

**DOCKET NO. D-2006-037-3**

**DELAWARE RIVER BASIN COMMISSION**

**Discharge to a Tributary of Special Protection Waters**

**Hudson Valley Foie Gras, LLC  
Wastewater Treatment Plant  
Ferndale, Sullivan County, New York**

**PROCEEDINGS**

This docket is issued in response to an Application submitted to the Delaware River Basin Commission (DRBC or Commission) by Hudson Valley Foie Gras, LLC (HVFG) on June 22, 2012 (Application), for renewal of an existing industrial wastewater treatment plant (IWTP) and its related discharge. State Pollutant Discharge Elimination System (SPDES) Permit No. NY0235393 for this project was issued by the New York State Department of Environmental Conservation (NYSDEC) on August 3, 2010, effective October 1, 2010.

The Application was reviewed for approval under Section 3.8 of the *Delaware River Basin Compact*. The Sullivan County Planning Department has been notified of pending action. A public hearing on this project was held by the DRBC on July 9, 2013.

**A. DESCRIPTION**

- Purpose.** The purpose of this docket is to renew approval of the existing 0.02 million gallons per day (mgd) HVFG IWTP and its related discharge.
- Location.** The IWTP will continue to discharge treated effluent to the Middle Mongaup River at River Mile 261.1 – 12.0 – 6.2 – 5.1 – 3.7 (Delaware River – Mongaup River – Swinging Bridge Reservoir – Mongaup River – Middle Mongaup River) via Outfall No. 002, within the drainage area to the Upper Delaware Special Protection Waters (SPW) area, in the Town of Liberty, Sullivan County, New York as follows:

<b>OUTFALL NO.</b>	<b>LATITUDE (N)</b>	<b>LONGITUDE (W)</b>
002	41° 45' 13"	74° 44' 57"

3. **Area Served.** The docket holder's IWTP will continue to service its in-site duck propagation, rearing, and slaughterhouse facility. For the purpose of defining the Area Served, Section B (Type of Discharge) and D (Service Area) of the docket holder's Application are incorporated herein by reference, to the extent consistent with all other conditions contained in the DECISION Section of this docket.

4. **Physical Features.**

a. **Design Criteria.** The docket holder operates the existing 0.02 mgd HVFG IWTP.

b. **Facilities.** The existing IWTP consists of a septic tank, an aerated equalization tank, an activated sludge tank, an aerobic digester, an alum chemical feed unit, a chlorine contact tank, a dechlorination unit, two (2) sand filters, and a cascade aerator.

The docket holder's wastewater treatment facility discharges to waters classified as SPW and is required to have available emergency power. HVFG has requested an exemption in the past from having to provide emergency power. HVFG's water is supplied by an onsite well, which does not have emergency power. If power is lost, the onsite well cannot provide water and hence the WWTP will not receive influent and effluent discharge would cease within minutes of power failure. The docket holder has previously indicated that in the event of an extended power outage, untreated wastewater would be removed from the onsite system by the licensed waste hauler Enviroventures (Narrowsburg, NY) and hauled to a municipal WWTP with excess capacity. DECISION Condition II.s. of this docket requires the docket holder to perform this pump and treat requirement in the event of power loss.

The docket holder's wastewater treatment facility is not staffed 24 hours per day. A remote alarm system has been installed and sensors have been placed at the WWTP's equalization tank, air feed lines, and three chemical feed pumps.

The docket holder's existing wastewater treatment facility has prepared and implemented an emergency management plan (EMP) in accordance with Commission requirements.

The project facilities are not located in the 100-year floodplain.

Wasted sludge will continue to be hauled off-site by a licensed hauler for disposal at a (State-approved) facility.

c. **Water withdrawals.** The potable water supply in the project service area is supplied by an on-site well whose pump capacity will not allow withdrawals above 100,000 gallons per day (gpd) and therefore does not require Commission approval.

d. **SPDES Permit / DRBC Docket.** SPDES Permit No. NY0235393 was issued by the NYSDEC on August 3, 2010 (effective October 1, 2010) and includes final effluent limitations for the project discharge of 0.02 mgd to surface waters classified by the NYSDEC as

a Class B(T) stream. The following average monthly effluent limits are among those listed in the SPDES Permit and meet or are more stringent than the effluent requirements of the DRBC.

**EFFLUENT TABLE A-1: DRBC Parameters Included in SPDES Permit**

OUTFALL 002 (IWTP)		
PARAMETER	LIMIT	MONITORING
pH (Standard Units)	6 to 9 at all times	As required by SPDES Permit
Total Suspended Solids	20 mg/l	As required by SPDES Permit
CBOD (5-Day at 20° C)	20 mg/l (85% minimum removal*)	As required by SPDES Permit
Ammonia Nitrogen (6-1 to 10-31) (11-1 to 5-31)	2.2 lbs/day 2.15 lbs/day	As required by SPDES Permit
Fecal Coliform (5-1 to 10-31)	200 colonies per 100 ml as a geo. avg.	As required by SPDES Permit
Phosphorus	0.17 lbs/day	As required by SPDES Permit

\* DRBC Requirement

**EFFLUENT TABLE A-2: DRBC Parameters Not Included in SPDES Permit**

OUTFALL 002 (IWTP)		
PARAMETER	LIMIT	MONITORING
Total Dissolved Solids*	1,000 mg/l *	Same as TSS freq **
Dissolved Oxygen*	6.0 mg/l (minimum at all times)	Monthly *
TKN*	Monitor & Report *	Monthly *
Nitrate + Nitrite as N*	Monitor & Report *	Monthly *

\* DRBC Requirement

\*\* See DECISION Condition II.p.

e. **Cost.** There are no construction costs associated with the renewal of the IWTP and its discharge.

## B. FINDINGS

The purpose of this docket is to renew approval of the existing 0.02 mgd HVFG IWTP and its related discharge.

In 1992, the DRBC adopted SPW 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 has been 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 *WQR* that provide increased protection for waters that the Commission classifies as SPW. The portion of the Delaware River and its tributaries within the boundary of the Lower Delaware River Management Plan Area was approved for SPW designation and clarity on definitions and terms were updated for the entire program.

Article 3.10.3A.2.e.1). and 2). of the Commission's *WQR* states that projects subject to review under Section 3.8 of the Compact that are located in the drainage area of SPW must submit for approval a Non-Point Source Pollution Control Plan (NPSPCP) 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 SPW. The docket holder's discharge is located within the drainage area to Special Protection Waters. However, according to exception (c) provided in Article 3.10.3A.2.e.1) of the Commission's *WQR*, the NPSPCP is not required because "*Projects above surface water impoundments listed in Section 3.10.3.A.2.g.5) where time of travel and relevant hydraulic and limnological factors preclude a direct impact on Special Protection Waters*" do not require NPSPCPs.

Docket No. D-2006-37-2 required the IWTP's effluent to meet the Commission's basin-wide standard of 1,000 mg/l for total dissolved solids (TDS). From the time the docket was issued thru May 2013 the docket holder's records indicate that it failed to meet the TDS effluent limit on seven (7) occasions. The exceedances were due to the use of a chemical controlling pH that the docket holder has indicated will be changed so that no further exceedances occur in the future. DECISION Condition II.q. of this docket retains the Commission's ability to issue violations and collect penalties for these infractions despite issuance of this docket.

The nearest surface water intake of record for public water supply is approximately 103 river miles downstream of the project discharge and is operated by the City of Easton on the Delaware River.

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.

The limits in the SPDES Permit are in compliance with Commission effluent quality requirements, where applicable.

The project is designed to produce a discharge meeting the effluent requirements as set forth in the Commission's *WQR*.

### **C. DECISION**

I. Effective on the approval date for Docket No. D-2006-037-3 below, Docket No. D-2006-037-2 is terminated and replaced by Docket No. D-2006-037-3.

II. The project and appurtenant facilities as described in Section A “Physical Features” of this docket 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 the NYSDEC in its SPDES Permit, and such conditions, requirements, and limitations are incorporated herein, unless they are less stringent than the Commission’s.

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

c. The facility shall be operated at all times to comply with the requirements of the Commission’s *WQR*.

d. The docket holder shall comply with the requirements contained in the Effluent Tables in Section A.4.d. of this docket. The docket holder shall submit the required monitoring results directly to the DRBC Project Review Section. The monitoring results shall be submitted annually, absent any observed limit violations, by January 31. If a DRBC effluent limit is violated, the docket holder shall submit the result(s) to the DRBC within 30 days of the violation(s) and provide a written explanation that states the action(s) the docket holder has taken to correct the violation(s) and protect against any future violations.

e. Except as otherwise authorized by this docket, if the docket holder seeks relief from any limitation based upon a DRBC water quality standard or minimum treatment requirement, the docket holder shall apply for approval from the Executive Director or for a docket revision in accordance with Section 3.8 of the *Compact* and the *Rules of Practice and Procedure*.

f. 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.

g. The discharge of wastewater shall not increase the ambient temperatures of the receiving waters by more than 5°F until stream temperatures reach 50°F, nor by more than 2°F when stream temperatures are between 50°F and 58°F, nor shall such discharge result in stream temperatures exceeding 58°F.

h. The docket holder is permitted to treat and discharge wastewaters as set forth in the Area Served Section of this docket, which incorporates by reference Sections B (Type of Discharge) and D (Service Area) of the docket holder’s Application to the extent consistent with all other conditions of this DECISION Section.

i. The docket holder shall make wastewater discharge in such a manner as to avoid injury or damage to fish or wildlife and shall avoid any injury to public or private property.

j. No sewer 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. Nothing in this docket approval shall be construed as limiting the authority of DRBC to adopt and apply charges or other fees to this discharge or project.

l. The issuance of this docket approval shall not create any private or proprietary rights in the waters of the Basin, and the Commission reserves the right to amend, suspend or rescind the docket for cause, in order to ensure proper control, use and management of the water resources of the Basin.

m. 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.

n. 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.

o. 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.

p. The docket holder may request of the Executive Director in writing the substitution of specific conductance for TDS. The request should include information that supports the effluent specific correlation between TDS and specific conductance. Upon review, the Executive Director may modify the docket to allow the substitution of specific conductance for TDS monitoring.

q. Nothing in this docket constitutes a defense to any penalty action for past conduct of the docket holder or ongoing activity not authorized by this approval. In particular, renewal of this docket does not resolve violations – whether in the past or continuing – of provisions of the Delaware River Basin Compact ("Compact") or any rule, regulation, order or approval duly issued by the Commission or the Executive Director pursuant to the Compact.

The Commission reserves its right to take appropriate enforcement action against the docket holder, including but not limited to recovery of financial penalties consistent with Section 14.17 of the Compact, for any and all such prior or continuing violations.

r. The docket holder is prohibited from treating/pre-treating any hydraulic fracturing wastewater from sources in or out of the Basin at this time. Should the docket holder wish to treat/pre-treat hydraulic fracturing wastewater in the future, the docket holder will need to first apply to the Commission to renew this docket and be issued a revised docket allowing such treatment and an expanded service area. Failure to obtain this approval prior to treatment/pre-treatment will result in action by the Commission.

s. Should the IWTP lose power, untreated wastewater at the facility must be removed from the on-site system by a licensed waste hauler and conveyed to a wastewater treatment facility that can handle such flows. DRBC staff must be informed whenever this occurs within 24 hours of the loss of power.

t. Prior to the docket holder initiating any substantial alterations or additions to the existing WWTP as defined in Section 3.10.3A2.a.16) of the Commission's *WQR*, an application must be submitted and approved by the Commission. Such an application shall be submitted prior to final design to ensure that the Commission can provide the docket holder with draft effluent limitations for SPW specific parameters as guidance for design as to not require duplication of work or cause a substantial expenditure of public funds without Commission approval. The docket holder is encouraged to contact the Commission staff during the planning stages to identify the potential effluent limitations required to meet the no measurable change parameters under SPW.

**BY THE COMMISSION**

**DATE APPROVED: September 12, 2013**

**EXPIRATION DATE: September 30, 2015**