

DOCKET NO. D-1985-014-4

DELAWARE RIVER BASIN COMMISSION

Special Protection Waters

**DSM Nutritional Products, Inc.
Surface Water Withdrawal
White Township, Warren County, New Jersey**

PROCEEDINGS

This docket is issued in response to an Application submitted by DSM Nutritional Products, Inc. (DSM) to the Delaware River Basin Commission (DRBC or Commission) on March 3, 2015 for renewal of an allocation of surface water and review of a surface water withdrawal project (Application). These sources were previously approved by the Commission in Docket No. D-1985-014-3 on March 1, 2006. In accordance with Section III.B.3 of the March 2015 DRBC/NJDEP Administrative Agreement, the docket holder's existing groundwater and surface water withdrawals will continue to be regulated by NJDPEP in accordance with the NJDEP Water Allocation Permit No. 2232P issued on November 17, 2011 with an expiration date of November 30, 2021. Upon the permittee's submission of an application for renewal of its NJDEP water withdrawal permit the renewal request will be subject to the One Permit/One Process Rule approved by the Commission on December 9, 2015.

The Application was reviewed for continued inclusion in the Comprehensive Plan and for approval under Section 3.8 of the *Delaware River Basin Compact*. The Warren County Planning Department has been notified of pending action on this docket. A public hearing on this project was held by the DRBC on February 10, 2016.

A. DESCRIPTION

1. Purpose. The purpose of this docket is to renew the approval of an existing withdrawal of up to 124 million gallons per month (mgm) of surface water to serve the docket holder's manufacturing facility from existing surface water Intake No. 1 on the Delaware River. DSM is not requesting an increase in groundwater withdrawal allocation from that contained in its prior approval. The DRB allocation corresponds to the allocation in NJDEP Permit No. 2232P.

2. Location. The project intake is located on the Delaware River in White Township, Warren County, New Jersey.

Specific location information has been withheld for security reasons.

3. Area Served. The project withdrawals will be used to supply water to the docket holder's DSM Nutritional Products, Inc. manufacturing facility only.

4. Physical features.

a. **Design criteria.** DSM presently operates six (6) wells and one (1) surface water intake to supply industrial process, potable and sanitary water to their pharmaceutical products manufacturing facility, and for withdrawals associated with groundwater remediation. Surface water Intake No. 1 and Well No. 200 supply industrial process, potable and sanitary water; Wells Nos. 1, 2, 7, 8, and 9 are used as recovery wells for a groundwater remediation system. The system currently has an existing average and maximum water demand of 2.565 mgd and 2.802 mgd, respectively. The docket holder projects an average and maximum water demand of 2.565 mgd and 4.0 mgd, respectively, by the year 2026. The allocation of 124 mgm should be sufficient to meet the future demands of the DSM manufacturing facility.

b. **Facilities.** The existing project wells and intake have the following characteristics:

WELL NO.	DEPTH (FEET)	CASED DEPTH / CASING DIAMETER	PUMP CAPACITY (GPM)	YEAR DRILLED
1	110	100'/ 18"	400	1967
2	113	91'/ 14"	400	1971
7	84	66'/ 14"	400	1974
8	125	110'/ 10"	100	1984
9	144	129'/ unknown	100	1984
200	140	109'/ 14"	75	1966

INTAKE NO.	WITHDRAWAL WATER BODY	PUMP CAPACITY (CFS/ MGD)	7Q10 FLOW AT INTAKE (CFS/ MGD)	YEAR CONSTRUCTED
1	Delaware River	8.429/ 4.536	1,185/ 637.7	1979

All water service connections are metered.

All wells and intake are metered.

Prior to entering the distribution system, the water is treated with the following processes; coagulation, flocculation, sedimentation, filtration and disinfection.

The project facilities are above the 100-year flood elevation.

The water system is not presently interconnected with any other distribution system.

c. **Other.** Wastewater is conveyed to the DSM sewage treatment facility most recently approved by DRBC Docket No. D-1993-007 on June 22, 1994. The NJDEP issued its most recent NPDES Permit No. NJ0004952 on March 9, 2012 for this treatment facility. The treatment facility has adequate capacity to receive wastewater from the proposed project.

d. **Cost.** There is no cost associated with this project.

B. **FINDINGS**

Special Protection Waters

In 1992, the DRBC adopted Special Protection Waters requirements, as part of the DRBC *Water Quality Regulations* (WQR), designed to protect existing high water quality in applicable areas of the Delaware River Basin. One hundred twenty miles of the Delaware River from Hancock, New York downstream to the Delaware Water Gap were classified by the DRBC as SPW. This stretch includes the sections of the river federally designated as "Wild and Scenic" in 1978 -- the Upper Delaware Scenic and Recreational River and the Delaware Water Gap National Recreation Area -- as well as an eight-mile reach between Milrift and Milford, Pennsylvania which is not federally designated. The SPW regulations apply to this 120-mile stretch of the river and its drainage area.

On July 16, 2008, the DRBC approved amendments to its *Water Quality Regulations* that provide increased protection for waters that the Commission classifies as Special Protection Waters. The portion of the Delaware River and its tributaries within the boundary of the Lower Delaware River Management Plan Area was approved for Special Protection Waters designation and clarity on definitions and terms were updated for the entire program.

Article 3.10.3A.2.e.1). and 2). of the *Water Quality Regulations, Administrative Manual - Part III*, states that projects subject to review under Section 3.8 of the Compact that are located in the drainage area of Special Protection Waters must submit for approval a Non-Point Source Pollution Control Plan that controls the new or increased non-point source loads generated within the portion of the docket holder's service area which is also located within the drainage area of Special Protection Waters. The intake providing water supply to DSM is located within in the drainage area to the Special Protection Waters. Since this project does not entail additional construction and expansion of facilities or service areas and there are not any new or increased non-point source loads associated with this approval, the non-point source pollution control plan requirement is not applicable at this time.

Surface Water Withdrawal under NJDEP AA

In accordance with Section III.B.3 of the March 2015 DRBC/NJDEP Administrative Agreement, the docket holder's existing groundwater and surface water withdrawals will continue to be regulated by NJDEP in accordance with the NJDEP Water Allocation Permit No. 2232P issued on November 17, 2011 with an expiration date of November 30, 2021. Upon the permittee's submission of an application for renewal of its NJDEP water withdrawal permit the renewal request will be subject to the One Permit/One Process Rule approved by the Commission on December 9, 2015. Under One Permit, all or most NJDEP and Commission requirements applicable to operation of your surface and groundwater withdrawal facilities will then be included in a single approval issued by the NJDEP.

The NJDEP water allocation is valid for a period of 10 years from the effective date of December 1, 2011. The allocations for the DRB included in the NJDEP permit are:

- Monthly Water Diverted – 124 mgm
- Yearly Water Diverted - 1,350 million gallons per year (mgy)
- Delaware River Source Intake No. 1 – 124 mgm
- Kittatinny Supergroup aquifer well sources – 35 mgm or 302 mgy
- Well No. 1 Rated Pump Capacity – 400 gpm
- Well No. 2 Rated Pump Capacity – 400 gpm
- Well No. 7 Rated Pump Capacity – 400 gpm
- Well No. 8 Rated Pump Capacity – 100 gpm
- Well No. 9 Rated Pump Capacity – 100 gpm
- Well No. 200 Rated Pump Capacity – 75 gpm

The project is designed to conform to the requirements of the *Water Code and Water Quality Regulations* of the DRBC.

The docket holders surface water withdrawals continue to be subject to DRBC's Basin Regulations – Water Supply Charges, 18 CFR § 420.41. Quarterly payments may be made electronically at <http://www.state.nj.us/drbc/programs/supply/charging/>. DSM shall pay for surface water use in accordance with the provisions of *Administrative Manual Part III Basin Regulations – Water Charges*.

The docket holder estimates that the project withdrawals, used for the purpose of industrial process, potable and sanitary and groundwater remediation, result in a consumptive use of 20 percent of the total water use. The DRBC definition of consumptive use is defined in Article 5.5.1.D of the *Administrative Manual – Part III – Basin Regulations – Water Supply Charges*.

The project does not conflict with the Comprehensive Plan and is designed to prevent substantial adverse impact on the water resources related environment, while sustaining the current and future water uses and development of the water resources of the Basin.

C. DECISION

I. Effective on the approval date for Docket No. D-1985-014-4 below, Docket No. D-1985-014-3 is terminated and replaced by Docket No. D-1985-014-4.

II. The project as described in the Section A “Physical features” is approved pursuant to Section 3.8 of the *Compact* and is granted this withdrawal permit pursuant to Section 10.3 of the *Compact*, subject to the following conditions:

a. Docket approval is subject to all conditions, requirements, and limitations imposed by the NJDEP in its water allocation permit, and such conditions, requirements, and limitations are incorporated herein, unless they are less stringent than the Commission’s.

b. The wells and operational records shall be available at all times for inspection by the DRBC.

c. The wells shall be operated at all times to comply with the requirements of the *Water Code* and *Water Quality Regulations* of the DRBC.

d. During any month, the combined withdrawal from the surface water source shall not exceed 124 mgm. The intake shall not be pumped above the maximum instantaneous rate and monthly allocation as indicated below. No well shall be pumped above the maximum instantaneous as indicated below:

WELL NO.	MAXIMUM INSTANTANEOUS RATE (GPM)
1	400
2	400
7	400
8	100
9	100
200	75

INTAKE NO.	INSTANTANEOUS RATE (GPM)	MONTHLY ALLOCATION (MILLION GALLONS)
1	3,150	124

e. The docket holder shall pay for surface water use in accordance with the provisions of *Administrative Manual Part III Basin Regulations – Water Charges*.

f. The project withdrawals shall be metered with an automatic continuous recording device that measures to within 5 percent of actual flow. An exception to the 5 percent performance standard, but no greater than 10 percent, may be granted if maintenance of the 5 percent performance is not technically feasible or economically practicable. A record of daily withdrawals shall be maintained, and monthly totals shall be reported to the NJDEP quarterly and shall be available at any time to the Commission if requested by the Executive Director.

g. Each new water service connection shall include a water meter in accordance with the DRBC's Resolution No. 87-7 (Revised).

h. The docket holder shall implement to the satisfaction of the NJDEP, the continuous program to encourage water conservation in all types of use within the facilities served by this docket approval. The docket holder will report to the NJDEP on the actions taken pursuant to this program and the impact of those actions as requested by the NJDEP.

i. No water service connections shall be made to newly constructed premises with plumbing fixtures and fittings that do not comply with water conservation performance standards contained in Resolution No. 88-2 (Revision 2).

j. The docket holder shall continue to implement its Water Conservation Plan as approved by NJDEP, and shall report to the NJDEP on actions taken pursuant to this program and the impact of those actions as requested by the NJDEP.

k. The docket holder shall implement to the satisfaction of the NJDEP, a drought or other water supply emergency plan.

l. Sound practices of excavation, backfill and reseedling shall be followed to minimize erosion and deposition of sediment in streams from any new facilities or repair related construction.

m. No new water service connections shall be made to premises connected to sewerage systems which are not in compliance with all applicable effluent limits contained in State permits and the *Water Quality Regulations* of the Commission.

n. Nothing herein shall be construed to exempt the docket holder from obtaining all necessary permits and/or approvals from other State, Federal or local government agencies having jurisdiction over this project.

o. The docket holder is permitted to provide the water approved in this docket to the areas included in Section A.3. Area Served of this docket. Any expansion beyond those included in Section A.3. Area Served is subject to DRBC review and approval in accordance with Section 3.8 of the *Compact*.

p. Unless an extension is requested and approved by the Commission in advance, in accordance with paragraph 11 of the Commission's Project Review Fee schedule (Resolution No. 2009-2), the docket holder is responsible for timely submittal of a docket renewal application on the appropriate DRBC application form at least 12 months in advance of

the docket expiration date set forth below. The docket holder will be subject to late charges in the event of untimely submittal of its renewal application, whether or not DRBC issues a reminder notice in advance of the deadline or the docket holder receives such notice. In the event that a timely and complete application for renewal has been submitted and the DRBC is unable, through no fault of the docket holder, to reissue the docket before the expiration date below (or the later date established by an extension that has been timely requested and approved), the terms and conditions of the current docket will remain fully effective and enforceable against the docket holder pending the grant or denial of the application for docket approval.

q. The issuance of this docket approval shall not create any private or proprietary rights in the water of the Basin, and the Commission reserves the rights to amend, alter or rescind any actions taken hereunder in order to insure the proper control, use and management of the water resources of the Basin.

r. If the monitoring required herein or any other relevant data or information demonstrates that the operation of this project is interfering with or otherwise impairing existing uses of ground or surface water, or if the permit holder receives a complaint from an existing ground or surface water user within the zone of influence of the withdrawal alleging such interference or impairment, the permit holder shall immediately notify the Executive Director, and unless excused by the Executive Director, shall investigate the demonstrated or alleged impacts. For purposes of this condition, notification shall mean either (a) electronic transmittal of written notice to the Executive Director via email (using addresses posted on the DRBC website); or (b) written notice to the Executive Director and a telephone call to the Project Review Section at 609-883-9500, ext. 216. (Oral notification must always be accompanied by immediate written notification directed to the Executive Director.) In addition, the permit holder shall provide written notice to all potentially affected water users of the permit holder's responsibilities under this condition. **Any well or surface water supply that is impaired as a result of the permit holder's project withdrawal shall be repaired, replaced or mitigated at the permit holder's expense.** The scope of the options to consider for repair, replacement and/or mitigation shall not be limited solely to those that are owned, operated, or controlled by the project sponsor. An investigation report and/or mitigation plan prepared and certified by a licensed professional engineer and/or a licensed professional geologist shall be submitted to the Executive Director as soon as practicable following notice of the demonstrated or alleged impairment consistent with this paragraph. The Executive Director shall make the final determination regarding the scope and sufficiency of the investigation and the extent of any mitigation measures that may be required. Where ground and surface waters are rendered unavailable, unusable, or unsuitable for the pre-existing use, the Executive Director may direct the permit holder to take interim actions to mitigate such impacts, pending completion of the investigative report and any long-term repair, replacement or mitigation

s. The Executive Director may modify or suspend this approval or any condition thereof, or require mitigating measures pending additional review, if in the Executive Director's judgment such modification or suspension is required to protect the water resources of the Basin.

t. Any person who objects to a docket decision by the Commission may request a hearing in accordance with Article 6 of the *Rules of Practice and Procedure*. In accordance with Section 15.1(p) of the *Delaware River Basin Compact*, cases and controversies arising under the *Compact* are reviewable in the United States district courts.

BY THE COMMISSION

APPROVAL DATE: March 16, 2016

EXPIRATION DATE: December 9, 2025