



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

DIVISION OF WATER
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AUTHORIZATION MEMORANDUM & DELEGATION

TO: Gregory B. Patterson,
Secretary

FROM: Steven M. Smailer
Director, Division of Water

DATE: March 2, 2026

SUBJECT: Temporary Emergency Variance Authorization Letter for Utilization of Lagoon Freeboard, and Limited Wet Weather Spray Irrigation to Mountaire Farms of Delaware, Inc., State Permit No. 359191-06

Mountaire Farms of Delaware, Inc. (Mountaire) has applied for a Temporary Emergency Variance from restrictions set forth in Mountaire's State Permit (No. 359191-06), Parts III.A.5 and A.17, and 7 DE Admin. Code § 7101-6.3.2.3.13.11 ("Delaware's *Regulations Governing the Design, Installation, and Operation of On-Site Wastewater Treatment and Disposal Systems*). Specifically, Mountaire is requesting the ability to temporarily reduce required freeboard to be maintained in the facility's two storage lagoons from two feet to one foot of freeboard and to discharge treated wastewater (effluent) on Mountaire's spray fields during precipitation (i.e., wet weather) events and/or when saturated or frozen soil conditions exist on a temporary and limited basis.

Pursuant to 7 *Del. C.* § 6012, the Secretary (or the Secretary's designee) may grant a Temporary Emergency Variance to any rule(s) or regulation(s) promulgated pursuant to Chapter 60 of Title 7 of the Delaware Code for a period not to exceed 60 days. Based on the following findings of fact, the Division of Water (Division) has determined that Mountaire's application for a Temporary Emergency Variance satisfies the requirements of 7 *Del. C.* § 6012, and further recommends that the Secretary authorize the issuance of the attached Temporary Emergency Authorization Letter to Mountaire.

Findings of Fact:

1. Exceptional and unanticipated weather conditions including long periods of extreme cold resulting in frozen ground and unusual and unforeseeable amounts of precipitation and snowfall have occurred in Sussex County over the last several weeks. As a result, Mountaire's spray fields have exhibited either frozen or saturated conditions, which preclude Mountaire from disposing of its effluent via spray irrigation under State Permit No. 359191-06. Mountaire's inability to dispose of its effluent has caused, and will likely continue to cause, Mountaire to shut-down operations at its facility. Such shutdowns, however, will likely cause significant adverse environmental impacts, including: (a) the euthanization and need for disposal of millions of birds, (b) the disruption of Mountaire's wastewater treatment facility's operations, which would likely negatively impact the current effectiveness of the treatment system and result in an increase in effluent nitrogen concentrations, and (c) result in offsite migration of the elevated total nitrogen plume through the loss of hydraulic control from production well shutdown. In addition, shutdowns of Mountaire's facility will have significant adverse impacts on the community due to prolonged unemployment and supply chain disruptions which hinder their ability to service areas of the country suffering food shortages due to extreme winter conditions.
2. Sussex County is entering its wet weather season; therefore, heavy, sudden, and above average precipitation events are expected to persist, which will likely further limit Mountaire's ability to dispose of its effluent via spray irrigation. Due to the wet weather conditions experienced to date, Mountaire has also exhausted its excess available storage capacity. Consequently, Mountaire will quickly utilize what little wastewater storage capacity it has remaining when future precipitation events occur. As mentioned above, shutdowns at Mountaire have significant repercussions to workers, the community at large and the environment via chicken mortality disposal, potential deterioration of treatment efficiency at the plant impacting future wastewater disposal, and additional offsite migration of elevated nitrogen in the groundwater beneath the spray fields if production wells are shutdown for any length of time. Thus, the Division has found that severe hardship, including adverse environmental impacts, will likely be caused by the delayed time period involved if Mountaire were to apply for a variance under *7 Del. C. § 6011*. Therefore, the Division has determined that Mountaire's application for a Temporary Emergency Variance satisfies *7 Del. C. § 6012(b)(1) & (b)(2)*.
3. Pursuant to *7 Del. C. § 6012(b)(3)*, an applicant for a Temporary Emergency Variance must show that the conditions set forth in *7 Del. C. § 6011(b)(1)-(4)* are satisfied. The Division has determined that Mountaire's March 2, 2026 Temporary Emergency Variance Request Letter documents that Mountaire's request satisfies the conditions set forth in *7 Del. C. § 6011(b)(1)-(4)* as follows:

- a. Mountaire has made, and continues to make, good faith efforts to comply with Chapter 60 of Title 7 of the Delaware Code and its Permit by ceasing all wet weather spray irrigation activities as required in State Permit No. 359191-06. Furthermore, Mountaire has made good faith efforts to minimize the need for this temporary emergency variance by instituting a number of flow reduction and mitigation measures, including reduction or cancellation of production shifts and processing department shutdowns, performance of additional water conservation measures, and the use of the offspec storage lagoon to store treated wastewater. In addition, Mountaire continues to operate with a very high level of treatment (less than 3mg/L total nitrogen) and maintains pumping of production water beneath the spray fields which helps prevent offsite migration of legacy elevated nitrogen in the groundwater.
- b. Mountaire has applied all available technology and alternative methods of control to avoid wet weather spray operations through advanced planning leading into winter resulting in only 3.19 MG in storage out of the 55 MG of storage capacity on January 24, 2026. This level of storage would generally more than handle winter weather conditions in Sussex County had such extreme winter weather not persisted as long as it has this year.
- c. Mountaire will continue to apply flow reduction and mitigation measures while in operation to minimize the need to utilize this temporary emergency variance and will do so in a fashion that minimizes the potential for environmental impacts by continuing to meet all hydraulic loading conditions in the permit, performing visual verification that no runoff is occurring at least twice daily, prioritizing operating on spray fields that are at a maximum distance from a receiving stream, and reporting to DNREC on dates, time, and volumes of any spray performed under this variance.
- d. Persistent or prolonged shutdowns of production at Mountaire's facility caused by the inability to dispose of treated effluent would adversely impact the food chain supply. Furthermore, such shutdowns will likely result in adverse environmental impacts from increased disposal of euthanized birds and disruptions to the biological treatment conditions at the wastewater treatment facility, which would likely decrease the facility's treatment effectiveness. In addition, prolonged shut down would result in the loss of hydraulic control and subsequent offsite migration of the contaminant plume of elevated nitrogen beneath the spray fields.

Recommendation and Conditions:

Based on the totality of the circumstances, the Division of Water finds that the environmental harms of allowing Mountaire to engage in limited, conditional wet weather spray irrigation are significantly less than the environmental harms that will result from repeated shutdowns of Mountaire's operations. The Division, therefore, recommends that the Secretary approve Mountaire's request, subject to the following conditions:

1. All wet weather spray operations will be performed in accordance with provisions detailed in Mountaire's March 2, 2026 Variance Request Letter and the conditions outlined in the Temporary Emergency Variance Authorization issued by Division of Water and attached herein.
2. A Temporary Emergency Variance may be revoked at any time at the discretion of the Secretary. Furthermore, Mountaire's failure to comply with these conditions or any condition of its State Permit No. 359191-06 not expressly addressed by the Temporary Emergency Variance shall result in immediate revocation of this Variance as of the date of the non-compliance. Violation of any condition of the Temporary Emergency Variance is enforceable pursuant to Chapter 60 of Title 7 of the Delaware Code.