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DOCKET NO. D-1978-085-2

DELAWARE RIVER BASIN COMMISSION

**SPI Pharma, Inc.
Groundwater Withdrawal
Lewes, Sussex County, Delaware**

PROCEEDINGS

This docket is issued in response to an Application submitted by SPI Pharma, Inc. (SPI) to the Delaware River Basin Commission (DRBC or Commission) on November 14, 2017 for renewal of an allocation of groundwater and review of a groundwater water withdrawal project (Application). These withdrawals will continue to be regulated by Delaware Department of Natural Resources and Environmental Control (DNREC) in accordance with the Administrative Agreement (AA) between DRBC and the State of Delaware, Section IV.C.4, enacted on July 2010 and modified on May 8, 2013. The project wells were approved by the Delaware Department of Natural Resources and Environmental Control (DNREC) as follows:

WELL NO.	DNREC PERMIT NO.	DNREC APPROVAL DATE
1	42421	January 1979
2	42422	January 1979
3	42423	January 1979
4	42424	January 1979
5	51722	September 1982
6	51723	September 1982
7	51724	September 1982
8	84365	September 1990
9	84366	September 1990
10	84367	October 1990
11	84368	October 1990
12	88950	October 1991
13	88951	October 1991
14	88952	October 1991
15	88956	October 1991
16 and 17	SL-0101-89	March 2003

The Application was reviewed for approval under Section 3.8 of the *Delaware River Basin Compact*. The Sussex County Planning and Zoning Commission has been notified of pending action. A public hearing on this project was held by the DRBC on May 16, 2018.

A. DESCRIPTION

1. **Purpose.** The purpose of this docket is to renew the approval of an existing groundwater withdrawal to supply water to the applicant's industrial facility for magnesium extraction. The renewal will also approve an increase in allocation from 18 mg/ 30 days to 23.76 mgm from 17 existing wells.

2. **Location.** The project wells are completed in unconsolidated sands and gravels under the fishing pier in Cape Henlopen State Park in the Delaware Bay Watershed in Lewes, Sussex County, Delaware. The Delaware Bay near the project site is designated by DNREC as Exceptional Recreational of Ecological Significance (ERES).

Specific location information has been withheld for security reasons.

3. **Area Served.** The project well supplies water to the SPI pharmaceutical antacid manufacturing facility. For the purpose of defining Area Served, the Application is incorporated herein by reference consistent with conditions contained in the DECISION section of this docket.

4. **Physical features.**

a. **Design criteria.** The water withdrawn from the project wells is used to manufacture antacid medication. The docket holder projects the 10-year average and maximum water demand to be 0.504 million gallons per day (mgd) and 0.792 mgd, respectively. The docket holder does not expect an increase in the water demand over the next 10 years. The allocation of 23.76 mgm should be sufficient to meet the future demands of the SPI pharmaceutical manufacturing facility.

An interconnection with the City of Lewes provides potable water to the site.

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

WELL NO.	DEPTH (FEET)	CASED DEPTH/ CASING DIAMETER	WELL SCREENED INTERVAL (FT. TO FT.)	PUMP CAPACITY (GPM)	YEAR DRILLED
1 through 4	20	20' / 10"	11 -20	85	1979
5 through 7	20	20' / 10"	11-20	85	1982
8 through 11	20	20' / 10"	11-20	85	1990
12 through 15	20	20' / 10"	11-20	85	1991

WELL NO.	DEPTH (FEET)	CASED DEPTH/ CASING DIAMETER	WELL SCREENED INTERVAL (FT. TO FT.)	PUMP CAPACITY (GPM)	YEAR DRILLED
16 and 17	20	20' / 10"	11-20	85	2003

The well system is metered.

The water withdrawn is chlorinated prior to going into the manufacturing process.

The project well is above the 100-year flood elevation.

The water system is presently interconnected with the City of Lewes distribution system for potable water supply.

c. **Other.** Domestic wastewater is conveyed to the City of Lewes sewage treatment facility which received approval most recently under Section 3.8 of the *Compact* by DRBC Docket No. D-2012-011 CP-2 on December 14, 2016. DNREC issued its most recent NPDES Permit No. DE0021512 on December 12, 2011 for this treatment facility. The treatment facility has adequate capacity to receive wastewater from the proposed project.

The processed wastewater from the facility is conveyed to the SPI Pharma, Inc. industrial wastewater treatment facility which received approval most recently under Section 3.8 of the *Compact* by DRBC Docket No. D-1969-006 on May 28, 1969. The docket holder has submitted a renewal application and it is currently under review. DNREC issued its most recent NPDES Permit No. DE0000060 on January 22, 2015 for this treatment facility. The treatment facility has adequate capacity to receive wastewater from the proposed project.

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

B. FINDINGS

The docket holder withdraws water from the seventeen (17) wells located under the fishing pier in Cape Henlopen State Park in the Delaware Bay. Withdrawn water is sent to their facility where magnesium is extracted from production of calcium carbonate, magnesium hydroxide and aluminum hydroxide which are used to manufacture antacid medication.

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

The DRBC estimates that the project withdrawals, used for the purpose of manufacturing, result in a consumptive use of 10 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-1978-085-2 below, Docket No. D-1978-085-1 is terminated and replaced by Docket No. D-1978-085-2.

II. The project and appurtenant facilities as described in the Section A “Physical features” are approved pursuant to Section 3.8 of the *Compact*, subject to the following conditions:

a. Docket approval is subject to all conditions, requirements, and limitations imposed by DNREC in its water allocation permits.

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 withdrawal from all wells shall not exceed 23.76 million gallons. The project wells shall not be pumped above the maximum instantaneous rate and monthly allocation as indicated below:

WELL NO.	MAXIMUM INSTANTANEOUS RATE	MONTHLY ALLOCATION
1	85	1.4
2	85	1.4
3	85	1.4
4	85	1.4
5	85	1.4
6	85	1.4
7	85	1.4
8	85	1.4
9	85	1.4
10	85	1.4

WELL NO.	MAXIMUM INSTANTANEOUS RATE	MONTHLY ALLOCATION
11	85	1.4
12	85	1.4
13	85	1.4
14	85	1.4
15	85	1.4
16	85	1.4
17	85	1.4
18	85	1.4

e. The docket approval is contingent on the purpose of the groundwater withdrawals not changing (irrigation), if the purpose of the withdrawals change the docket holder or new owner must submit a renewal application to the Commission.

f. The wells shall be equipped with readily accessible capped ports and minimum ½ inch inner diameter (ID) drop pipes so that water levels may be measured under all conditions. Existing wells are to be similarly equipped, where possible, with readily accessible ports and ½ inch ID drop pipes as repairs or modifications are made at each existing well.

g. 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 DNREC annually and shall be available at any time to the Commission if requested by the Executive Director.

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

i. The docket holder shall implement to the satisfaction of DNREC, 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 DNREC on the actions taken pursuant to this program and the impact of those actions as requested by DNREC.

j. 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).

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

l. 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.

m. 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.

n. 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*.

o. The docket holder is responsible for timely submittal to the DRBC of a docket renewal application on the appropriate application form including the appropriate docket application filing fee (see 18 CFR 401.43) at least 6 months in advance of the docket expiration date set forth below. The docket holder will be subject to late filed renewal surcharges 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, 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.

p. The docket holder shall be subject to applicable DRBC regulatory program fees, in accordance with duly adopted DRBC resolutions and/or regulations. (see 18 CFR 401.43).

q. The ownership of this approval is transferable by request to the DRBC Executive Director provided that the project purpose and area served approved by the Commission in this docket will not be materially altered because of the change in project ownership. The request shall be submitted on the appropriate form and be accompanied by the appropriate fee (see 18 CFR 401.43).

r. The docket holder shall request a name change of the entity to which this approval is issued if the name of the entity to which this approval is issued changes its name. The request for name change shall be submitted on the appropriate form and be accompanied by the appropriate fee (see 18 CFR 401.43).

s. 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.

t. 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 docket 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 docket holder shall provide written notice to all potentially affected water users of the docket holder's responsibilities under this condition. **Any well or surface water supply that is impaired as a result of the docket holder's project withdrawal shall be repaired, replaced or mitigated at the docket 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 docket holder to take interim actions to mitigate such impacts, pending completion of the investigative report and any long-term repair, replacement or mitigation.

u. 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.

v. 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:

EXPIRATION DATE: June 13, 2028