



July 9, 2013

Commission Secretary
Delaware River Basin Commission
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Re: **Docket no. D-2006-037-3, Hudson Valley Foie Gras, LLC, Wastewater Treatment Plant**

Dear Commission Secretary,

We provide this comment to the Delaware River Basin Commission (DRBC) in opposition to the approval of the proposed Docket for Hudson Valley Foie Gras (HVFG).

As you know, this facility has applied for a renewal of their permit for a discharge of 20,000 gallons of wastewater per day from their wastewater treatment facility on the Middle Mongaup River, Ferndale, Sullivan County through a location known as Outfall No. 002. The Middle Mongaup River flows to the Mongaup River, through the Swinging Bridge Reservoir into the Delaware River about 6 miles north of Port Jervis into the Upper Delaware Scenic and Recreational River, a 73-mile stretch of river (Hancock NY to Milrift, PA) that is federally recognized as a National Wild and Scenic River due to its outstanding natural and historic resources. Fishing, canoeing and camping, provide an important and popular tourism economy for this region. Many endangered and threatened species and habitats as well as numerous and diverse plants and wildlife thrive here. Over 17 million people (including New York City) rely on the Delaware River for drinking water. This is part of the area designated as Upper Delaware Special Protection Waters, protected by the DRBC's water quality regulations.

HVFG propagates, raises, slaughters, and processes ducks in order to harvest the birds' livers known as *foie gras*¹ and other bird products such as *duck confit*². The process produces a

¹ http://en.wikipedia.org/wiki/Foie_gras - *foie gras*, French for "fat liver" - a [food product](#) made of the [liver](#) of a [duck](#) or [goose](#) that has been specially fattened. By French law, foie gras is defined as the liver of a duck fattened by [force feeding](#) corn with a [gavage](#), although outside of France it is occasionally produced using natural feeding.

significant amount of waste from both the raising, slaughter, and processing portions of HVFG's operations.

HVFG collects the waste from its slaughter and processing operation and discharges the pollutants from the waste through a treatment system into the Middle Mongaup River. According to an application filed in 2008 on behalf of HVFG by an environmental consultant, there are three components to the waste discharge system for this operation—the wastewater treatment plant that is covered by this docket and New York State under a SPDES permit, liquid manure that is handled through a Nutrient Management Program under a Concentrated Animal Feeding Operation (CAFO) and a discharge to groundwater through a septic system for sanitary sewage³. In 2008 a sand filter was put back into service to provide additional treatment for the wastewater facility effluent.

In reviewing DRBC files, it is apparent the influent wastewater quality receives some treatment by the facility. In past years (prior to 2008), HVFG caused approximately 850 violations of the CWA, the New York Environmental Conservation Law, and associated state and federal regulations and litigation by nonprofit organizations ensued. The existing refitted wastewater treatment facility and the addition of sand filters have eliminated these profligate incidents of pollution.

DRN reviewed the permit limits and compared these to monitoring reports that were in the DRBC file for 2010 and January to June 2011. There were no records for the latter half of 2011 or 2012. In May and June 2011, total dissolved solids (TDS) violated the permit limits and yet there is no record of any enforcement action taken by New York State or the DRBC. The TDS limit is 1000mg/L; in May 2011, the monthly mean for TDS was 1070 mg/L⁴ and for June the monthly mean was 1130 mg/L⁵. Since there are no records after this time, it is unknown if the TDS problem was an emerging trend or if the exceedences of the permit limits for TDS were remedied. These violations are a concern because:

- ✓ 500 mg/L, not 100 mg/L is the recommended effluent standard of the U.S. Environmental Protection Agency;
- ✓ TDS are a measurement of inorganic salts, organic matter and other dissolved materials in water. TDS contain minerals and organic molecules that provide benefits such as nutrients, but also may contain contaminants such as toxic metals and organic pollutants;
- ✓ TDS cause toxicity through increases in salinity, changes in the ionic composition of the water, and toxicity of individual ions. The composition of specific ions determines toxicity of elevated TDS in natural waters. The major concern associated with high TDS

² https://en.wikipedia.org/wiki/Duck_confit - *confit de canard* - a [French](#) dish made with the leg of the [duck](#). While it is made across [France](#), it is seen as a specialty of [Gascony](#).

³ Application by Northeastern Environmental Resolutions, Permit Modification for slaughterhouse waste SPDES # 023 5393, rec'd by DRBC April 4, 2008.

⁴ NY State Dept. of Environmental Conservation, Department of Water, Wastewater Facility Operation Report for the Month of May 2011.

⁵ NY State Dept. of Environmental Conservation, Department of Water, Wastewater Facility Operation Report for the Month of June 2011.

concentrations relates to direct effects of increased salinity on the health of aquatic organisms.⁶

- ✓ Lower levels are needed to protect aquatic life, particularly biota that feed fish such as the mayfly.⁷ The function of osmoregulation in these animals needs to be protected at these naturally adapted levels if they are to survive. A protective TDS standard needs to be in place to accomplish this. Fluctuations of TDS in a waterway can be damaging or even deadly to aquatic life by affecting the osmoregulation of aquatic animals. Also, according to a California study, “Spawning fish and juveniles appear to be more sensitive to high TDS levels. For example, it was found that concentrations of 350 mg/l TDS reduced spawning of Striped bass (*Morone saxatilis*) in the San Francisco Bay-Delta region, and that concentrations below 200 mg/l promoted even healthier spawning conditions.”⁸ In the Truckee River, the EPA found that juvenile Lahontan cutthroat trout were subject to higher mortality when exposed to thermal pollution stress combined with high total dissolved solids concentrations.⁹

Further, the cumulative impacts of the effluent discharge from this facility on the Middle Mongaup River are not evaluated by stream monitoring on this reach of the river so the water quality impacts and the effects on biological life and fish are unknown. DRN requests that stream monitoring by the company be required above and below Outfall No. 002 in order to assess the impacts on the health of the Middle Mongaup over time. With this information, the cumulative impacts of the discharge can be measured on the river system.

The Middle Mongaup River is a beautiful stream in a largely rural watershed. The area is made up of residences, camps, summer homes, and large tracts of unbroken high quality forest. Wildlife abounds. The Middle Mongaup River is a navigable water of the United States, as defined by section 502(7) of the CWA, and has been designated by the state for fishing and other recreational uses. It is a major tributary of the Mongaup River, which is well used for canoeing, kayaking and hosts whitewater events. Clubs come from New York City and farther to kayak the Mongaup.¹⁰

⁶ PA Dept. of Environmental Protection, “Permitting Strategy for High Total Dissolved Solids (TDS) Wastewater Discharges”, April 11, 2009.

⁷ USEPA, “Water Chemistry associations with benthic macroinvertebrates”, Region 3, Power Point. An EPA Region 3 study that examined ionic stress impacts to aquatic life reports that most clean streams in the Appalachian region are naturally dilute with a TDS less than 50 ppm. Therefore, the invertebrates that are present are physiologically adapted to low TDS concentrations. When comparing conductivity in streams with biological diversity, EPA scientists found many mayfly taxa were not present at all or found in lower percentages in streams with increasing conductivity. Mayflies, in many clean streams like that of the Appalachia region and the upper Delaware region can represent 25-50% of abundance and about 1/3 the biodiversity in natural, undegraded streams. They form the base of the aquatic food chain, are important for healthy fish populations and help assimilate organic enrichment in streams.

⁸ Kaiser Engineers, California, *Final Report to the State of California, San Francisco Bay-Delta Water Quality Control Program*, State of California, Sacramento, CA (1969).

⁹ (C.M. Hogan, Marc Papineau et al. *Development of a dynamic water quality simulation model for the Truckee River*, Earth Metrics Inc., Environmental Protection Agency Technology Series, Washington D.C. (1987))

¹⁰ DRN Comment to DRBC on HVFG Docket, May 10, 2007.

The river is a haven and a nursery for bald eagles and is popular for American Bald Eagle watching. The area supports one of the largest concentrations of wintering bald eagles in New York State (150+ individuals) and 3+ pairs of nesting eagles (NYDEC Mongaup Valley Bird Conservation Area Management Guidance Summary, 2000). Bird watchers on Mongaup Reservoir frequent a public eagle observation blind. Red-Shouldered Hawk and Cerulean Warbler (both special concern species) are also in the Mongaup River Valley. New York has designated the Mongaup River Valley as a bird conservation area, limiting motorized boats and other intrusive activities. The large contiguous forest of the Mongaup's watershed provides important habitat, including rarities such as a perched bog, a floodplain forest, and pitch pine-oak-heath woodland. Timber rattlesnake and spotted salamander are also documented there.¹¹

DRN appealed a denial of records from NYSDEC under their Freedom of Information Law (FOIL) in 2007 and was successful in obtaining some records that were originally denied regarding the nutrient management plan (NMP) for HVFG. Manure is applied to fields in the vicinity of HVFG as per the facility's NMP. Because we were not able to get all the records we wanted under the FOIL request, we do not know the exact locations of the applied manure. We have concerns that nonpoint source pollution from the operations of this CAFO through the NMP could be causing further pollution and degradation of the Middle Mongaup River.

We consider stream monitoring to be an important data gathering effort that would provide real information about the water quality and health of the stream. We request DRBC to require stream monitoring above and below the facility and we request that monitoring also be conducted at stream locations that would capture potential runoff to the stream from the application of manure to fields according to HVFG's NMP.

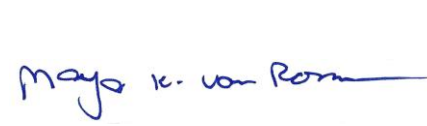
DRBC's proposed Docket Decision conditions should be weakened in any way. We do not agree that the Emergency Management Plan can be supplied within six month, January 2014, as per condition m. We are concerned that the hauling of waste from the facility during a power outage is not reliable, especially if the cause of the outage is severe weather or some other environmental condition that may hamper response from the hauler. Also, the lack of 24 hour monitoring of the plant and the reliance on alarms allows another way that things could go wrong at the facility, causing a discharge of pollution. Further, it is not clear that the facility can mechanically stop the flow of waste if the tank or another part of the treatment system's infrastructure were to overflow. Finally, the preparation of a Plan should not require such a long length of time. The harmful environmental impacts that would occur if untreated waste were released to the environment and the river are too great to allow a 6 month waiting period for the Emergency Management Plan. We request DRBC to remove condition m. and require immediate compliance for an Emergency Management Plan as a precautionary measure.

Delaware Riverkeeper Network opposes approval of the docket for this facility. We suggest that action on this docket be tabled until the Commission obtains further detailed information about the point and nonpoint sources of pollution from HVFG.

¹¹ Ibid.

Thank you very much for your consideration.

Sincerely,

Handwritten signature of Maya K. van Rossum in blue ink.

Maya K. van Rossum
the Delaware Riverkeeper

Handwritten signature of Tracy Carluccio in blue ink.

Tracy Carluccio
Deputy Director