

Comments on New Atlantic Concrete Plant Application  
DNREC Hearing, May 28, 2021  
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There are a number of issues that need to be addressed before approving this plant and issuing permits. To start, some information about the application for a new Atlantic Concrete plant at 16762 Old Orchard Road, Lewes, is not accurate and other relevant information has not been provided to the public. In addition, although the property has been used as a cement production site for many years, environmental and other, more recent factors--including the Coastal Zone Act, the construction of new homes, and the completion of a multi-purpose paved trail--have come into being. These did not exist decades ago but are now a reality and affect the site, especially because this application is for a new plant and not simply a refurbishing or retrofitting of an existing plant.

Please be aware, these comments are not meant to prohibit the lawful use of this project site or the construction of this operation. They are meant to ensure compliance with applicable laws and to ensure that DNREC rightly performs its oversight and permitting functions.

Information Issues

For the public to be able to provide complete and reasonable comments requires access to accurate and relevant information. Unfortunately, this has not been the case regarding this project. Specifically, some of the information provided as part of the application was inaccurate; the application was silent on whether there would be a concrete crushing operation on site; the public has had no access as part of the application and hearing to information indicating Sussex County has reviewed or commented on this proposed plant; and there is no indication the project complies with the County's Source Water Protection ordinance, Sussex County Chapter 89 and the

state law on which it is based. Relatedly, DNREC has failed to address some of these issues during its application review process and needs to improve its internal controls to ensure applications are complete and accurate before accepting applications and announcing applications are available for consideration.

#### Inaccurate and Missing Information

The initial application contained inaccurate information. In particular, it erroneously indicated that the location is not within Delaware's Coastal Zone, thereby implying the Coastal Zone Act (CZA) did not apply. Specifically, Question 29 asks if the facility is located in the CZA but was marked "NO." However, it is well within the CZA. And although a new revised application was date stamped "Received April 29, 2021," it looks like the old page 2 incorrectly answering Question 29 was replaced with a new page with a hand-marked X for question 29, the signature sheet still shows "12/22/20" for the date in the signature block. This new page 2 is not dated or otherwise annotated to show when it was provided, but it was submitted sometime after public review and the request for a hearing was made. From an internal control and accountability perspective, this is highly inappropriate; in the absence of some indication of the submission of the new page 2 on that page, the signature page should have been updated to reflect the date of the change with initials and/or the signature page replaced with a legitimate date.

Another example of missing information is when was the Coastal Zone Decision letter issued? This is Exhibit 13 in the application docket, but it is undated. Why is there no date on this document? It appears this is yet another situation of poor internal agency quality control.

Further, the application shows in item 36 that Proof of Local Zoning is included, but the 123-page application packet included in the original application packet and revised packet do not include any such documentation--or at least was not provided as part of

the publicly available documents. There is no documentation indicating Sussex County project, review or zoning consideration and decisions, or other relevant information regarding this project for the public to see. What was submitted in the 123 pages regarding County information was a single page that one has to assume is meant to indicate County support. This page is a map dated July 27, 2020, taken from what looks to be the Sussex County property search database and identifies the owner--Atlantic Concrete--and provides the owner's Milford mailing address; it doesn't even show the physical address of the property in Lewes. Further, while the applicant's representative stated during the May 12th hearing the company has Sussex County zoning documentation, none of it was included in the application information and was not available to the public. So the public cannot tell what, if any conditions, the County placed on the project or whether other reviews were conducted--see the discussion below regarding Sussex County Chapter 29, the Source Water Protection Ordinance. DNREC needs to verify this and should note it in its decision, given there's no public awareness of the County approval via this application.

Also, there is no evidence whether the State Office of Planning Coordination did a Preliminary Land Use Service (PLUS) review or issued a report for this site or project. A check of the state's PLUS Dashboard shows nothing listed. Given the age of the original plant(s), they were likely built before this practice was implemented. However, the application describes this as a new facility with new equipment--see page 1 of the application form (p. 6 of the full packet). DNREC should consult with the State Office of Planning Coordination about the applicability of the PLUS process.

#### Information Lacking Regarding Concrete Crushing

The application packet makes no mention about whether there is or will be a concrete crushing operation at the site. This is partly due to the application not asking a simple question: Will this concrete plant include concrete crushing equipment now or in the future? This kind of equipment and concrete crushing operations can produce highly

dangerous silica dust, crystalline silica, and other particulates and lead to silicosis-- see this relevant National Institute for Occupational Safety and Health (NIOSH) report <https://www.cdc.gov/niosh/docs/2004-108/pdfs/2004-108.pdf> --and should not be allowed in close proximity to existing and planned homes and trail users. Although this point we briefly discussed during the May 12 hearing and a statement was made that there would not be any concrete crushing operation and is appreciated, this prohibition should be written in this project documentation and permit because of the close proximity to residences and the Lewes Georgetown [biking, jogging, walking] Trail that parallels the northern edge of this concrete company's property. Moreover, DNREC should update its application to ask whether concrete crushing equipment will be used now or in the future.

Also, in the interest of public health, DNREC should place air monitoring points along the trail and should consider putting up notices to riders, walkers, cyclists, joggers that concrete dust may reach the trail.

#### Failure to Comply With Source Water Protection Review

Significantly, there apparently has been no review of this project for compliance with the County's source water protection area requirements--Sussex County chapter 89, known as the Source Water Protection Ordinance. This ordinance is based on state law pertaining to source water protection, see Delaware Source Water Protection Law of 2001 as codified in 7 Del. C. 60, Subchapter VI.

The law essentially is meant to evaluate proposed project sites to determine whether primate source water protection areas exist on a site and identifies whether development restrictions should apply. Based on the Sussex County ordinance, this project would not be exempt because County site plan and project approval apparently

took place between June 2019 and spring 2021, well within the year the ordinance was enacted.

Had this check been done by the County and DNREC asked on its application whether this requirement had been followed, Both DNREC and the public would know the answer.

In fact, a check of Delaware's First Map datasets on Well Head Protection and Groundwater Recharge Areas shows that the entire western half of the parcel--335-11.00-57.00--is an Excellent Groundwater Recharge Area --see [https://opendata.firstmap.delaware.gov/datasets/94d6d5387d814951837b3ee5ef4b5200\\_0/explorer?location=38.754632%2C-75.168772%2C16.00](https://opendata.firstmap.delaware.gov/datasets/94d6d5387d814951837b3ee5ef4b5200_0/explorer?location=38.754632%2C-75.168772%2C16.00) . Moreover, because the proposed new concrete plant and supporting operations appear to be at the edge of this Excellent Groundwater Recharge area, this would have triggered the project engineering firm and others to evaluate and address the Chapter 89 requirements. These would include noting in engineering documents and on maps any applicable Chapter 89 requirements and restrictions. DNREC should verify this before it approves any site plan and approves any permit(s). Note that Sussex County has a history of failing to ensure project proposals comply with this ordinance; recently the County has started reviewing project proposals after local residents discovered this problem and raised this issue. To ignore this statutory requirement would seem to be tantamount to breaking the law. More seriously, if this project does not comply with Chapter 89 requirements, it could put the aquifer and Sussex County drinking water supply at risk of contamination.

Because each county is to have its own source water protection ordinance and Delaware state law requires source water protection, DNREC should therefore include a line item/question on its permit applications to indicate whether a project has been reviewed for this compliance.

### DNREC's Application and Review Process Needs to be Enhanced

The problems identified above are symptomatic of DNREC staff failing to adhere to internal controls and the need for enhanced efforts to obtain relevant information. This is not the first time that permit applications have errors and is missing information and that DNREC has not provided documents to the public as part of the hearing process.

But allowing these problems of failing to adhere to or have adequate internal controls to ensure applications are complete and accurate is a disservice to the Department staff and the public. Worse, these deficiencies, including not making sure applicants follow the stated instructions before accepting applications, undermine the public's confidence in DNREC's oversight. Equally serious, they also delay the applicants' plans, construction, and project completion and can result in increased project costs.

If DNREC staff were to ensure complete and accurate applications before accepting them or putting them out for public review, those actions would likely result in fewer comments and concerns about the application and likely lead to fewer public hearings. Similarly, ensuring the full set of application supporting documents are made accessible to the public would also likely result in fewer comments, concerns, and possibly fewer hearings. Please, do yourselves and the public a favor and do your due diligence up front as part of the application review and not at the backend of the application process and after hearings. Finally, implement the changes noted above, especially the ones asking additional questions about whether concrete crushing will be done and if Source Water Protection reviews have been done.