

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

| | | |
|------------------------------|---|------------------------|
| STATE OF DELAWARE |) | |
| DEPARTMENT OF NATURAL |) | |
| RESOURCES & |) | |
| ENVIRONMENTAL CONTROL, |) | |
| |) | |
| Plaintiff, |) | C.A. No. 18-838-MN-JLH |
| |) | |
| and |) | |
| |) | |
| GARY and ANNA-MARIE CUPPELS, |) | |
| |) | |
| Plaintiffs-Intervenors, |) | |
| |) | |
| |) | |
| v. |) | |
| |) | |
| MOUNTAIRE FARMS OF |) | |
| DELAWARE, INC., |) | |
| |) | |
| Defendant. |) | |

ORDER

At Wilmington, this 10th day of June, 2020:

WHEREAS, on March 25, 2019, the Court granted a Motion to Intervene in this matter filed by Gary and Anna-Marie Cuppels (the “Intervenors”) (D.I. 16);

WHEREAS, on December 16, 2019, Plaintiff State of Delaware Department of Natural Resources & Environmental Control (“DNREC”) filed a proposed Consent Decree that would resolve its claims under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* (“RCRA”), and the Clean Water Act, 33 U.S.C. § 1251, *et seq.* (“CWA”), against Defendant Mountaire Farms of Delaware, Inc. (“Mountaire”) (D.I. 63);

WHEREAS, on December 17, 2019, the Court ordered Intervenors to file a letter stating their objections to the proposed Consent Decree, ordered the parties to meet and confer regarding

any such objections by January 24, 2020, and ordered the parties to file a joint status report on or before January 31, 2020 (D.I. 67);

WHEREAS, on January 27, 2020, this case was referred to the undersigned for pre-trial proceedings (D.I. 71);

WHEREAS, between December 17, 2019 and May 29, 2020, the case remained stayed, and the parties engaged in multiple meet-and-confers and filed multiple status reports (D.I. 73, 75, 77, 79, 81, 84);

WHEREAS, on May 4, 2020, Intervenors filed a Motion for Preliminary Injunction against Mountaire, which motion remains pending (D.I. 87);

WHEREAS, on May 29, 2020, DNREC filed a First Amended Proposed Consent Decree that would resolve its claims against Mountaire under RCRA and CWA (D.I. 92, 94);

WHEREAS DNREC has not yet moved the Court to enter the First Amended Proposed Consent Decree;

WHEREAS, on May 29, 2020, Mountaire filed a Motion for Stay of Intervenors' Motion for Preliminary Injunction or, in the Alternative, Motion for a Briefing Schedule (D.I. 91), which motion remains pending;

WHEREAS, Mountaire's motion argues, among other things, that, if the Court enters the First Amended Proposed Consent Decree, Intervenors' request for a preliminary injunction would be barred under RCRA and CWA and/or would be rendered moot;

WHEREAS, Mountaire's motion suggests that Intervenors cannot obtain injunctive relief without filing a complaint in intervention, which Intervenors have not done;

WHEREAS, Mountaire also argues that the Court should not issue an injunction and should delay consideration of Intervenors' request for an injunction because the COVID-19 crisis has

placed a strain on the nation's food supply and Mountaire has been ordered by the President to remain open in the interest of national security, and the same circumstances make it difficult for Mountaire and counsel to adequately respond to the request for injunctive relief;

WHEREAS, neither Intervenors' Motion for Preliminary Injunction nor Mountaire's Motion for Stay of Intervenor's Motion for Preliminary Injunction was "accompanied by an averment of counsel for the moving party that a reasonable effort has been made to reach agreement with the opposing party on the matters set forth in the motion," D. Del. LR 7.1.1;

WHEREAS, the Court needs the parties to explain which issues they agree on, which they dispute, and how they propose the Court should proceed with resolving the disputed issues;

NOW, THEREFORE, IT IS HEREBY ORDERED that, on or before June 24, 2020, all parties (including DNREC, Intervenors, and Mountaire) shall meet and confer regarding how this case should proceed. The discussion must cover at least the following issues:

- a. What proceedings on the First Amended Proposed Consent Decree need to be held and the schedule for completing them;
- b. Whether the Court's entry of the First Amended Proposed Consent Decree would bar and/or moot Intervenors' request for a preliminary injunction;
- c. Whether the Court should delay consideration of Intervenors' request for a preliminary injunction until after its consideration of the consent decree and, if not, what proceedings on the motion for a preliminary injunction should be held and the schedule for completing them;
- d. Whether and what discovery is needed prior to a hearing on the preliminary injunction motion;
- e. Whether Intervenors can seek injunctive relief without having filed a complaint in intervention;
- f. Whether Intervenors' motion for injunctive relief should be denied without prejudice to refile in light of the fact that it refers to an earlier version of the proposed consent decree that has been superseded by the First Amended Proposed Consent Decree;

- g. Whether the Court should enter an order similar to the order issued by Judge Noreika on December 27, 2019 (D.I. 67), requiring Intervenors to file written objections to the First Amended Proposed Consent Decree followed by a meet and confer process;
- h. How the ongoing COVID-19 crisis should be taken into account when scheduling further proceedings and determining the form that the proceedings should take; and
- i. How the parties' respective positions on the above issues promote the goals of judicial economy and the just resolution of this matter.

IT IS FURTHER ORDERED that, on or before July 1, 2020, the parties shall file a joint status report setting forth their agreement (or respective positions) on the above issues, including their agreement (or respective positions) on a schedule for remaining proceedings. The status report shall also include (i) the name of each attorney who participated in the meet and confer(s); and (ii) how long the meet and confer(s) lasted.

IT IS FURTHER ORDERED that the Court will hold a status teleconference with all parties on July 6, 2020 at 2:00 p.m. Plaintiff DNREC shall organize the teleconference. Plaintiff shall email the dial-in number to cailah_garfinkel@ded.uscourts.gov on or before July 3, 2020.

IT IS FINALLY ORDERED that, absent leave of Court, no additional briefing on the pending motions (D.I. 87, 91) shall be filed until after the July 6 status teleconference.

Dated: June 10, 2020



Jennifer L. Hall
UNITED STATES MAGISTRATE JUDGE