011F/74) to Perdue Foods, Inc., in accordance with its January 13, 2011 NPDES permit application for renewal, with the following changes:

1. Implementation of a 12-month cumulative average annual load limit for Total Nitrogen ("TN"), based on the TMDL for the Broadkill River Watershed.
2. Implementation of a daily average TN load limit during the months of May through September, based on the TMDL for the Broadkill River Watershed.
3. Implementation of a daily average load limit for Biological Oxygen Demand ("BODs"), Total Phosphorus ("TP"), and Ammonia, based on the TMDL for the Broadkill River Watershed.
4. Addition of a "Schedule of Compliance" to Part I, Section C of the Permit, requiring the Permittee to comply with the final effluent limitations and monitoring requirements for TN, TP, and Ammonia, no later than fifty-nine (59) months after the effective date of the Permit.
5. Revision of "Reporting" in Part I, Section D.2 of the Permit, requiring the Permittee to submit results via the Department-approved Electronically Generated Discharge Monitoring Report ("eDMR").
6. Addition of a standard condition in Part II, Section A.2 of the Permit, "Notifications Specific to Manufacturing, Commercial, Mining, and Silvicultural Dischargers."

7. Addition of a limit for “Whole Effluent Toxicity” and a thirty-six (36) month compliance schedule for achieving compliance with the new limit.
8. Removal of zinc limits.
9. Addition of new copper limits, based on the new Biotic Ligand Model (“BLM”).
10. Amendment of Special Condition No. 8 regarding the Stormwater Plan, to now include the Broadkill TMDL requirements.
11. Addition of Special Condition No. 11, pursuant to 40 CFR Part 136, to ensure the use of EPA-approved analytical methods capable of detecting and measuring the pollutants at, or below, the applicable water quality criteria or permit limits.
12. Addition of Special Condition No. 12, which requires monitoring copper BLM parameters and performing a reasonable potential analysis for copper.

In addition to the above permit changes, the Department has revised the Receiving Stream Classification section of the Fact Sheet, now noting that Savannah Ditch discharges to Ingrams Branch, which discharges to Diamond Pond, then into Wagamons Pond, and finally into the Broadkill River, which empties into Zone 6 of the Delaware River. The Department further notes that the designated uses for the Broadkill River Watershed are Industrial Water Supply, Primary Contact Recreation, Secondary Contact Recreation, Maintenance of Fish, Aquatic Life and Wildlife, and Agricultural Water Supply, and that these uses apply to all waterbodies in the watershed, including Ingram Branch, Diamond Pond, Wagamonds Pond, and Broadkill River.

In 7 *Del.C.* §6001(c)(3), the General Assembly’s purpose of providing a program for the protection and conservation of the water resources of the State, for public recreational purposes, and for the conservation of wildlife and aquatic life is stated. In 7 *Del.C.* §6001(a)(2), the General Assembly finds that the development and utilization of water resources must be regulated to ensure that the water resources of the State are employed for beneficial uses and not wasted. Reissuance of Perdue’s NPDES permit will update the permit to reflect existing requirements of state and federal law.

Based on the Record developed, I find and conclude that the Department has provided appropriate reasoning regarding the renewal of Perdue's NPDES permit, as noted above. The draft NPDES permit, as prepared by the Department's experts in SWDS, meets state and federal requirements, the public has commented on it, and the Record supports its reissuance.

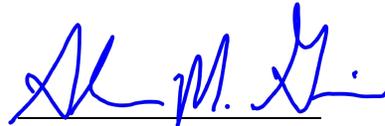
Accordingly, I recommend the reissuance of NPDES Permit No. DE 0000469 (State Number WPCC 3011F/74) to Perdue Foods, LLC, in accordance with the Application, as presented by SWDS, in the customary manner provided by law, and with appropriate conditions.

Further, the Department concludes and directs the following:

1. The Department has the statutory basis and legal authority to act with regard to the renewal of Perdue's NPDES Permit, under its state and delegated federal authority, and pursuant to 7 *Del.C.* Chapter 60, to make a determination regarding the draft NPDES Permit;
2. The Applicant's NPDES permit reissuance is subject to the requirements of Delaware's *Regulations Governing the Control of Water Pollution* (7 DE Admin. Code 7201, Section 6.0), Section 402 of the federal *Clean Water Act* (33 U.S.C. 1251), and 7 *Del.C.* Chapter 60;
3. The Department provided adequate public notice of the Application, and of all proceedings in a manner as required by the law and regulations. The Department also provided the public with an adequate opportunity to offer comment to be submitted into the Record, and considered all public input before making any final decision in this matter;
4. The Department has carefully considered the factors required to be weighed with regard to the renewal of Perdue's NPDES Permit, and finds that the Record supports issuance of the same;
5. Further, the draft NPDES Permit meets the applicable state and federal requirements, and includes reasonable conditions intended to protect Delaware's environment and public health, as referenced above;

6. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and

7. The Department shall serve and publish its Order on its internet site.



Shawn M. Garvin
Secretary