



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL

OFFICE OF THE  
SECRETARY

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**Secretary's Order No. 2015-A-0033**

**Re: Application of Diamond Materials, LLC to Amend Air Pollution Control Permit APC-2008/0087 to Construct/Operate a Roving Rock Crusher, an Impactor and a Screener at 200 Marsh Lane, New Castle, New Castle County**

**Date of Issuance: September 29, 2015**

**Effective Date: September 29, 2015**

Under the authority granted the Secretary of the Department of Natural Resources and Environmental Control ("Department") pursuant to 7 Del. C. Sections 6003, 6004 and 6006 and other relevant authority, the following findings of fact, reasons and conclusions are entered as an Order of the Secretary following a public hearing on a permit application.

**Background and Procedural History**

This Order considers the record as established by the Hearing Officer in the Hearing Officer's Report ("Report") on an application ("Application") submitted by Diamond Materials, LLC ("Applicant") to the Department's Division of Air Quality ("DAQ"). The Application seeks to amend Air Pollution Control permit APC-2008/0087-Construction/Operation ("Permit"), which regulates the air emissions from Applicant's diesel powered equipment<sup>1</sup> ("Equipment") used to crush materials at nine locations. The Application seeks to add 200 Marsh Lane, New Castle, New Castle County ("Site") as the tenth allowed location to operate

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<sup>1</sup> The Equipment consists of a 350 horsepower ("hp") diesel powered roving rock crusher, a 366 hp diesel powered impactor, and a 100 hp diesel powered screener that are roving in that they may be moved and operated at nine authorized locations

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the Equipment. The Applicant proposed to use the Equipment at the Site to crush approximately 100,000 tons of concrete stored at the Site.

DAQ prepared a draft permit (“Draft Permit”) that limited the use of the Equipment at the Site to crushing only the concrete collected at the Site before DAQ received the Application on August 22, 2014. On November 9, 2014, DAQ provided public notice of the Application, DAQ’s Draft Permit, and that a public hearing would be held December 11, 2014 to receive public comments on the Application. At the public hearing, the Department’s presiding hearing officer, Robert P. Haynes, presided over the hearing and received public comments from nineteen persons, including several elected officials. Mr. Haynes granted the unopposed request to keep the public comment period open for written comments until December 29, 2014.

On August 31, 2015, DAQ provided Mr. Haynes its Technical Response Memorandum (“TRM”) that reviews the public comments and recommends that the Department issue a revised draft permit (“Revised Draft Permit”) that would impose additional operational limitations discussed later in this Order.

Mr. Haynes prepared the attached Report, which recommends issuance of the Revised Draft Permit based on the record established by the Report. The Report also reviews the public comments, most of which opposed the Application because of concerns that the Equipment’s operation at the Site would result in air emissions from the diesel engines’ exhaust and from the dust when crushing concrete, and also that the operations would produce objectionable noise and vibrations.

#### **Findings of Fact**

The Department finds that the record supports amending the Permit based on DAQ’s Revised Draft Permit, which imposes operational restrictions to reduce the risk that the

Equipment's operations will adversely impact nearby residents, particularly in the residential neighborhood of West Minquadale located along the Site's eastern boundary. Support for this decision is based upon the record, the Report, and the recommendations of the Department's experts in DAQ.

The Department finds that the Site is zoned by New Castle County as "Heavy Industrial" which permits the proposed use of the Equipment to crush concrete. West Minquadale is adjacent to the Site and is an area zoned residential. The Department has no authority to alter New Castle County's zoning; only New Castle County has the ability to change zoning codes. The Department's limited authority in this proceeding is to determine whether the Equipment may operate at the Site consistent with the Department's Air Quality Regulations. *7 DE Admin. Code §§1101 et seq.*

It is understandable that the Application was opposed by adjacent and nearby residents because it will be a heavy industrial operation next to a heavily populated and established residential area. Therefore, in response to the public comments, the Department determines that the Revised Draft Permit should include special operating restrictions as conditions to address the public's concerns and to reflect the differences between the Site and the other nine approved locations.

The Department already has reviewed the Application's proposed air emissions because the same emissions were considered when the Department approved the Permit authorizing the Equipment's operations and air emissions at the nine other locations. Delaware does not regulate air quality by neighborhood, but instead regulates the air quality across all of Delaware pursuant to federal and state laws and regulations. The air emissions from the three diesel engines are within established limits and consistent with Delaware's air quality standards. The air emissions

produced by dust are also within established limits and will be subject to controls in the existing permit for the Equipment to minimize dust by the application of water on the concrete crushing operations. The Permit requires the use of approved dust control measures whenever the Equipment is operating.

The Department finds that the close proximity of the heavily populated West Minquadale residential area makes the Site different from the other nine locations where the Equipment may operate. In addition, the Department did not receive any public comment or a request for a hearing when it considered the applications for the Equipment to operate at the other nine locations. DAQ provided a summary table of the other nine locations, which are either located in less densely populated areas or where demolition work occurred near to where the Equipment would operate. The Application submitted for this Site also proposes to crush more concrete than the materials that were crushed at the other locations. Thus, based upon these differences in the locations and on the public comments opposing the Application because of the risks from the Equipment's operation so close to a residential neighborhood, the Department finds that it is reasonable to impose more restrictive operating conditions than the other nine locations in order to allow the Equipment to operate at the Site and reduce the risk of any possible excessive emissions and noise from adversely impacting nearby residents.

The DAQ prepared the Revised Draft Permit based upon the public comments. The Revised Draft Permit includes six special conditions for the Equipment's operation at the Site, as set forth below:

- 3.1.10.1 Diamond Materials shall only process concrete materials that have been collected at the site before the permit application was received dated August 22, 2014.

- 3.1.10.2 Authority for operation at this location shall cease once the concrete materials have been processed at 200 Marsh Lane, New Castle.
- 3.1.10.3 Diamond Materials shall locate the crusher away from the residential area as shown in testimony presented at the public hearing. The crusher shall be placed approximately 400 feet away to minimize the noise during the crusher operation.
- 3.1.10.4 Diamond Materials shall only operate the crusher from 7am through 5pm on Monday through Friday.
- 3.1.10.5 Diamond Materials shall keep daily log records of operation and shall not exceed 150 operating days at this location.
- 3.1.10.6 The Department reserves the right to require that the owner or operator perform off site monitoring and/or emissions tests as approved by the Department at the company's expense.

The first restriction limits the Equipment to crushing only concrete materials, which is more limiting than the broader range of materials that the Permit allows to be crushed at the other nine locations. This condition also would require the Equipment to only crush the concrete material collected on the Site as of August 22, 2014, which is when DAQ received the Application. The Application cited the presence of approximately 100,000 tons of concrete on the Site. Consequently, this restriction is based upon Applicant's representation and the Department is reasonable to rely upon the representation in imposing this condition.

The second operating restriction ends any authority for the Equipment to operate at the Site once the concrete material to be crushed by the first condition has been crushed.

A third restriction is in Condition 3.1.10.3 which limits where the Equipment can operate as follows: "Diamond Materials shall locate the crusher away from the residential area based upon the proposed location presented at the public hearing. The crusher shall be placed at approximately 400 feet away to minimize the noise during the crusher operation." This location is based upon the recommended location provided by Applicant's sound expert who

determined a location that would reduce the risk of any sound level from the Equipment's operation exceeding allowed limits at the Site's eastern boundary with the residential area.

A fourth restriction is in Condition 3.1.10.4 and would address the public concerns with when the Equipment would be allowed to operate. The Site will have the Equipment's operation limited to only after 7 a.m. and before 5 p.m. and only Monday through Friday. The Equipment would not be allowed to operate on the weekends. This is a reasonable restriction to reduce the risk of disturbing the residential neighbors outside of the Applicant's proposed working hours.

The fifth restriction in Condition 3.1.10.5 limits the duration of the crushing operations by requiring that the crushing "shall not exceed 150 operating days at this location," and requires maintenance of a daily operating log. This number of operating days should be sufficient to crush the estimated 100,000 tons of concrete based upon Applicant's estimated average crushing rate of 1,000 tons a day. This is a reasonable restriction that will limit the Equipment's operating days in response to public comments that were concerned with extended and indefinite crushing operations.

The sixth condition confirms the Department's authority to require additional special monitoring by the Applicant at the Applicant's expense. The Department can also conduct its own monitoring inspections.

The above discussed special conditions imposed on the Equipment's operation at the Site will provide greater protection to the West Minquadales residents. Moreover, the approval of the Revised Draft Permit also will address the concerns in some of the public comments, which sought the removal of the concrete from the Site. The Department, however, does not have the authority when reviewing the Application, which is for an Air Pollution Control permit to regulate air emissions, to direct the removal of the concrete from the Site. Any issue with the

storage of concrete at the Site is not regulated under the Air Quality Regulations. The Department may have authority under other of its Regulations and law, such as the Department authority to regulate solid waste, but then, as Applicant's counsel pointed out in a letter providing the source of the concrete, the Department's Solid Waste Regulations define "clean fill" as including "concrete," and exempt it from any solid waste regulation over "the final disposal of clean fill." 7 DE Admin. Code 1301. Consequently, this proceeding does not support the exercise of any Department authority under the Solid Waste Regulations to require Applicant to move the concrete to a different location.

The Department supports the recycling of concrete as part of its policies designed to encourage the recycling of materials. Therefore, Department also finds that the Application should be approved and a permit issued to Applicant based upon the Revised Draft Permit because Applicant's plans are to crush the concrete so that the concrete may be recycled. The crushing will allow the recycling of concrete at the Site to occur. Moreover, the recycling will allow the concrete piles to be reduced and possibly removed for re-use elsewhere. Thus, the Revised Draft Permit may serve a goal sought by some public comments, which was the removal of the concrete from the Site. The removal of the concrete from the Site will best be accomplished in the shortest time period by approval of the Revised Draft Permit.

### **Conclusions and Reasons**

The issuance of DAQ's Revised Draft Permit that includes several operational restrictions is reasonable and well-supported in the record. The above special restrictions on the Equipment's operation at the Site will be subject to the Department's on-going monitoring and supervision of the Equipment's operation at the Site. The Department imposed monitoring and record-keeping on the Applicant, but also undertakes its own inspections. The Department's

permit enforcement authority includes the assessment of civil penalties as well as undertaking criminal prosecution of permit violators. Thus, the issuance of the Revised Draft Permit will begin the Department's regulation of the Equipment's operation at the Site and should problems develop then the authority to operate the Equipment at the Site may be revoked.

In sum, the Department has carefully considered the public comments and imposed restrictions in the Revised Draft Permit that will provide necessary operational safeguards to minimize the risk of adverse impact from the Equipment's operation at the Site, including impacts from dust or other air emissions and from noise and vibrations. Accordingly, the Secretary concurs with the DAQ's recommendation and the Hearing Officer's recommendation to amend the Permit based upon the Revised Draft Permit and its reasonable conditions. The following is entered as ordering paragraphs.

1. The Department issues this Order pursuant to *7 Del. C. Section 6006* following a public hearing on a permit application, which seeks to amend the Revised Draft Permit to allow Applicant to operate its Equipment at the Site;

2. The Department is authorized under *7 Del. C. Section 6003(b)(1)* to issue permits for the construction, installation, replacement, modification or use of any equipment which may cause or contribute to the discharge of an air contaminant;

3. The Department provided adequate public notice of the permit amendment application and of the public hearing as required by *7 Del. C. Section 6004*, and held the public hearing in a manner required by *7 Del. C. Section 6006*, and the Air Quality Regulation 1102;

4. The Department considered all timely and relevant public comments in making this final determination on the Application, and this Order and attached Report establishes the Record to support this decision to issue Applicant the amended Permit;

5. DAQ shall issue Applicant the amendment to the Permit consistent with the Revised Draft Permit prepared by DAQ's experts and attached to DAQ's TRM;

6. Pursuant to *7 Del. C. 6001*, the conditions and terms in the permit amendments approved by this Order will protect the public health, safety and welfare from any undue harm from the operation of the Equipment to be operated at the Site, and will allow Applicant to operate its Equipment to enable the concrete at the Site to be recycled for beneficial reuse; and

7. The Department shall publish this Order on its web site and provide such public notice of it in a manner required by the law and the Department's regulations and the Department determines appropriate.

A handwritten signature in blue ink, appearing to read "David S. Small", is written over a horizontal line.

David S. Small  
Secretary

## HEARING OFFICER'S REPORT

TO: The Honorable David S. Small  
Secretary, Department of Natural Resources and Environmental Control

FROM: Robert P. Haynes, Esquire  
Senior Hearing Officer, Office of the Secretary  
Department of Natural Resources and Environmental Control

RE: **Application of Diamond Materials, LLC to Amend Air Pollution Control Permit APC-2008/0087 to Construct/Operate a Roving Rock Crusher, an Impactor and a Screener at 200 Marsh Lane, New Castle, New Castle County**

DATE: September 3, 2015

### I. PROCEDURAL HISTORY

On August 22, 2014, the Department of Natural Resources and Environmental Control's ("Department") Division of Air Quality ("DAQ") received Diamond Materials, LLC's ("Applicant") application ("Application") to amend its Air Pollution Control permit APC-2008/0087-Construction/Operation ("Permit"). The Applicant seeks to add a new location, 200 Marsh Lane, New Castle, New Castle County ("Site")<sup>1</sup> for the operation of a roving rock crusher, an impactor and a screener ("Equipment"). The Permit allows the Equipment to operate at nine other Delaware locations based upon air emissions that the Application would not change.

DAQ reviewed the Application, determined that it was complete and prepared a draft permit. DAQ had published public notice<sup>2</sup> of the Application, DAQ's November 9, 2015 Draft Permit ("Draft Permit"), and that a public hearing would be held December 11, 2014 at the Minquadale Fire Company, 129 E. Hazeldell Avenue, New Castle.

I presided over the public hearing, which was attended by approximately 100 persons, and nineteen members of the public presented comments at the public hearing. State

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<sup>1</sup> The Site is owned by Clifton Mills Associates, LP, and it is used by Corrado Construction Company, LLC. ("CCC") for its construction and recycling business.

<sup>2</sup> Publication occurred in the November 9, 2014 editions of *The Delaware State News* and *The News Journal*.

Representative James (“JJ”) Johnson requested an extension of time for the submission of written public comments, which I granted until December 29, 2014.

On August 31, 2015, DAQ’s experts provided the attached Technical Response Memorandum (“TRM”), which responded to the technical issues raised by the public comments and provided additional information on the other locations where the Equipment is authorized to operate as well as other crusher authorized locations in Delaware. DAQ also prepared a Revised Draft Permit dated August 31, 2015 (“Revised Draft Permit”) attached to the TRM if the Secretary decides to issue an amended Permit. DAQ’s Revised Draft Permit includes special restrictions that address several of the concerns raised by the public comments.

## **II. SUMMARY OF THE RECORD AND FINDINGS OF FACT**

The record contains: 1) the 103 page verbatim transcript of the public hearing, 2) the documents presented at the public hearing as exhibits, as summarized below, and 3) this Report and the documents identified in this Report, including DAQ’s TRM.

DAQ’s air quality experts, Paul Foster, P.E., Program Manager of DAQ’s Engineering and Compliance Branch, and Chandu Dalsania, Environmental Engineer, attended the public hearing. Mr. Foster provided an overview of the Application and DAQ’s draft permit. He explained that the Department had provided thirty days for public comment on the Application, which was more than the fifteen days’ notice required by the law. In addition, he said that DAQ had prepared the Draft Permit and that a public hearing had been scheduled without waiting for any request.

Mr. Foster went on to describe the Equipment. He said that the Equipment has been used at a number of locations to crush concrete produced by demolition projects, which allowed the concrete to be recycled and such re-use was good for the environment. He described the Permit as a synthetic minor permit, which he explained requires that the Equipment’s operations is

limited by the Permit to no more than 2,600 hours a year at all locations in order to keep the air emissions below the levels that would trigger classification as a major source of air emissions and require a much more complicated permit. He noted that the 2,600 hour annual limit would allow the Equipment to operate 260 days annually based upon operating 10 hours a day and a normal five day work week. He described the Equipment's use of a spray bar for spraying water to control dust emissions from operations.

Mr. Foster also explained that the Draft Permit included conditions that were not included on the Equipment's operation at the other locations, namely, 1) that only the concrete material on the Site as of August, 22, 2014, the date DAQ received the Application, could be crushed, and 2) that once the concrete material on the Site was crushed, then the permit authority to operate the Equipment at the Site would expire. Mr. Foster described the procedure the Department would take following the public hearing resulting in the issuance of a Secretary's Order and possibly a permit, if approved by the Order.

Mr. Foster provided the following documents, which were introduced as Department exhibits:

- DNREC Ex. 1-the Application dated August 21, 2014;
- DNREC Ex. 2-the DAQ draft permit dated November 9, 2014; and
- DNREC Ex. 3-the affidavits of publication of legal notices in newspapers.

Following Mr. Foster's presentation, Applicant's counsel, Mark Dunkle, Esquire of the law firm of Parkowski, Guerke and Swayze, PC, made a presentation. He introduced, Louis M. Militana, Applicant's permit consultant, James Scott Lester, Applicant's foreman

, and Valentino DeRocili, Ph.D., Applicant's consultant and an expert on sound with CHMM, Compliance Environmental, Inc. Mr. Dunkle also provided for the record the following exhibits:

- Diamond Materials Ex.1-the existing Department permit;
- Diamond Materials Ex. 2-the Applicant's hearing presentation;

Diamond Materials Ex. 3-the resume of Louis M. Militana;  
Diamond Materials Ex. 4-the resume of Valentino DeRocili;  
Diamond Materials Ex. 5-New Castle County's zoning of the Site as Heavy Industry  
("HI").

Mr. Dunkle then introduced Mr Militana and asked him questions. Mr. Militana described the Equipment, which he said has a maximum capacity to crush 386 tons per hour. He described how the concrete is first sent to the crusher and then to the impactor to reduce the size of the concrete so that it may go through the screener. He said the crushed material would be transported on a conveyor. He said that the material is sprayed with water to control dust. He said the Site is zoned HI by New Castle County. He said the crusher would be located 400 feet from the nearest residential fence line. He provided his education and work experience background and explained that the Equipment was approved for use at nine other Delaware locations. Mr. Militana concluded by saying that the Equipment would meet all applicable air quality requirements.

Mr. Dunkle then presented the Applicant's foreman, Mr. Lester, who said the Equipment requires three employees to operate. He operates the heavy equipment which is a loader and excavator, and the other two employees control dust levels with water trucks and otherwise ensures compliance with the Permit. He stated that the Applicant has not been cited for any violations of the Permit when the Equipment has operated at the other nine locations. Finally, he stated that Applicant plans on operating the Equipment at the Site Monday through Friday from 7am to 5pm.

Mr. Dunkle introduced Dr. DeRocili next, who spoke about his study of the Site's sounds. Dr. DeRocili explained his charts that displayed the Site and his calculation of sound from the Equipment's operation at the proposed location on the Site, which would farthest from the residential area approximately 400 hundred feet away. He said this location also is at a low

spot where sounds from the Equipment would not exceed the normal noise levels of the residential areas or the regulatory level of 70 decibels.

Robert Whetzel, Esquire, of the law firm Richards, Layton and Finger, introduced Joseph Corrado, one of the owners of Clifton Mills Associates, LLC (“CMA”), which owns the Site.

Mr. Whetzel introduced a binder containing the documents identified below as exhibits:

- CMA Ex.1-Applicant’s December 11, 2014 letter applying for a permit;
- CMA Ex.2-DAQ’s draft permit dated November 9, 2014;
- CMA Ex.3-CMA’s November 20, 2014 letter to neighbors;
- CMA Ex. 4-the printout of CMA’s web site;
- CMA Ex. 5-letters in support of the Application from Delawareans for Environmental and Economic Development and from Associated Builders and Contractors, Inc,
- CMA Ex. 6-the resumes of Dr. DeRocili and Mr. Militana;
- CMA Ex. 7-Diamond Materials’ presentation;
- CMA Ex. 8-the June 5, 2012 DAQ permit issued to Applicant;
- CMA Ex. 9-the August 1, 2008 Department permit issued to Corrado Construction Company, LLC to operate an 800 hp Caterpillar Engine and Grinder Operation at the Site;
- CMA Ex. 10-the September 19, 2007 Department permit issued to Corrado Construction Co., LLC to operate a 440 hp crusher and 100 hp Screener at the Site;
- CMA Ex. 11-September 12, 1995 Department permit issued to Edgemoor Materials, Inc. to operate two 125 hp crushers with associated equipment at the Site and the May 22, 1995 transfer of operations from Edgemoor Materials to Wilmington Recycling, LLC.

Mr. Corrado explained that the Site has been used for his construction business since 1981 and that the business currently employs 60 full-time staff and 125-150 tradesmen. He indicated that his recycling business has been operating at the Site since the mid 1980’s. He said that the operations had two prior permits for crushing, and that currently his business has a permit for a tub grinder used to make mulch.

The first public speaker was Thomas P. Gordon, New Castle County’s County Executive. He said his office has authority over New Castle County’s land use and that he has been trying to shut down landfills if they do not have liners. He stated his opposition to the Application based upon his concern that the proposed rock crushing would cause lung diseases.

The second public speaker was State Representative JJ Johnson, who first requested an extension of the public comment period, which was not opposed. Consequently, I granted an extension to December 29, 2014. He then discussed the public's complaints over the past ten years with the landfill and noise in the area, particularly, West Minquadale, from Interstate 495. He mentioned complaints about grinding up tires. He mentioned the past Department hearing on raising the height of the landfill. He discussed the issue of sinkholes in the area and how the area also was adversely impacted by Peninsula Compost's nearby operations.

New Castle County Councilman Jea Street was the third public speaker. He first thanked the Department for shutting down Peninsula Composting's operations. He then expressed his view that the hearing lacked due process because the Applicant presented witnesses who were not subject to cross-examination. He requested that the hearing should be postponed and requested that New Castle County provide an attorney to appear at the next hearing in order to cross-examine witnesses. He mentioned the high cancer rate in the area, which has been the subject of a large number of Department permits. He wanted the issuance of permits in the area to stop until Peninsula Compost no longer was operating and after the cancer rate declined. He also raised his concern with groundwater contamination in the Hamilton Park area. Finally, he noted the proximity of the New Castle County 911 operation center to the Site, and he wondered if the crushing operations would interfere with the handling of emergency calls.

The fourth public speaker was State Senator David McBride, who stated that the material at the Site should be removed because it had been placed there illegally. He asked how long the crushing would last. Applicant's witness, Mr. Militana, answered by stating that the 2,600 hours would allow for one year's operation. Senator McBride asked about the other nine locations, and Applicant's counsel, Mr. Dunkle, answered by identifying the other nine locations in the Permit as follows: 1) 394 S Chapel Street, Newark; 2) Village of Bayberry, Jamison Corner Road and

Boyds Corner Road, Middletown; 3) Christiana Mall North Parking Area, Newark; 4) 36393 Sussex Highway, Delmar; 5) Dexter Corner Road, Townsend, DE 19734; 6) 560 South College Avenue, Newark, DE 19713; 7) 3700 Bay Road, Dover; 8) Indian River Inlet, Delaware Rt. 1, Bethany Beach; and 9) 1107 Willow Grove Road, Felton, DE 19943. Mr. Dunkle stated that Applicant had successfully operated its crushing operations at these locations. Senator McBride also asked about how much concrete was on the Site, and Mr. Dunkle responded by stating that the Site had approximately 100,000 tons based upon the estimated size of the pile. Senator McBride asked about the source of the material, but Mr. Dunkle objected to providing an answer because the source of the material was irrelevant to the Application. I directed Applicant to provide the information in a post-hearing response. Senator McBride asked whether the dust from crushing concrete may contain silica that could cause a lung disease.

The fifth public speaker was David Trincia, who spoke about the high cancer rate in the community. He also was concerned about the concrete dust, which he claimed contains silica that could harm humans. He also raised a concern with the emissions from the Equipment's diesel engines, which said would cause air pollution and bad smells. He described seeking relief from the Applicant's proposed operation from legislators and from New Castle County, which he said should change the zoning.

The sixth public speaker was Raymond Smith, who stated that the material should be moved to a different location.

The seventh public speaker was Len McCarthy, Vice-President of Teamsters Local 326, who supported the Application because it would allow the Equipment to temporarily operate and would operate with adequate precautions to keep the dust and noise within allowed limits.

Suendy Zavala spoke next about her concern with the noise and vibrations, which she said starts before 7 am. She also complained about the smell. She said the noise disturbs her and her three children on the weekends too.

The ninth public speaker was Catherine Niemand, Vice-President of the Minquadale Civic Association, who said the concrete piles first appeared in 2013. She told about contacting State Representative JJ Johnson and New Castle County's land use office. She was told that CCC's crusher permit at the Site had expired. She commented that houses were experiencing cracks in their walls from the vibrations. She asked about the monitoring, and DAQ's Mr. Foster told her that the Department required the Applicant to monitor and to submit reports. Ms. Niemand responded that self-monitoring was equivalent to the fox guarding the hen house. She provided photographs of the Site, which were marked as Niemand Ex. 1. These photos showed concrete piled approximately fifty feet above grade, and heavy equipment used to move the concrete.

The tenth public speaker was Sherry Cropper, who spoke of her concern with the Equipment's proposed operating time of ten hours a day, six days a week for fifty two weeks a year.

Barbara Oliver spoke next about what she called a "dump" and how it has ruined her quality of life because of the noise level and shaking from before 7 am until after 5 pm. She also mentioned the dust, smoke and trash from the operations. She opposed the rock crushing being added to the dumping operations.

The next public speaker was Robert Oliver, who spoke about hearing loud noises from machines running before 7 am and how he experienced large clouds of concrete dust a couple of times during the summer. He said how he does not invite his family over anymore because of his concern with the pollution.

The thirteenth public speaker was Celia Burton, who spoke on the noise and dirt that she claimed has caused her to have diseases.

Mike Enyedy spoke about the noise from Interstate 495 and he asked whether the noise levels were cumulative. Applicant's sound expert, Dr. DeRocili, answered. He stated that noise levels were not cumulative. Mr. Enyedy also asked whether Applicant's employees wore protective equipment, and Mr. Lester replied that Applicant's employees wore respirator gear. Mr. Enyedy complained about vibrations from the Equipment, and how the Equipment's operation would impact houses that are approximately seventy years old. Finally, he asked about how much time would be needed to crush the concrete. Applicant's Mr. Lester replied that the Equipment on average could crush approximately 1,000 tons a day based upon a daily range between 600 tons and 1,500 tons daily depending if the concrete contained reinforcing wire or steel in it. He said that the 380 tons an hour was the Equipment's maximum limit. He estimated that the existing concrete pile could be crushed in twelve months based upon normal operations.

The fifteenth public speaker was Willie Jean Masterson, who described her efforts to find out what was going on at the Site. She complained about how the operations were messing up her house with the shaking and that the dust had caused her white house to look beige. She expressed her concern with health issues from the dust.

Joseph Hojnicky spoke about the health issues he has experienced from living in the neighborhood.

Miranda St. Pierre spoke on the noise from Interstate 495 and from what she called "the dump," which had adversely impacted her family's health problems.

The eighteenth public speaker was Lee Jarmon, President of the Overview Gardens Garfield Park Civic Association, Inc., who spoke on behalf of the Association's approximately

700 homes. He discussed how his community has been plagued by environmental problems. He expressed his concern with the concrete dust that could cause lung diseases. He did not want even a temporary permit approved because it would cause more requests for permits in the area. His written statement was identified as Jarmon Ex. 1

The nineteenth public speaker was Lori Trincia, who asked who would monitor the Site to ensure compliance. Mr. Foster answered that the Applicant monitored and submitted reports to the Department, which could enforce any permit by assessing penalties and criminal prosecution. She commented that self-regulation was not good.

Sherry Cropper made further comments on her family's health conditions, but I granted her request after the hearing to withdraw these comments because she considered them to be too personal. I agreed to this request as a courtesy to her and also because the comments would not add to the record any new relevant information that should be considered.

In a December 22, 2014, letter, Applicant's counsel provided a response to Senator McBride's question on the source of the concrete. The letter generally identified the non-industrial locations as the sources of the Site's concrete. I consider this an acceptable response given that the Department does not regulate the material at the Site as solid waste. This letter repeated counsel's objection to producing records for the sources of the Site's concrete because Applicant claimed that the concrete was "clean fill" as defined by the Department's *Regulations Governing the Regulation of Solid Waste, 7 DE Admin. Code 1301*. The letter indicated that the source of the material was not subject to the Department's recordkeeping requirements, which would otherwise apply if the Department did regulate the concrete material as solid waste.

The record also contains a December 24, 2014 letter from New Castle County Executive Gordon and New Castle Council District 10 Councilman Street. This letter raised the procedural issues that Applicant's witnesses should have been questioned and requested that the Department

hold another hearing. The letter also noted the noise concern with the Equipment's operation near the County 911 Operations building. The letter stated that the material stored on the Site should be transported to one of the existing approved locations. The letter also opposed the Application because of its air emissions and noise from the Equipment's operation. The letter disputed the claim of temporary operations based upon the proposed Monday through Saturday operations over 52 weeks a year. The letter opposed the uncontrolled emissions from the diesel engines and the lack of any study of the Equipment's impact on the air quality in the area.

The record includes the Application, which describes the Equipment as: 1) an Extec C-12 roving crusher powered by a 350 h.p Caterpillar C9 Diesel engine, 2) an Extec Impactor powered by a 366 h.p. DEUTZ BF6M 1015C diesel engine, and 3) an Extec Screener powered by a 100 h.p. DEUTZ BF4M 2012 diesel engine. The Application also shows that the Site is zoned by New Castle County as Heavy Industrial.

The record also contains the Permit, which allows the Equipment to operate at the nine other locations to crush concrete, asphalt, rock, block or brick. The Permit requires that the Equipment use diesel fuel with sulfur content no greater than 0.05% by weight, and that crushing is to occur only when fugitive dust control measures are operating. The air emissions at the Site would be subject to the same air emissions and control limits in Condition 2 that the Department has approved for the other nine locations for the air emissions from the diesel engines and the dust from the crushing.

The record includes DAQ's Draft Permit, which was DAQ's tentative position prior to the public comments. DNREC Ex 2. The Draft Permit includes Condition 3.1.10, which would be specific to the Equipment's operation at the Site and includes in 3.1.10.1 that Applicant "shall only process concrete materials that have been collected at the site before the permit application was received dated August 22, 2014." In addition, the Draft Permit also includes 3.1.10.2, which

states that “[a]uthority for operation at this location shall cease once the concrete materials have been processed at 200 Marsh Lane, New Castle.”

DAQ’s August 31, 2015 TRM also provided a Revised Draft Permit in response to the public comments. This Revised Draft Permit would impose the following additional restrictions for the Equipment’s operation at the Site:

- 3.1.10.1 Diamond Materials shall only process concrete materials that have been collected at the site before the permit application was received dated August 22, 2014.
- 3.1.10.2 Authority for operation at this location shall cease once the concrete materials have been processed at 200 Marsh Lane, New Castle.
- 3.1.10.3 Diamond Materials shall locate the crusher away from the residential area based upon the proposed location presented at the public hearing. The crusher shall be placed at approximately 400 feet away to minimize the noise during the crusher operation.
- 3.1.10.4 Diamond Materials shall only operate the crusher from 7am through 5pm on Monday through Friday.
- 3.1.10.5 Diamond Materials shall keep daily log records of operation and shall not exceed 150 operating days at this location.
- 3.1.10.6 The Department reserves the right to require that the owner or operator perform off site monitoring and/or emissions tests as approved at the company’s expense.

DAQ’s TRM also reviews the public comments and replies to them. Finally, DAQ recommends that an amended Permit be issued based upon the Revised Draft Permit if the Secretary decides to approved the Equipment’s operation at the Site.

I also toured the area and observed the Site from Marsh Lane. The concrete piles are approximately fifty feet in height and are located at the portion of the Site that borders Marsh Land and Interstate 495, which is on the west and north corner of the Site. The entire Site is

twenty two acres, but most of the Site is used by CCC's construction, which on the Site's southern end that has an office building. To the north of the office building there are other garage and storage buildings, and a large area used for the outside storage of a considerable number of heavy construction equipment. Located next to the Site's western side at 210 Marsh Lane is Magnus Environmental, which is a tire recycling business that also is zoned heavy industrial. Across Marsh Lane is an active industrial landfill owned and operated by Delaware Recyclable Products, Inc., and this is zoned heavy industrial. The north side of the Site abuts the land used for Interstate 495.

The residential neighborhood of West Minquadale is along the Site's entire eastern side. This neighborhood is zoned residential and consists of approximately one hundred single family houses. These houses are on one central street and nine cross streets that run approximately one block on each side of the central street. The proposed crushing would occur nearest the western and northern part of West Minquadale, or nearest the houses on the western side of the five cross streets of Frazier Avenue, Altoona Avenue, Mifflin Avenue, Newport Avenue and Erie Avenue.

### **III. DISCUSSION OF FINDINGS OF FACT AND REASONS**

I find that the record is complete and sufficient to support a decision to grant the Application subject to the terms and conditions set forth in the Revised Draft Permit. The public comments raised issues that I summarize as the Department's procedures, the air emissions, the noise and vibrations, the zoning, and the removal of the concrete.

#### **A. Procedural Issues**

The Application was submitted pursuant to Section 11 of Department Regulation 1102 in the Department's Air Quality Regulations, *7 DE Admin. Code §§1100 et seq.* DAQ determined that the Application was complete and properly followed the Air Quality Regulations' procedures for the publication of public notice of the Application and of the notice of the public

hearing. Indeed, DAQ provided the public with thirty days to provide written comments on the Application, which is more than the minimum fifteen days required by Section 11 of Air Quality Regulation 1102. In addition, DAQ also prepared the Draft Permit, which was prepared in an effort to address some of the public concerns. The Draft Permit, as noted above, added special permit restrictions that would only provide limited authority to crush only the concrete material already stored at the Site as of August 22, 2014, the date DAQ received the Application.

The Department also provided the public with thirty days to prepare for the public hearing following the publication of the public notice, which is more time than the twenty days' notice required under Regulation 1102. In addition, the public was provided more time to provide written comments after the public hearing based upon the extension of the public comment period through December 29, 2014. Thus, I find that the public was provided ample opportunity to comment on the Application, and that the Department properly followed the procedures for public notice and a public hearing in compliance with the law and Department regulations.

One public comment raised an issue with the public hearing's procedures. This comment was based upon how the Applicant made its presentation. Applicant used its counsel to guide the overall presentation by introducing three witnesses who each spoke on distinct areas of their involvement with the Application. The public comment claimed that there was no opportunity to cross-examine the Applicant's witnesses and that another hearing should be held. I do not find anything wrong or improper in Applicant's method of making its presentation at the public hearing. The Applicant's use of its counsel to obtain information from its witnesses in its presentation expressly is allowed by *7 Del. C. Section 6006(c)*, which states that a "the permit applicant...may appear personally or by counsel at the hearing and produce any competent evidence..."

The public comment also complained that the Applicant's witnesses were not subject to any questioning. The Applicant made its presentation without any interruption for public questions. Again, I find that this procedure is appropriate under 7 Del. C. Section 6006(c). The Department's public hearings on permit applications do not result in an adjudication, and this has been recognized by Section 10161 of the *Administrative Procedures Act*. 29 Del. C. §§10101 et seq ("APA"), which excludes the Department's public hearings from the APA's Subchapter III case decision procedures required for public hearings held by certain agencies when an adjudication is required. Instead, the Department's public hearings on permit applications are subject to 7 Del. C. Section 6006, and the APA's procedures for licensing proceedings in Subchapter IV of the APA. The Subchapter IV type of public hearing allows a public comment type of public hearing, which provides the public with the opportunity to comment on the subject matter of the public hearing, which in this case is the Application. Section 6006 (c) grants the Department during the public hearing process to compel answers to gain information, but that right to question does not extend to the public.<sup>3</sup> The Delaware Superior Court has upheld the Department's permit hearing procedures when the Department did not allow a public speaker to be granted "party status," which is a term used in an adjudicatory style public hearing to have a right to cross-examine witnesses. *Kearney v. Coastal Zone Industrial Control Board*, Del Super. Ct. C.A 03A-11-008 JRJ (2005). Thus, I find that the Department provided the public with ample opportunity to make comments on the Application, and that the public has no statutory right to ask questions of the Applicant as part of the public comments, but that the Department

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<sup>3</sup>. Indeed, the record shows that I directed the Applicant to provide information on the source of the concrete that Applicant refused to provide at the public hearing.

procedures grant the public a limited opportunity to ask questions in the exercise of its discretion over the procedures for its public hearings on permit applications.<sup>4</sup>

The Department's discretion over its procedures for the conduct of public hearings<sup>5</sup> allows the Department to determine whether public comments may include questions. Unless a public speaker's question is merely rhetorical, the more important Department policy is the requirement that an applicant or the Department answer the questions posed by the public. The Department has authority in Section 6006((3) to investigate during the public hearing process in order to gain information for the decision. I find that this authority allows the Department to compel answers to its questions, which in turn allows the Department to require the Applicant to answer questions posed by the public. The current policy is that each public speaker may ask the Applicant or the Department questions as part of the public comment. I informed the public of this policy at the hearing and that speakers would be taken in order that they called to speak. This procedure ensures an orderly public hearing and avoids the disorder when comments and questions are randomly shouted from the audience. Several public speakers questioned the Applicant and the Department as part of their public comments, and answers were provided, as reflected in this Report. Thus, the public comment that the public was not allowed to question the Applicant is not incorrect.

#### B. Air Emissions

Many of the public comments raised an issue with the Equipment's air emissions. The Equipment's air emissions are reason for Air Quality Regulation 1102 and the Department requirement that Applicant seek a permit amendment even the same air emissions were approved for the Equipment's operation at nine other locations. The Department considers a change in

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<sup>4</sup> The Department does hold public hearings that are adjudications and then due process hearing procedures are followed.

<sup>5</sup> The Department's public hearing guidelines for public hearings on permit applications is posted on the Department's web site.

location as requiring a permit amendment, which recognizes that changes in location do require additional regulatory scrutiny. The purpose of regulating air emissions is to ensure that the air emissions remain below allowed limits, as set forth in the Permit. Air Quality Regulation 1102 requires sources of air emissions to be controlled by a permit based upon established limits so that Delaware's air quality will achieve air quality standards that are based upon public health risks. The Department's Permit includes the following emission limits to protect the air quality:

Air contaminant emission levels shall not exceed those specified in 7 DE Admin. Code 1102 and the following combined from all sites:

- 2.1.1 Particulate Matter (PM) Emissions  
PM emissions shall not exceed 2.37 tons per rolling 12-month period.
- 2.1.2 Nitrogen Oxide (NO<sub>x</sub>) Emissions  
NO<sub>x</sub> emissions shall not exceed 7.83 tons per rolling 12-month period.
- 2.1.3 Sulfur Dioxide (SO<sub>2</sub>) Emissions  
SO<sub>2</sub> emissions shall not exceed 0.71 ton per rolling 12-month period.
- 2.1.4 Carbon Monoxide (CO)  
CO emissions shall not exceed 3.35 tons per rolling 12-month period.
- 2.1.5 Volatile Organic Compounds (VOCs)  
VOC emissions shall not exceed 0.3 ton per rolling 12-month period.
- 2.2 The emission limits stated in Condition 2.1 and operational limitation stated in Condition 3.2 are maximums for operation at all sites combined.
- 2.3 The rolling twelve (12) month period emission limits along with the operational limits of this permit are voluntary limitations taken by the owner or operator to reduce the potential to emit nitrogen oxides to below the major source threshold of 7 DE Admin Code 1130.
- 2.4 Particulate emissions from fuel burning equipment shall not exceed 0.3 pound per million BTU heat input on a maximum two hour average.
- 2.5 At no time shall the emissions of visible air contaminants from the facility exceed the following:
  - 2.5.1 Twenty percent opacity for an aggregate of more than three minutes in any one hour period, or more than 15 minutes in any 24 hour period from the diesel engines and systems for screening, handling, storing, weighing, loading, and transferring.

2.5.2 Ten percent opacity from the crushing operation's belt conveyor transfer points, except any stockpiles.

2.5.3 Fifteen percent opacity from the crusher.

2.6 Odors from this source shall not be detectable beyond the plant property line in sufficient quantities such as to cause a condition of air pollution.

These emission and operating limits will not change from the levels the Department already has authorized for the same Equipment when it operates at the other nine approved locations. These limits also are based on established federal health based air quality standards established by the United States Environmental Protection Agency (“EPA”) and adopted for Delaware in the Air Quality Regulations. I find that these limits are well-supported by the record and the Department’s regulation of air quality in its Air Quality Regulations. Thus, the Equipment’s proposed operation at the Site will not impair air quality based upon the limits in Permit.

The Permit also requires the control of fugitive dust by the spraying of water to reduce dust to the Permit’s allowed limits in Section 2.5. This method for dust control has been adopted by the Department for the Equipment’s other locations and for other permits where dust is expected to be produced. The concerns about dust and lung diseases are valid but the Department requires dust control that should satisfy this concern. Dust, like noise, is difficult to isolate the source in a heavily industrial environment, but the use of water should be an effective method of control. I find that the Applicant’s proposed use of water spraying is a proper and reasonable method to control dust emissions.

The Permit’s air emission limits are subject to monitoring and reporting requirements to ensure that the Equipment’s operation complies with the Permit. The Permit imposes a duty to report any violation of the Permit, which is a duty imposed in other Department permits. Contrary to the public comments, the Department finds that the Permit’s monitoring and

reporting requirements are effective form of regulation because any violation may result in a Department enforcement action, including civil penalties and criminal prosecution. The Department also has the authority to conduct its own monitoring and inspections or, as set forth in the Revised Draft Permit, to require the Applicant to install additional monitoring equipment. Thus, the Permit's requirements for monitoring and reporting are similar to the same requirements in other permits issued pursuant to Air Quality Regulation 1102, and I find them to be reasonable and well-supported.

Further support for the approval of the air emissions from the Equipment's operation at the Site is Applicant's operating experience at the other nine locations. The Applicant's record of operating the Equipment shows that the Applicant has complied with the Department's regulations and the Permit at the other nine locations. Hence, I find that the Equipment should be able to perform equally as well at the Site without any excessive air emissions.

The Department's regulation of the Equipment's air emissions at the Site should be more protective than at the other nine locations because of the Site's differences from the other locations and the concerns raised by the public comments. The first difference is that the Site is next to a densely populated residential area, whereas most of the other locations are located farther from residential areas. The second difference, and likely related to the first difference, is that the Department did not receive any public comments or request for a public hearing on the applications for the Equipment to operate in the other locations. The third difference is that the concrete was collected at the Site whereas most of the other locations the Equipment was brought to where the demolition was occurring, such as the two Newark locations, the Middletown location and the Dover location. The Felton and Townsend locations are at or near solid waste facilities. The fourth difference, as noted by DAQ, is that the Site would crush far more material than the other locations, which in itself supports imposing greater restrictions

because crushing more material increases the risk of harm from the crushing. These differences support imposing reasonable operating conditions on the Equipment to lower the air quality risks associated with the Equipment's operation at the Site.

DAQ's Revised Draft Permit provided increased protection for the residents of West Minquadale by adding to the Draft Permit's restrictions the following:

- 3.1.10.3 Diamond Materials shall locate the crusher away from the residential area as shown in testimony presented at the public hearing. The crusher shall be placed approximately 400 feet away to minimize the noise during the crusher operation.
- 3.1.10.4 Diamond Materials shall only operate the crusher from 7am through 5pm on Monday through Friday.
- 3.1.10.5 Diamond Materials shall keep daily log records of operation and shall not exceed 150 operating days at this location.
- 3.1.10.6 The Department reserves the right to require that the owner or operator perform off site monitoring and/or emissions tests as approved by the Department at the company's expense.

I find that these conditions are reasonable based upon the concerns with the risks from the Equipment's operation at the Site, as expressed in the public comments. Condition 3.1.10.3 requires the Equipment to be located approximately 400 feet from West Minquadale at location where the Applicant's noise expert indicated would reduce the risk of excessive noise reaching West Minquadale. Condition 3.1.10.4 will reduce the operating hours from what is in the Permit and will be consistent with Applicant's presentation at the public hearing and those public comments that objected to any weekend operation. Condition 3.1.10.5 imposes a 150 day operating day limit for the Equipment's operation at the Site, which should be sufficient based upon Applicant's average crushing tonnage per day and the estimated tonnage of concrete material. Condition 3.1.10.6 recognizes the Department's authority to amend the Permit to

require Applicant to conduct additional monitoring and testing requirements. Together, these restrictions will provide an increased margin of protection to the residents who live near the Site.

#### C. Noise and Vibrations

The public comments on noise and vibration were addressed by DAQ in its TRM by stating that noise and vibration should not be regulated in an Air Pollution Control permit, but instead that noise and vibration are established and enforced by local authorities. I find that the Equipment's operations will also be subject to the Department regulation of noise and vibration in Air Quality Regulation 1149. Thus, the Equipment's operations will be regulated for noise and vibration based upon local and Department enforcement, with the local ordinances providing greater level of regulatory control over noise than does the Department's Regulation 1149.

#### D. Zoning

Most of the public comments highlight the real problem with the Application, which is the proposed use of a heavy industrial activity next to a heavily populated residential area. I find that New Castle County's zoning HI allows for the Equipment's use at the Site, and that the Department is without authority to change the local zoning. The Site is located in an area with other heavy industrial uses, such as an active landfill<sup>6</sup> along the Site's western boundary of Marsh Lane, which also is zoned HI. The Site's northern boundary is Interstate 495, which several public comments identified as a source of objectionable noise from the traffic. The Site's southern area and approximately one half of the Site is used by CCC's construction and recycling operations, which use diesel powered heavy equipment similar to the Equipment. The Site's southern boundary abuts property that is zoned "industrial," but is now where the New Castle County Public Safety Building is located. The origins of the zoning are not material to the Department's decision, and the Department must accept the past zoning decisions and only

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<sup>6</sup> This may have been the public comments' reference to a "dump." The Department regulates this solid waste management disposal landfill based upon a permit issued under its Solid Waste Regulations.

determine if the Equipment's operation would be consistent with the zoning. Nevertheless, the Department can regulate the Equipment's operation at the Site. DAQ's Revised Draft Permit effectively will regulate the Equipment's operation to provide increased protection to nearby residents.

The record also includes information on the Site's past use for crushing beginning in the 1980s through 2013. The Department last issued CCC an Air Pollution Control permit APC-2007/0164-O (Amendment 1) that expired on March 11, 2013 without any attempt to renew it. A review of this permit shows that the crushing equipment was different, and used a larger diesel engine (800 hp) than the Equipment's crusher. DAQ's review of Department records finds no violation was issued based upon this permit. Thus, it appears that past crushing operations at the Site were able to be conducted in compliance with a Department permit, which I find supports DAQ's position to issue the Revised Draft Permit.

The Site's past use for crushing operations also may explain several of the public comments, which seemed to be based upon the current operation of the Equipment at the Site. The Department has verified that Applicant's Equipment has not operated at the Site. There are several other possible sources of noise and dust at the Site or nearby, such as CCC's construction and recycling operations, the tire recycling operations of Mangus Environmental, the traffic noise from Interstate 495 and operations from the industrial landfill. These other sources of possible noise and pollution in the area do not support denying Applicant's Equipment from operating at the Site, but DAQ's Revised Draft Permit has proposed additional protection to minimize the Equipment's operations adversely impacting the residential area.

#### E. Removal of Concrete

Several public comments requested that the concrete be moved to a different location, and one public comment questioned whether storing 100,000 tons of concrete at the Site was

legal. In response, Applicant's counsel provided an explanation that the Department's *Regulations Governing the Regulation of Solid Waste* ("Solid Waste Regulations"), 7 DE Admin. Code Regulation 1301, exempt the concrete at the Site from solid waste regulation because it is within the definition of "clean fill."

I find that in this proceeding on an application submitted to amend an air pollution control permit that there is no authority to act under any solid waste authority. Nevertheless, Section 2.2.3 of Department's Solid Waste Regulation 1301 exempts the final disposal of clean fill from compliance with the Department's regulation of solid waste. Section 3.0 of Solid Waste Regulation 1301 defines "clean fill" as "non-water-soluble, non-decomposable, environmentally inert solid such as rock, soil, gravel, concrete, broken glass and/or clay and ceramic products." Concrete as "clean fill" means that the Department cannot regulate the concrete as solid waste under its Solid Waste Regulations, which means that there would be no authority to require the concrete to be moved if it was found in a solid waste proceeding to be within the clean fill definition. This proceeding makes no decision on the solid waste issue. Thus, I find that the DAQ's Revised Draft Permit properly limits the crushing to only concrete, which is consistent with the Department's Solid Waste Regulations' exemption.

Moreover, I find that the neighborhood goal of the removal of the concrete would be advanced by allowing the crushing of the concrete because the purpose of the crushing is to allow the crushed concrete to be recycled. The Department's solid waste policies encourage recycling and consequently the crushing would allow the concrete to be recycled. If the concrete was recycled, then this would reduce concrete at the Site, which several public speakers sought. DAQ's Revised Draft Permit will allow the crushing of the concrete, which will reduce the piles of concrete and allow the concrete to be removed from the Site for use as recycled material. I

find that this proposed recycling use is far better than having the high piles of concrete remain at the Site indefinitely, which many public speakers opposed.

#### **IV. CONCLUSIONS**

In sum, the Department's experts in DAQ prepared a Revised Draft Permit that addresses some of the public's concerns with Applicant's proposed crushing operations in a manner consistent with the Department's authority. First, the Revised Draft Permit establishes limited authority to crush only the concrete placed at the Site as of August 22, 2014. Second, the limited authority to crush would continue only so long as needed to crush the concrete placed on the Site before the Department received the Application, and no longer than 150 operating days, which DAQ's experts have determined, based upon Applicant's estimates, is sufficient time to crush the concrete collected at the Site as of August 22, 2014. Third, DAQ's Revised Draft Permit limits the Equipment's operation to locations on the Site as far as reasonably possible from the residential area consistent with Applicant's sound expert's proposed location, which is approximately 400 feet from the residential area. This location should also minimize the risk from any dust impacting the residential area. As a further precaution, the Department reserves the right to amend the Permit to require Applicant to install, at Applicant's expense, monitoring equipment and to conduct air quality testing. Thus, the record supports the issuance of DAQ's Revised Draft Permit as reasonable to allow the Equipment to operate at the Site, but subject to specific conditions appropriate and reasonable for the Site based upon the public comments.

I find and conclude that the record supports approval of the DAQ's Revised Draft Permit to amend the Permit to allow Applicant to operate the Equipment at the Site. I recommend the Secretary adopt the following:

1. The Department issues this Order pursuant to *7 Del. C. Section 6006* following a public hearing on a permit application, which seeks to amend the Revised Draft Permit to allow Applicant to operate its Equipment at the Site;

2. The Department is authorized under *7 Del. C. Section 6003(b)(1)* to issue permits for the construction, installation, replacement, modification or use of any equipment which may cause or contribute to the discharge of an air contaminant;

3. The Department provided adequate public notice of the permit amendment application and of the public hearing as required by *7 Del. C. Section 6004*, and held the public hearing in a manner required by *7 Del. C. Section 6006*, and the Air Quality Regulation 1102;

4. The Department considered all timely and relevant public comments in making this final determination on the Application, and this Order and attached Report establishes the Record to support this decision to issue Applicant the amended Permit;

5. DAQ shall issue Applicant the amendment to the Permit consistent with the Revised Draft Permit prepared by DAQ's experts and attached to DAQ's TRM;

6. Pursuant to *7 Del. C. 6001*, the conditions and terms in the permit amendments approved by this Order will protect the public health, safety and welfare from any undue harm from the operation of the Equipment to be operated at the Site, and will allow Applicant to operate its Equipment to enable the concrete at the Site to be recycled for beneficial reuse; and

7. The Department shall publish this Order on its web site and provide such public notice of it in a manner required by the law and the Department's regulations and the Department determines appropriate.



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Robert P. Haynes, Esquire  
Senior Hearing Officer

## MEMORANDUM

TO: Robert Haynes  
Hearing Officer

THROUGH: Ali Mirzakhali, P.E. *Am*  
Division Director

Paul Foster, P.E. *PA*  
Program Manager

Angela D. Marconi, P.E., BCEE *ADM*  
Managing Engineer

FROM: Chandu Dalsania *CD*

**SUBJECT: Report on the Public Hearing for Diamond Materials LLC's proposal to operate Roving Crusher, located at 200 Marsh Lane, New Castle.  
Draft Permit: APC-2008/0087-C/O(Amendment 13)(NSPS)(SM) dated 11/5/14**

DATE: August 31, 2015

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### **Background**

Given below are the Division of Air Quality's responses to the comments made at the public hearing held on November 9, 2014 regarding Diamond Materials LLC's , request to operate roving crusher at 200 Marsh Lane, New Castle.

### **History**

Diamond Materials started Roving crusher operation in April 2008 and complies within the applicable regulation requirements. Currently, the company is operating crusher at 9 locations in the State of Delaware. All the crusher operation locations are in the permitted zone or approved by the county or city official as shown in Appendix "A. Most of the site locations are nearby the residential area.

Diamond Materials, LLC is issued roving crusher operation permit: **APC-2008/0087-C/O(Amendment 12)(NSPS)(SM)**, on November 5, 2014 to operate one new Extec C-12 Crusher with a capacity of 386 tons per hour powered by 350 hp Caterpillar C9 Diesel Engine, one existing Extec Impactor with capacity of 300 tons per hour powered by 366 hp DEUTZ BF6M 1015C diesel engine, and one new Extec S-6 Screener with a capacity of 300 tons per hour powered by 100 hp DEUTZ BF4M 2012 diesel engine.

This federally enforceable permit: **APC-2008/0087-C/O(Amendment 12)(NSPS)(SM)**, is issued to operate roving crusher at 9 locations throughout the State of Delaware, as specified in Condition No. 3.1.1 through 3.1.9. This permit application request is to amend the current Permit: **APC-2008/0087-C/O(Amendment 12)(NSPS)(SM)** for Roving Crusher to add a new location 200 Marsh Lane, New Castle. The proposed amended draft permit: **APC-2008/0087-C/O(Amendment 13)(NSPS)(SM)** includes a new location of 200 Marsh Lane, New Castle, in Condition 3.1.10 for Roving Crusher operation.

### **Public Notice**

Division of Air Quality (DAQ) advertised a public notice that it had developed a Draft Title V Synthetic Minor Permit: **APC-2008/0087-C/O(Amendment 13)(NSPS)(SM)** for the Diamond Materials Roving Crusher

## **MEMORANDUM**

### **Diamond Materials**

#### **DAQ's Response Document for the Public Hearing on December 11, 2014**

#### **Draft Permit: APC-2008/0087-C/O(Amendment 13)(NSPS)(SM)**

August 31, 2015

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Operation to add a new location at 200 Marsh Lane, New Castle. The legal notice was published in Sunday News Journal and the Delaware State News on November 9, 2014. The public notice also stated that the public hearing of the application and the draft permit is scheduled to be conducted on December 11, 2014. The public notice period was open for 30 days.

Air pollutant emissions limitations in Condition 2.1 or operation hour limitations of 2600 hours in any rolling twelve month period from all sites combined in Condition No. 3.2 will remain the same. The company's proposed plan is to crush 100,000 tons of recycled concrete materials and the crushing time may take up to 6 months at the proposed new site at 200 Marsh Lane, New Castle.

### **Review of Application and Public Hearing**

A public hearing was held at the Minquadale Fire Company, located at 129 E. Hazeldell Ave., New Castle, Delaware, on December 11, 2014 to receive comments on DAQ's draft permit. The hearing was attended by 48 citizens plus State and Company representatives. During the hearing, 15 persons offered testimony.

On behalf of DNREC, Hearing Officer, Mr. Robert Haynes, conducted the public hearing and welcomed all attending people (i.e. legislator, congressman, county officers, company representatives and community people) for the attending and/or commenting on the Diamond Materials application for the Roving Crusher Draft Permit: APC-2008/0087-C/O(Amendment 13)(NSPS)(SM). Prior to the public comments, the Division of Air Quality (DAQ) Program Manager, Mr. Paul E. Foster P.E., presented the background information on air permitting action that included part of the permit application, draft permit and legal notice/affidavits for the Roving Crusher Operation.

The applicant representatives, Mr. Mark F. Dunkle, Attorney of Esquire Parkowski, Guerke & Swayze, P.A., Mr. Louis M. Militana of Ambient Air Quality Services, Mr. James Scott Lester of Diamond Materials, and Valentino DeRocili of Compliance Environmental Inc., spoke on behalf of Diamond Materials for the Roving Crusher Operation. Mr. Louis M. Militana of Ambient Air Quality Services presented slides information on the components of the crusher and specifics of the draft permit related to the equipment, emissions and controls. Mr. James Scott Lester of Diamond Materials is working as a Foreman and presented on equipment handing operation and dust controls using water spray bars on conveyor transfer locations and truck spraying water on the road at the site.

Mr. Robert W. Wetzel, Attorney, presented the binder of Clifton Mills exhibits 1 through 13 and represented Butch Corrado and the owner of the site, Clifton Mills Associates, on which crusher equipment is proposed to be located. Also, Mr. Joe Corrado, one of the owners of Clifton Mills and the property 200 Marsh Lane, New Castle, stated the company history and operation at the site that is currently listed as heavy industrial zone and located next to the residential area. The company is operating recycling operation at 200 Marsh Lane since the mid-1980's and had two crushing permit previously. Corrado Construction Company has an existing wood grinder permit: APC-2008/0149-C/O(SM)(MNSR) and operates very few times a year.

Public hearing comments report, with comments received during the public hearing, was prepared by Wilcox & Fetzer, Ltd and was submitted to the Department on December 22, 2014.

## **MEMORANDUM**

### **Diamond Materials**

#### **DAQ's Response Document for the Public Hearing on December 11, 2014**

#### **Draft Permit: APC-2008/0087-C/O(Amendment 13)(NSPS)(SM)**

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### **Enforcement History**

Diamond Materials LLC had a change in ownership in October 27, 2000 and there is no past enforcement reported in the file for the crusher unit under Permit, **APC-2002/0092-C/O(Amendment 2)(PTE)** operated at 924 South Heald Street, Wilmington. Also, there was no past enforcement reported from Corrado Cosntruction Company, LLC for the other crusher permit, **APC-2007/0164-O(Amendment 1)** that was operated and cancelled on March 11, 2013.

### **Comments and DAQ Response**

The Department extended the comment period for additional 30 days as per request of the Representative James Johnson during the public hearing on December 11, 2014. The Department received the following comments from County Executive, Mr. Thomas P. Gordon, and Hon. Jea P. Street, District 10 NCC Councilman, in a letter, dated December 24, 2014, with the objections and opposition on the proposed draft permit, **APC-2008/0087-C/O(Amendment 13)(NSPS)(SM)**. Mr. David J Trincia, President of Minquadale Civic Association, sent a comment of the community resident sent to the accounting, dated December 15, 2015 and received to DAQM on January 5, 2015.

All the comments received from the County Official, State Senator, State Representative, and Community People during the public hearing on December 11, 2014 and DAQ's response are addressed in the table below.

**MEMORANDUM**

**Diamond Materials**

**DAQ's Response Document for the Public Hearing on December 11, 2014**

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<b>Comment Reference</b>	<b>Elected Officials Comment Summary</b>	<b>Responses /Actions Taken by DAQ</b>
1	<p><b>COUNTY EXECUTIVE THOMAS P. GORDON:</b> I am county executive responsible for land use in New Castle County. But unfortunately, you are building upon a problem that we are working every day to shut down and three of the areas don't have liners. We are trying to figure out how we are going to drill. But as far as representing county government, we think it should have stopped in 2004. This is tragedy that it is 160 feet in the air. Many people in here will talk to you about lung diseases and problems that they are having. So I don't even get to how safe I think you might make it with being able to crush the cement. This thing has to shut down and I am going to do everything. I don't do this for applause. I am very pro-union. I think the Corrado Organization is great. The sins have been created up to this point. We know they were told there was liner. There is not liner. We talked to the engineer. We are going to be drilling. We are going to be doing everything we can. It should have stopped in 2004. People in the room that live around there are breathing this air and this is going to add to it. Count Government is strongly, strongly opposed to it. Thanks you very much.</p>	<p>The Diamond Materials LLC's permit application request is to operate roving crusher at 200 Marsh Lane, New Castle, and crush used concrete materials up to 100,000 tons. The proposed site at 200 Marsh Lane, New Castle is owned by Butch Corrado &amp; the Clifton Mills Associates and located in heavy industrial zone. The above site is also located next to the West Minquadale Development.</p> <p>Issues related to dust and air pollutant emissions from roving crusher operation are discussed in Reference Comments 3 &amp; 5 below.</p>
2	<p><b>REPRESENTATIVE JAMES JOHNSON:</b> First of all, I would like to thank DNREC for allowing the hearing here at Minquadale Fire Hall. I know it was inconvenient for you, and in that same sense, also would request the hearing officer to extend the comment period for at least two more weeks. Because of the weather outside, it didn't allow a lot of people to make it to the hearing tonight and they may want to make some comments. I did like to begin also, like I said, I am State Representative J.J. Johnson. I have been representing this district here for the last ten years, Minquadale as a</p>	<p>Division of Air Quality (DAQ) extended the comments for 30 day period after the hearing that expired on January 11, 2015.</p> <p>County Executive, Mr. Thomas P. Gordon, and District 10 NCC Councilman, Mr. Jea P. Street, made comments in a letter, dated December 24, 2014, with the objections and opposition on the proposed draft permit,</p>

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	<p>whole, but I just want to discuss West Minquadale tonight. We have issues that have pertained specifically to West Minquadale. The county executive alluded to several of them when he spoke, but I would just like to comment further.</p> <p>First of all, lets begin with the landfill itself. The landfill has been a source of complaints for the last ten years that I have represented and probably even before that. And in addition to the landfill, they wanted to extend the height of it to 160 feet.</p>	<p><b><u>APC-2008/0087-C/O(Amendment 13)(NSPS)(SM)</u></b></p> <p>Comment response of County Executive, Mr. Thomas P. Gordon and Councilman Mr. Jea P. Street, is discussed in Comment Reference 3 below.</p> <p>Also, Mr. David J Trincia, President of Minquadale Civic Association, sent a comment of the community resident, dated December 15, 2015 as discussed below in Comment Reference 16.</p>
3	<p><b>COUNTY COUNCILMAN JEA STREET:</b></p> <p>I'd like to start out by thanking DNREC for the action that was taken and the decision was made and I was pleasantly surprised to shut down Peninsula Compost. That is very much appreciated, very much respected. But it is not enough. At this point, I'm asking you to do two things tonight: One, I have a major problem with due process here. Yeah, I have a major problem with due process because the applicant and the landowner come in with not one, but two lawyers. Then presented witnesses and they are not subject to cross-examination. And I think this hearing should be postponed until such time as the community can obtain counsel to cross-examine the witnesses that you presented.</p> <p>You have a major problem if you don't allow that because they presented witnesses, and that's one examination, no opportunity for cross-examination, so you have one side of the story only. That's not appropriate. It is a violation of procedure due process in any arena, and I think this</p>	<p>Information on previously permitted locations, amount of concrete to be crushed and site zone classification is included in the <b>APPENDIX "A"</b> with this memorandum.</p> <p><b>NOISE REQUIREMENTS:</b></p> <p>DAQ does not enforce the Noise Regulation. The noise regulation is enforced by NCC County and Police Officers.</p> <p>Corrado History:</p> <p>Corrado site is located in a heavy industrial zone area and this site had a crusher operation previously by the Corrado Construction Company at the current location and cancelled crusher permit on March 11,</p>

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	<p>proceeding should be postponed accordingly. Now, how you act on that is completely entirely up to you, but I want to make my position clear on the record.</p> <p>Second, and given the fact that the county executive is here, if we can't obtain private counsel, I'm quite certain I will speak for him, but based on his comments at a minimum, we'll be able to obtain the services of the county attorney so that these witnesses can be cross-examined.</p> <p>Second, the applicant talked about nine places where this goes on. Of those nine places, the likelihood that, one, DNREC has had to shut down the operation by law is unprecedented, unique to this area. The fact that this area is among the, if not one of the highest cancer rates in the state is unique to this area. The impositions that have been put upon this community and attempted to be put upon this community are unprecedented. And I think the number of times we have had to come into my council district for request for permits is unprecedented. My request is that given the fact that Peninsula Compost is not shut down and cleaned up yet, given the fact that we are in a high cancer cluster area, that DNREC doesn't even accept any more applications for modifications, changes or anything in my council district until such time as, number one, Peninsula Compost is gone, and two, there's a reduction in cancer cluster. On top of that, you've got groundwater problems that haven't been cleaned up in the Hamilton Park area which are part and parcel still in my council district and directly related to the entire area. So for those reasons, I am specifically requesting that there just be a moratorium on you so much</p>	<p>2013.</p> <p>The roving crusher operation of Diamond Materials LLC is carried out only at permitted industrial zone or special approval county or city locations. Most of the permitted sites are located nearby the residential area.</p> <p>Recently, there are no previous complaints or comments reported for Roving Crusher of Diamond Materials at currently permitted 9 permitted locations.</p> <p>The company's proposed plan is to operate roving crusher at a new site, located at 200 Marsh Lane, New Castle, to resize used concrete, stone, brick, block and recycled asphalt pavement (RAP). The requested amount to crush used concrete materials is up to 100,000 tons and estimated time period will be up to 6 months or less.</p> <p>DAQ recommends to add the following Condition 3.1.10.3 in the draft Permit; <b><u>APC-2008/0087-C/O(A 13)(NSPS)(SM)</u></b>, dated November 9, 2014. at 200 Marsh Lane, New Castle, if the Department approves and issue a permit.</p> <p>"The company shall only crush up to 100,000</p>

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	<p>as accepting applications for any changes and modifications in Council District 10. The other is out of those nine areas, they don't have a 911 call center adjacent to it, and the safety of this entire county, including the City of Wilmington, emergency services, goes through that call center in the public safety building. And to the extent that that noise could interrupt a call, cause an operator to make a mistake, you got a major problem. And that unique attribute by itself is good cause by itself for you not to allow any additional noise to come through that, adjacent to the public safety building. And public safety is primary and foremost and county executive, I think that's something you should consider, and I'm respectfully requesting as councilman tonight that if this application goes forward that you utilize the services of the county attorney to challenge it based solely on the potential of 911, the call center being disrupted, interrupted and a mistake made. Those are among the reasons that I think this application should be denied. There should be a moratorium on any applications submitted. And finally, enough is enough. Enough is enough. We've had Cherry Island. We've had a request for fly ash. We've had Peninsula Compost. On the other side of my district they want to bring in marijuana distribution. We've got groundwater that's contaminated and that's in your record. You've got the highest cancer cluster. And quite frankly, gentlemen, it is all about money. It is not that you are all needy. You're just flat out greedy.</p>	<p>tons of used concrete materials in the period not to exceed 6 months at 200 Marsh Lane, New Castle."</p> <p><b>PENINSULA COMPOST ISSUE</b></p> <p>Peninsula had requested the extension from DNREC earlier this year in a letter to Secretary Small that cited "operational and resource limitations for the facility (that) made it impractical to meet the schedule that was set forth in the Secretary's Order" requiring the company to cease operations.</p> <p>DNREC Secretary David Small has issued a Conciliation Order by Consent to Peninsula Compost Company, LLC, extending the closure deadline of Peninsula's Wilmington facility by three months to June 30, 2015 and stipulating specific monetary penalties if that deadline is not met. The DNREC order – agreed to by Peninsula Compost – sets penalties of \$10,000 per day beyond June 30 for every day thereafter that Peninsula fails to complete all closure activities.</p>
4	<p><b>SENATOR DAVID B. McBRIDE:</b> Thank you, Hearing Officer. My name is Senator David McBride. I have had the honor and privilege of representing</p>	<p><b>Roving Crusher Operation Hour Limit Remains the Same:</b></p>

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	<p>this community since 1980. It's a very humbling experience to be honored and selected by you to be your voice in Dover. I have never taken it lightly. You have your whole team here tonight with Representative Johnson, Councilman Street, and of course County Executive Tom Gordon.</p> <p>I have a number of questions in my mind based on the presentation tonight, and I want to go through them, if I can. But I would say first and foremost that I believe that tomorrow the Teamsters and all the people that own trucks ought to get over there, load up the trucks and take the concrete back wherever it came from.</p> <p>I told the county executive that I believe it has been dumped there illegally. I don't believe it is within the law to have it there. I have to tell you why, county executive. There are a couple other places in the State of Delaware who tried this act where they claim the material is recyclable and that's correct, but they don't have any permit to recycle. So as far as I am concerned, they have dumped it there illegally and they ought to take it out of there. And I speak for the community because they have told me many times exactly what I am saying. And so I hope you would at least look into that. I don't for one moment say that you allowed that, but I would hope that you investigate that. You'll hear testimony from some of these people that will tell you I'm wrong, but I don't think I'm wrong about that. We have habitual offenders right now that are being chased around by DNREC. Let me get onto some of the questions that I have. First of all, on one of the slides it was mentioned that there's 2600 hours maximum operation. Is that under the permit or is that here in</p>	<p>As per Condition 3.2 of draft Permit: <b>APC-2008/0087-C/O(A 13)(NSPS)(SM)</b>, "the maximum operation hours for roving crusher shall not exceed 2600 hours in any rolling twelve (12) month period from all sites combined". The facility maintains records of twelve month period from all sites combined and mainly operates crusher in months of April through October each year.</p> <p>Based on the capacity of crusher, crushing of 100,000 tons recycled concrete materials can take 334 hours if operated at maximum capacity up to 300 tons per hour.</p> <p>However, considering the down time for the maintenance and based on crushing operation rates reported past in the years 2009-2011, the total crushing time for 100,000 tons of recycled materials may be granted up to 6 months. See Comment Reference 4 above for to add an additional condition for operation hours and process operation limits.</p>

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	<p>Minquadale or is that the nine locations? That wasn't clear to me. So I don't know who do I address that to? So if you are going to operate from seven to five, that's nine hours a day. You are looking at about 100 days you are allowed to do that, would that be correct, is my math about right?</p>	
4-a	<p><b>SENATOR DAVID B. McBRIDE:</b> I want to get some more information about these nine locations that this crusher operates, and I'd like specifically to hear about the operations in these other locations and about residential communities nearby. For example, I'm very familiar -- and I don't know if it is one of these nine locations - - I know there's crusher down below Dover air base that's out in the middle of no where. You know, if you're going to crush concrete out in the middle of no where, that's one thing, and I'm very serious about these other locations if they have residential communities close, within 400 feet?</p>	<p>Based on the aerial views of roving crusher operation locations in the State of Delaware, crushing operation have been located all around the State of Delaware and locations of most sites are nearby residential property.</p> <p>As discussed in the Comment Reference 1, the proposed site at 200 Marsh Lane, New Castle is owned by Butch Corrado &amp; the Clifton Mills Associates and located in heavy industrial zone and located next to the West Minquadale Development.</p>
4-b	<p><b>SENATOR McBRIDE:</b> Thank you, Mr. Dunkle. From what you said, then, I'm going to characterize it not necessarily there are residential communities nearby, because I have no idea where those addresses are, and number two, we have no information about how often the other locations where the roving crusher is there. So I think it's comparing, quite frankly, apples and oranges to what we're talking about tonight. Let me go on. You know, I found it very interesting that no where in the testimony, or I didn't hear it, and I apologize if it was mentioned, nobody said how much concrete is over there. I</p>	<p>DAQ had not received exact amount of concrete materials at 200 Marsh Lane, New Castle at this time. However, the proposed permit application request is to crush 100,000 tons of concrete recycled materials.</p> <p>As per Condition 5.2.2 of draft Permit: <b><u>APC-2008/0087-C/O(A 13)(NSPS)(SM)</u></b>, the company shall daily record the crushed quantity, in tons, of recycled concrete materials processed and shall not exceed</p>

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	heard from someone that an estimate was made of 100,000 tons, and so I'd like to know, A, how much is over there; B, I'd like to know how they calculated whatever that number is; and C, even more importantly, I'd like to know where it came from, each and every piece, because, you know, way back when they used to mix asbestos in concrete, and how do I know that there isn't asbestos? And I'll get to some of the other chemical content of concrete in a moment. So there's a three-part stacked question. Where did it come from? How much is there? And who calculated it? Who do I address that to? You? Thank you, Mr. Dunkle.	100,000 tons.  In order to process any excess amount over 100,000 tons, the company needs to re-submit a new permit application and the request shall be published a legal notice and public hearing process.
4-c	<b>SENATOR McBRIDE:</b> Is there anyone on the panel that can address the issue of silica being released by the crushing of the concrete? That's my question. Yes or no?	Based on Recycled Asphalt Pavement MSDS crushed material includes rock and sand greater than 90% that includes quartz, a form of crystalline silica.
4-d	<b>SENATOR McBRIDE:</b> So I want to ask the air expert, I want to ask him about, what are some of the adverse affects of crushing concrete? Let me go on to something else, and I'm really confused about this. If this is an air permit hearing, why are we talking about noise? Where does that fit into this permit? But more importantly, I want to ask the noise expert, or someone else that may know, when was the last violation and/or citation that DNREC issued about noise? Because guess what? I don't know of any ever. They don't even have noise measuring equipment. They do not have noise measuring equipment to even measure what the problem is. Noise expert.	DAQ does not enforce the Noise Regulation. The noise regulation is enforced by NCC County and Police Officers.  Air pollutant emissions from Roving Crusher Operation are discussed in Comment Reference 5.

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4-e	<p><b>SENATOR McBRIDE:</b> That's appreciated, Mr. Dunkle, and I appreciate the fact that you brought it up, because in fact the residents have complained in the past on <b>other operations that related to noise, vibration. I heard about vibration and so forth. I mentioned the air expert and the fugitive dust.</b> I want to know, and I need to address this to someone, I didn't hear anything about how that is going to be monitored, if we're going to have equipment someplace to measure whether or not there is dust being discharged from the site, whether it gets to the community, and how all that is going to work? You know, presently DNREC has I think nine -- the official term, and I don't even know we heard that tonight is particulate matter in the air. DNREC has right now, I believe, nine sampling sites in New Castle County, one right at Martin Luther King Boulevard right down by the waterfront that I believe they take readings there every day, look at it every day. And I want to know if there's any plans to monitor what is being discharged from this operation and how all that's going to work? And if I'm told that there isn't any plans for that, then I'm offended. Who would I direct that to, Mr. Dunkle?</p>	<p><b>Fugitive Particulate matter Emissions:</b> Fugitive emissions of particulate matters are controlled by the proper operation of water spray bars used for dust suppression at all times as per Condition 3.7 of draft Permit: <b><u>APC-2008/0087-C/O(A 13)(NSPS)(SM).</u></b></p> <p>Fugitive emissions operation limitations from the material handling, stockpiling of materials, vehicular traffic entering and leaving the facility are placed in Condition 3.9 of draft Permit: <b><u>APC-2008/0087-C/O(A 13)(NSPS)(SM).</u></b></p> <p>Currently, DAQ has no proposed monitoring plan for this site.</p> <p>DAQ does not enforce the Noise Regulation. The noise regulation is enforced by NCC County and Police Officers.</p>

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5	<p><b>MR. DAVID TRINCIA:</b> Hi, my name is David Trincia. I'm a resident of Minquadale, as well as the civic association president for this community. First of all, I would like to thank the Department of Environmental Resources and Environmental Control for agreeing to have the hearing here at Minquadale Fire Company. Also, I would like to thank Minquadale Fire Company for allowing us to use their facility tonight for this hearing. Secondly, I'd like to thank Senator David McBride, State Representative David Johnson, Executive Tom Gordon, County Councilman Street, and I don't know if George Haggerty is here this evening of land use, but, again, I want to thank those individuals for being supportive of this community and also the surrounding communities that are here this evening helping us in this endeavor of this permit. As many of you know, New Castle County has the highest cancer rate of the whole State of Delaware. I want to bring to your attention the concrete dust. There is a cancer-causing disease called crystalline silica. This is when the air you breathe contains silica particles that will cause silicosis that is scarring the lung tissue and occurs by breathing the air that contains the concrete dust. Breathing of this dust can cause an increase of tuberculosis and serious breathing difficulties. Acute silicosis can happen within a couple of months, up to two years at an acute level. Approving of this permit for the usage of concrete crusher will be writing a death notice for the residents of Minquadale and the surrounding communities. Another issue we have is the diesel engine that will be powering this crusher. It has an annual fuel</p>	<p><b>Roving Crusher Operation &amp; Emissions:</b> Roving crusher operation of the Diamond Materials started in April 2008 and currently operating at 9 locations in the State of Delaware. Roving crusher operation complies with the applicable air regulation requirements and permitted rolling 12 month period air pollutant emissions are as follows: PM emissions shall not exceed 2.37 tons, NOx emissions shall not exceed 7.83 tons. SO<sub>2</sub> emissions shall not exceed 0.71 ton, CO emissions shall not exceed 3.35 tons &amp; VOC emissions shall not exceed 0.3 ton.</p> <p><b>Fugitive Particulate matter Emissions and Controls:</b> Fugitive emissions of particulate matters are controlled by the proper operation of water spray bars used for dust suppression at all locations as per Condition 3.7 of draft Permit: <u>APC-2008/0087-C/O(A 13)(NSPS)(SM)</u>. Fugitive emissions operation limitations from the material handling, stockpiling of</p>

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	<p>consumption of 28,330 gallons of fuel annually. This diesel will burn 40 gallons per hour at a normal running load. This is more air pollution that we'll be breathing. This is another air pollution health issue. Along with the smell of diesel exhaust of 40 gallons an hour of burnt diesel fuel is not a very pleasant odor. The community of Minquadale is totally, totally against this crusher from being placed anywhere near the community of Minquadale because of it causing a major burden on residents of the noise, the smell, the vibration, the air pollution and health risks that will cause major quality of life issues. To our legislators, and I'm talking about great Senator McBride, great Representative Johnson, introduce legislation in the House of Representatives and also the Senate to approve a bill that will create a law to stop this from happening into not only the community of Minquadale, but throughout New Castle County. And I would like to also request from the county executive, his administration, and look about changing the zoning for that whole complex over there. Again, I want to thank you, the residents of Minquadale, as well as the surrounding communities for being here this evening and again, I hope that DNREC listens to our cries here and takes appropriate actions.</p>	<p>materials, vehicular traffic entering and leaving the facility are placed in Condition 3.9 of draft Permit: <b><u>APC-2008/0087-C/O(A 13)(NSPS)(SM)</u></b>.</p> <p><b>Controls of Noise Issue:</b></p> <p>DAQ does not enforce the Noise Regulation. The noise regulation is enforced by NCC County and Police Officers.</p> <p>The proposed roving crusher operation may last up to 6 months to crush used concrete materials up to 100,000 tons. The estimated operation hours to crush used concrete materials will be ≤ 600 hours based on past operations conducted at the other sites.</p> <p>DAQ recommends to add the following Condition 3.1.10.3 in the draft Permit; <b><u>APC-2008/0087-C/O(A 13)(NSPS)(SM)</u></b>, if the Department approves and issues the permit.</p> <p>"The company shall only crush up to 100,000 tons of used concrete materials in the period not to exceed 6 months at 200 Marsh Lane, New Castle."</p>

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6	<p><b>MR. RAYMOND SMITH:</b> My first question is to the gentleman sitting over there that was speaking before that can't talk too good. What is that from, a cold or from those crushers? I want to know, is that from a cold or is it from working around those crushers constantly? Plus I want to know, you brought that stuff in here to hurt our people, you can take it out of here, because I know you's got the truck and the equipment to do it. Because my grandson, he has been definitely sick from it, and my daughter-in-law was. And a lot of other people have been getting sick from all the smells in that, and we are getting tired of it. As far as I am concerned, I will protest against you's and we don't want you here, so you get the hell out of here in pointblank words. We didn't ask you to come; you can go.</p>	There are no smell related complaints received in past from the roving crusher operation conducted at previous locations.
7	<p><b>MS. ZAVALA: Zavala,</b> Z-A-V-A-L-A. Like I said, I live on 29 Altoona Avenue. I live right on that red line thing. I'm the last house. You guys don't start after seven or at seven. You guys start before. My house trembles. The noise, I have three kids. I live on my own. What kind of damage, what happens if my house gets any damage? Are you guys going to pay for it? You guys live on that borderline. You guys feel on the weekend what we feel when you guys are working. Three kids that I don't let go outside, especially the little one. Why? Noise, dust. Stink. It stinks, that too. Water. I mean really? So I'm on my own, single mom, three kids. Anything happens to my house, are you guys going to like say something? You guys damaged. You guys are the ones doing</p>	See comment response in above condition no. 6 for odor issue and comment response in Condition 5 for dust control and noise issues.

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	<p>stuff. So all of this saying that there's nothing is going to happen, that you guys are securing it and that it's safe and that there's no noise, that's BS. I'm sorry. Last house on that street right on that water line. Yes, there is noise. Yes, there is trembling. Yes, there is dust. So unless you guys live in our neighborhood, unless you guys have this kind of construction near your homes, say something. Other than that, you guys can't say things like that. You can't promise. You can't secure our safety.</p> <p>Because believe me, anything happens to my kids, you guys can't be hiding. Not with my kids. Single mom. 32. Don't care. Borderline, yes, there is noise. You guys want to fool other people, go ahead. Grab little kids if you guys want. But I don't even think those little kids are going to be stupid enough to believe everything you guys are saying right now. Why? Because same thing. Kids want to see -- my kids sleep late. What happens? They can't. The side of my house, noise, it shakes. I can't sleep. I work Monday through Friday eight to who knows what time sometimes. I have worked until as late as 10:30. Sometimes I work weekends. The weekend that I want to rest or the day that I want to sleep late, I can't. Why? Because you guys are working. And sometimes before seven, during Monday through Friday. Why? Because like I said, borderline, that's where I live. I don't depend on the state. Okay? I work. I pay my taxes.</p>	
8	<p><b>MS. NIEMAND:</b> Does anyone care? Governor Markell emphasized he wants people to be healthy and exercise, but how can this be when the air we breathe is environmentally unsafe? What does</p>	No comments.

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9	<p>Delaware really want us to do? Somebody tell me that.</p> <p><b>MS. SHERRY CROPPER:</b> Thank you for the opportunity. I'm actually here representing six people of this community: My husband, my daughter and her husband and our two future grandchildren that she's had on her heart all these years. We are here and all of us are vehemently opposed to the permitting of this operation. What is going to be the value of our homes? Nobody's mentioned that. Yep. And why have they been using our community as a dumping ground for all these years? What made them think that they could bring it all here? And what was the future plan for removing it from here? And is there a drought contingency plan built into this permit? And Mr. Militana, do you live anywhere near this community? And do any of you? You call this a temporary permit for a temporary period of time. I view it as a permanent opening of a door for future permits. So I don't think I have heard it identified as the duration of time for seeing at this point that this would complete what is already in this community that hasn't been noted. In the stockpiles of material that are there now, what's the rat population? And I didn't hear it identified, what are the two conditions unique to this permit in the amendment? And it was stated that Diamond plans to operate this from seven to five Monday through Friday. I also heard ten hours a day, six days a week, 52 weeks per year. I hear this as ongoing, relentless and permanent. And that is what I had to bring. Thank you for your time.</p>	<p>The proposed site is to operate crusher at 200 Marsh Lane that is located in Heavy Industrial zone area which is near by the residential community.</p> <p>There are other various industries and two landfills located in the nearby area that may be causing or creating condition of smell based on the weather conditions. Peninsula compost has shutdown receiving additional food waste materials and site will be closed once the remaining material at the site is processed and sold.</p> <p>The proposed roving crusher operation may last up to 6 months to crush used concrete materials up to 100,000 tons.</p> <p>The company shall operate only day time up to 10 hours per day, 6 days per week up to 6 months and shall not exceed total crushed material amount above 100,000 tons.</p>

**MEMORANDUM**

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<b>Comment Reference</b>	<b>General Public Comment Summary</b>	<b>Responses/Actions Taken by DAQ</b>
10	<p><b>MS. BARBARA OLIVER:</b> Good evening and thank you. We are being held hostage in our homes because of the closeness of the dump to our house, which was on one of the drawings on Frazier Avenue, and it is right next to our outdoor living deck. Our quality of life is already limited because of the noise level, extremely loud booming, house shaking, crashing sounds before 7 a.m. and until after 5 p.m., six to seven days a week. And this scares us with heart-pounding, grinding noise, smoke and dust blowing from their concrete and trash. It is unbreathable and choking causing us to close our windows and doors, cutting off our fresh air. You all are a danger to our public health, well being and peace of mind. Though you are a heavy industrial giant dump site with your long-term zoning license in our community and you operate more deadly and uglier week by week during all seasons, while publicly and by letter you assure us that you are a good neighbor, you daily pollute our communities by cutting off the fresh air, dumping silica, ash and dust over our houses, our cars, decks, and lawns. Your misleading, disregarding, bullying tactics you have been using for years, while blinding us with this heavy dust and debris that's been irritating our eyes, our nose and skin, only to smile in our faces with false promises, such as the community park. You are smothering and destroying our lifestyles, our children and our elders, ruining our health and our well being as we try to enjoy our homes in our community. You want to operate a rock stone crusher in addition to your present dumping operations in our community. I'm saying no, no, you're not a good neighbor. I</p>	<p>As per response in previous comment 9, this is a temporary operation request to operate up to 6 months and crushing material amount not to exceed above 100,000 tons.</p> <p>The company has to abide by the permit conditions to control dust and equipment operation. See comment response in Comment 5 for dust and noise control requirements.</p>

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Comment Reference	General Public Comment Summary	Responses/Actions Taken by DAQ
11	<p>don't want you. I want you to leave.</p> <p><b>MR. ROBERT OLIVER:</b> Hello, I'm Robert Oliver. I live on Frazier Avenue. I'm right at the fence line. Early in the mornings, before seven o'clock, banging, machine running, all that. There was a time, a couple of times during the summer, my wife and I, Miss Willie, Celia, we were outside talking. All of a sudden a big cloud of concrete dust, and so much we had to go in the house because we were scared. We are senior citizens. We are homeowners. We are tax-paying people. We are good people. We live in this community. We came to this community thinking, a lot of us, in the last several years, that this would be a good place for us to retire, to have our children, our grandchildren to come over. We don't invite our grandchildren and small grandchildren, nieces and nephews to come over because we don't want them with the ash, with all the concrete, noise, with all the machinery, with all the pollution, we don't want it with our little kids, with our grandkids, with our nieces and nephews, with our neighbors, with our senior citizens. We don't want it. We're good providing tax-paying people. We're senior citizens. We deserve more than what you are all offering us, which is nothing. All of you should be ashamed of yourself. The Teamster man over here, he want people to work. While your people are working, you're killing us. That's what you're doing. And you're a Teamster? And you're a Teamster? You ought to be ashamed.</p>	<p>See Comment response in Comment No. 5 for dust and noise control requirements.</p> <p>The emission control requirements are placed in draft permit Conditions 3.7 through 3.10 and 5.2.3.</p> <p>The company must to abide by the all permit conditions and comply with the applicable requirements pertinent to dust control and odor conditions requirements as stated in the draft permit conditions.</p>
12	<p><b>MS. CELIA H. BURTON:</b> My name is Celia H. Burton. I live on 30 Frazier. I would just</p>	<p>See DAQ response in Comment No. 5 for</p>

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	<p>like to say that this stuff is sickening. My husband has gone through two heart surgeries. I live right on the edge of the fence, right across from Rob. And he had four heart stents put in. He's deathly ill. He can't leave the house and now this is coming to our neighborhood, and I'm just sorry that this is happening to us. I have skin diseases. I'm environmentally sick, and I don't know how much I can take. All the noise, the dirt. He's scrubbing the house. You know, it's crazy. It needs to stop. We need to stop.</p>	<p>dust control requirements in the draft permit and noise control regulation requirements.</p>
13	<p><b>MR. MIKE ENYEDY:</b> Mike Enyedy, 3 E-N-Y-E-D-Y. I have several questions. One to our sound expert here. Is the sound cumulative? More or less the sound that I'm getting from 495, which if you took it in May, was 495 in full operation at that point in time or was the bridge down? Because the quietest I've every heard the neighborhood is when the bridge was shut down, and I really actually did like it even though it made my commute home absolute hell. It turned it from five minutes to an hour and 45 minutes, but I'd live with that for the sound to go away. On May you were 61 decibels, which is like three houses down from where your meter was, and now you're talking about from a different direction bringing in other sound. Is it cumulative? More or less does the amount of sound build up? Am I going to end up with, I have 60 decibels or 61 decibels coming from one end, I'm going to end up with another 60 decibels coming from another direction, am I going to end up with 120 decibels against my house? The dust -- Scott, is that your name? Scott, do you people wear respirator equipment around the dust area?</p>	<p>DAQ has no comment on question relates to the vibration of the equipment and damage to structure due to the vibration of equipment.</p> <p>Noise control requirements are discussed in Comment No. 5.</p>

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	<p>I brought my house two years ago. The reason I bought my house two years ago was because of the amount of land I could have and I could have my granddaughter down to play in the yard. Now I've got real concerns about whether or not I should even allow my granddaughter in my neighborhood. You know, the vibration that this machine is going to produce, my foundation, parts of the foundation of my building, house, are 70 years old. Are they going to be able to withstand the vibrations of that structure?</p> <p><b>HEARING OFFICER:</b> That's a good question. Could you follow up to me, or if you can do that now, the time frame for completion?</p>	
14	<p><b>MS. WILLIE JEAN MASTERSON:</b> My name is Willie Jean Masterson, M-A-S-T-E-R-S-O-N. And I just come to let you all know that I live right there on Frazier Avenue. I have been there for a while. I was there when the crusher was there and I am aware of everything that's been going on over on your site because I have called your office many a times to try to find out whose business it was and who was, you know, doing the work. Because it did mess up my house. And I called sister Cathy to come and look at it. She told me, oh, that's the house settling. I said no. I know when a house is settling and when a house is being deteriorated by shaking. And even when you're in your bed in the morning, early morning, I thought an earthquake came through because I was shaking and I'm saying, what is going on?</p>	<p>Ms. Willie Jean Masterson, who owns property nearby, opposed the crusher operation for the following issues:</p> <ul style="list-style-type: none"><li>• House settling and structural damage due to the crusher operation.</li><li>• Dust issue.</li><li>• Noise issue.</li><li>• House Color Change.</li></ul> <p>See DAQ Response for Dust control requirements and Noise regulation</p>

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	<p>So I am against any of the crushing that's going on. I remember when there was a little pile and I was saying, where's all these rocks coming from? Then all of a sudden it got bigger and bigger. And even right now, you can say the dust won't come, but the tree line is down now. All the leaves is off the trees. All I got to do is stand in my window and I can see everything that's going on. I know just about when every truck is over there because I hear the noise. So all I got to do is look. I want to know, put the crusher in, who's going to fix my house? I'm a senior.</p> <p>I got to fix it now. Now who going to fix it if you put the crusher in and make it worse? I even looked at the foundation. I see little cracks going like this.</p> <p>The dust. My house is supposed to be white and it look like it almost beige. I go out and I wash my house down mostly every other month during the summer, and before I can turn around the dust is back there again. My life is important to me. I think about all of the dust the rocks is going to put out. My parents, my father worked in the mine, so I know what they are talking about with all of this dust. When the lungs get messed up and it causes cancer, I know all about it. So I'm just saying, if you have any love for your people, for your neighbors, for a child of God, if you have any concern, any love, why don't you just stop it right now, because you might think you're getting away with it, but one day, you're going to give an account because you got to give an account</p>	<p>requirements in the Comment No. 5.</p> <p>As stated in Draft Permit Condition 6, Citizen can call Environmental Emergency Notification and Complaint number (800) 662-8802 for any complaint which creates a condition of air pollution.</p> <p>DAQ has no comments on aging on house, structural changes and/or house color changes.</p>

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<b>Comment Reference</b>	<b>General Public Comment Summary</b>	<b>Responses/Actions Taken by DAQ</b>
	<p>to God. God looks at everything that you do. There is nothing hid from him. I'm a child of God, and he told me no weapon formed against me shall prosper. He said that you can throw things, darts at me, it will follow under my right hand, but it won't come at me. I'm a believer. And I want you to know that no matter what you do, I still love you. Why? Because I hope and I pray that you are a child of God. I won't hold it against you, but God will and you will give an account, each and every one of you will give an account one day. Not to me, but to the Almighty Master, the one who died for your sins and my sins. So I ask you to examine yourselves, pray and ask God, what shall I do? Because he don't want us hurting each other. He said love one another as I have loved you. And he also told me, greater love has no man than this than a man that will lay down his life for his friend. So if you are a child of God, you are his friend. You are his friend and we shall become friends of the Almighty.</p> <p>So examine yourselves, because we can't take much more, and I'm leaving it as it is. I'm putting it in the hands of the Almighty, and I'm going to ask him to have his way and let his will be done, because his will is going to be done. Thank you very much.</p>	
15	<p><b>MS. LORI TRINCIA:</b> I just had a question about when you said the amendment or what you were talking about when you said the amendment or what you were talking about, who is going to monitor what gets brought? You had said in the past that they had people come in and inspecting. You are saying you're not going to bring in new concrete and things like that. How do we know that it is not new? It is just a question.</p>	<p>Based on the permit application request, the Diamond Materials, LLC is planning to operate roving crusher at a new site, located at 200 Marsh Lane, New Castle, to resize used concrete, stone, brick, block and recycled asphalt pavement (RAP).</p> <p>The proposed plan is to crush used concrete materials up to 100,000 tons and estimated</p>

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		<p>time period will be up to 6 months or less.</p> <p>The company is required to maintain records of incoming materials and processed material at the site. The Division of Air Quality inspects the site and reviews the records for the compliance requirements.</p> <p>If the company plans to crush any amount over 100,000 tons of concrete materials, the company must submit a new permit application request that will go through the required public notice and hearing.</p>
16	<p>Mr. David J Trincia, President of Minguadale Civic Association, sent the following comment of the community resident, dated December 15, 2015 and received to the DAQM on January 5, 2015:</p> <p>"Dave, I'm sorry I am not able to come to the Meeting on Thursday 12/11/14. I am against Diamond Materials from putting a concrete crusher in West Minguadale. There are a lot of elderly people living here that already have health problems And don't need that crusher to cause more. I pray it does not get awarded the permit.</p> <p>sincerely,"</p>	<p>See comment response in comment reference 5 above for dust and noise issues.</p>

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**RECOMMENDATIONS**

DAQ recommends to add the following permit conditions in the Draft Permit: **APC-2008/0087-C/O(Amendment 13)(NSPS)(SM)**:

- 3.1.10.3 Diamond Materials shall locate the crusher away from the residential area based upon the proposed location presented at the public hearing. The crusher shall be placed at approximately 400 feet away to minimize the noise during the crusher operation.
- 3.1.10.4 Diamond Materials shall only operate the crusher from 7am through 5pm on Monday through Friday.
- 3.1.10.5 Diamond Materials shall keep daily log records of operation and shall not exceed 150 operating days at this location.
- 3.1.10.6 The Department reserves the right to require that the owner or operator perform off site monitoring and/or emissions tests as approved at the company's expense.

DAQ has prepared the attached draft Permit: **APC-2008/0087-C/O(Amendment 13)(NSPS)(SM)** for the Department's review of comments, finding, and suggestions. Also, the company may add a Roving Crusher at a new site as they indicated in the public hearing. DAQ suggest issuing the permit in Appendix A.

Your patience in awaiting these responses is appreciated. I hope this information will assist you in reviewing the issues and making your recommendations to the Secretary of the Department of Natural Resources and Environmental Control. If you have any questions, please call me at (302) 323-4542.

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**MEMORANDUM**

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**Draft Permit: APC-2008/0087-CONSTRUCTION/OPERATION(Amendment 13)(NSPS)(SM)  
Roving Crusher, Impactor and Screener**

**Diamond Materials, LLC.**  
924 South Heald Street  
Wilmington, DE 19801

ATTENTION: Paul Lester  
Superintendent

Dear Mr. Lester:

Pursuant to 7 **DE Admin. Code** 1102, Section 2, approval by the Department of Natural Resources and Environmental Control (the Department) is hereby granted for the operation of one new Extec C-12 Crusher with capacity of 386 tons per hour powered by 350 hp Caterpillar C9 Diesel Engine, one existing Extec Impactor with capacity of 300 tons per hour powered by 366 hp DEUTZ BF6M 1015C diesel engine, and one new Extec S-6 Screener with capacity of 300 tons per hour powered by 100 hp DEUTZ BF4M 2012 diesel engine, located at the addresses listed in Condition 3.1 in accordance with the documents submitted in Appendix "A" and Secretary's Order 2015-A-0033:

This permit is issued subject to the following conditions all of which are federally enforceable except Condition 2.6 and 3.1:

**1. General Provisions**

- 1.1 Diamond Materials, LLC agrees that all limits, restrictions and requirements in this permit are necessary to limit their potential to emit to below major source thresholds. Violation of any limit, restriction or requirement contained herein may be grounds for suspension or revocation of the permit or other enforcement action for noncompliance with the permit, the failure to apply for a Title V permit, or the failure to obtain a Title V permit.
- 1.2 Representatives of the Department may, at any reasonable time, inspect this facility.
- 1.3 This permit may not be transferred to another location or to another piece of equipment or process.
- 1.4 This permit may not be transferred to another person, owner, or operator unless the transfer has been approved in advance by the Department. Approval (or disapproval) of the permit transfer will be provided by the Department in writing. A request for a permit

transfer shall be received by the Department at least thirty days before the date of the requested permit transfer. This request shall include:

- 1.4.1 Signed letters from each person stating the permit transfer is agreeable to each person; and
  - 1.4.2 An Applicant Background Information Questionnaire pursuant to 7 Del C, Chapter 79 if the person receiving the permit has not been issued any permits by the Department in the previous five (5) years.
- 1.5 The owner or operator shall not initiate construction, install, or alter any equipment or facility or air contaminant control device which will emit or prevent the emission of an air contaminant prior to submitting an application to the Department pursuant to 7 **DE Admin. Code** 1102, and, when applicable 7 **DE Admin. Code** 1125, and receiving approval of such application from the Department; except as exempted in 7 **DE Admin. Code** 1102 Section 2.2.

## **2. Emission Limitations**

- 2.1 Air contaminant emission levels shall not exceed those specified in 7 **DE Admin. Code** 1102 and the following combined from all sites:
- 2.1.1 Particulate Matter (PM) Emissions  
PM emissions shall not exceed 2.37 tons per rolling 12-month period.
  - 2.1.2 Nitrogen Oxide (NO<sub>x</sub>) Emissions  
NO<sub>x</sub> emissions shall not exceed 7.83 tons per rolling 12-month period.
  - 2.1.3 Sulfur Dioxide (SO<sub>2</sub>) Emissions  
SO<sub>2</sub> emissions shall not exceed 0.71 ton per rolling 12-month period.
  - 2.1.4 Carbon Monoxide (CO)  
CO emissions shall not exceed 3.35 tons per rolling 12-month period.
  - 2.1.5 Volatile Organic Compounds (VOCs)  
VOC emissions shall not exceed 0.3 ton per rolling 12-month period.
- 2.2 The emission limits stated in Condition 2.1 and operational limitation stated in Condition 3.2 are maximums for operation at all sites combined.
- 2.3 The rolling twelve (12) month period emission limits along with the operational limits of this permit are voluntary limitations taken by the owner or operator to reduce the potential to emit nitrogen oxides to below the major source threshold of 7 **DE Admin Code** 1130.
- 2.4 Particulate emissions from fuel burning equipment shall not exceed 0.3 pound per million BTU heat input on a maximum two hour average.
- 2.5 At no time shall the emissions of visible air contaminants from the facility exceed the following:

- 2.5.1 Twenty percent opacity for an aggregate of more than three minutes in any one hour period, or more than 15 minutes in any 24 hour period from the diesel engines and systems for screening, handling, storing, weighing, loading, and transferring.
- 2.5.2 Ten percent opacity from the crushing operation's belt conveyor transfer points, except any stockpiles.
- 2.5.3 Fifteen percent opacity from the crusher.
- 2.6 Odors from this source shall not be detectable beyond the plant property line in sufficient quantities such as to cause a condition of air pollution.

**3. Operational Limitations**

- 3.1 This permit only allows for operation at the following locations:
  - 3.1.1 394 S Chapel Street, Newark;
  - 3.1.2 Village of Bayberry, Jamison Corner Road and Boyds Corner Road, Middletown;
  - 3.1.3 Christiana Mall North Parking Area, Newark;
  - 3.1.4 36393 Sussex Highway, Delmar;
  - 3.1.5 734 Dexter Corner Road, Townsend, DE 19734;
  - 3.1.6 560 South College Avenue, Newark, DE 19713;
  - 3.1.7 3700 Bay Road, Dover; or
  - 3.1.8 Indian River Inlet, Delaware Rt. 1, Bethany Beach
  - 3.1.9 1107 Willow Grove Road, Felton, DE 19943
  - 3.1.10 **200 Marsh Lane, New Castle, DE 19720.**
    - 3.1.10.1 Diamond Materials shall only process concrete materials that have been collected at the site before the permit application was received dated August 22, 2014.
    - 3.1.10.2 Authority for operation at this location shall cease once the concrete materials have been processed at 200 Marsh Lane, New Castle.
    - 3.1.10.3 Diamond Materials shall locate the crusher away from the residential area as shown in testimony presented at the public hearing. The crusher shall be placed approximately 400 feet away to minimize the noise during the crusher operation.

- 3.1.10.4 Diamond Materials shall only operate the crusher from 7am through 5pm on Monday through Friday.
- 3.1.10.5 Diamond Materials shall keep daily log records of operation and shall not exceed 150 operating days at this location.
- 3.1.10.6 The Department reserves the right to require that the owner or operator perform off site monitoring and/or emissions tests as approved by the Department at the company's expense.
- 3.2 The maximum hours of operation for this equipment shall not exceed 2,600 hours in any rolling twelve (12) month period from all sites combined.
- 3.3 The Extec Crusher shall not be operated above 386 tons per hour and Extec Impactor shall not be operated above 300 tons per hour.
- 3.4 The crusher operation shall only process concrete, asphalt, rock, block, or brick.
- 3.5 The sulfur content of all diesel fuel combusted in the diesel engines shall be no greater than 0.05% by weight.
- 3.6 This crusher shall be powered by 350 hp diesel engine, impactor shall be powered by 366 hp diesel engine and the screener shall be powered by 100 hp diesel engine.
- 3.7 The onboard manifold, piping hoses, valves, and spray bars for dust suppression shall be in operation at all times that the affected equipment is in operation.
- 3.8 Crushing operations shall be conducted only if proper fugitive dust suppression measures are met.
- 3.9 Fugitive emissions shall not be emitted in such quantities as to cause or create a condition of air pollution from material-handling operations, the stockpiling of materials or vehicular traffic entering or leaving the facility. Dust control measures shall be employed on all non-paved access roads and driveways to the facility to minimize fugitive emissions from vehicular traffic entering or leaving. Dust control measures shall include methods such as water tanker/sprinkler trucks, water sprinkler systems, dust retardant sprays, etc.
- 3.10 At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate the facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating procedures are being used will be based on information available to the Department which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.
- 3.11 All structural and mechanical components of the equipment or process covered by this Permit shall be maintained in proper operating condition.

**4. Testing and Monitoring Requirements**

Initial Performance and Visible Emissions Testing for the Extec crusher and Extec screen:

The Company shall conduct an initial performance test while operating at maximum production, to establish compliance with the visible emissions standards of Condition 2.5:

- 4.1 The performance test shall be conducted during representative performance of the equipment. Representative performance shall be defined as operating the plant at its maximum production rate. The Company shall make available to the Department a record of these operating parameters.
- 4.2 Within sixty (60) days after achieving the maximum production rate at which the facility will be operated, but not later than 180 days after initial startup of such facility, the owner or operator shall conduct performance test(s) and furnish the Department and EPA with a written report of the results of such performance test(s).
- 4.3 The facility shall provide the Department and EPA a minimum of 30 days prior notice of the performance test, to afford the Department and EPA the opportunity to have an observer present.
- 4.4 The test protocol shall be submitted a minimum of thirty (30) days in advance of the tentative test date to the address in Condition 6.5.
- 4.5 The final results of the testing shall be submitted to the Department within thirty (30) days of the test completion.
- 4.6 Compliance shall be determined by conducting observations in accordance with Reference Method 9 in appendix A of 40 CFR Part 60, with the following additions:
  - 4.6.1 The minimum distance between the observer and the emission source shall be 4.57 meters (15 feet).
  - 4.6.2 The observer shall, when possible, select a position that minimizes interference from other fugitive emission sources (e.g., road dust). The required observer position relative to the sun (Method 9, Section 2.1) must be followed.
  - 4.6.3 For affected facilities using wet dust suppression for PM<sub>10</sub> control, a visible mist is sometimes generated by the spray. The water mist must not be confused with PM<sub>10</sub> emissions and is not to be considered a visible emission. When a water mist of this nature is present, the observation of emissions is to be made at a point in the plume where the mist is no longer visible.
- 4.7 Ongoing Visible Emissions Testing:

Each calendar year while the plant is in operation and material is being processed, the plant shall be observed for visible emissions using EPA Reference Method 9. Each screen, stockpile, belt conveyor transfer point, and crusher shall be observed for a period of ten (10) minutes to ensure compliance with its opacity standard in Condition No. 2.5. If an emission point exceeds its respective opacity standard, the plant shall be shut down or corrective action be taken immediately to resolve the emissions.

- 4.8 When determining compliance with the fugitive emissions standard for transfer points, the duration of the Method 9 observations may be reduced from 3 hours (thirty 6-minute averages) to 1 hour (ten 6-minute averages) only if the following conditions apply:
- 4.8.1 There are no individual readings greater than ten percent (10%) opacity; and
  - 4.8.2 There are no more than three (3) readings of ten percent (10%) during the 1-hour period.
- 4.9 When determining compliance with the fugitive emissions standard for the crusher, the duration of the Method 9 observations may be reduced from 3 hours (thirty 6-minute averages) to 1 hour (ten 6-minute averages) only if the following conditions apply:
- 4.9.1 There are no individual readings greater than fifteen percent (15%) opacity; and
  - 4.9.2 There are no more than three (3) readings of fifteen percent (15%) during the 1-hour period.
- 4.10 Daily, while the plant is in operation and material is being processed, the presence or absence of visible emissions for each screen, stockpile, belt conveyor transfer point, and crusher shall be observed. Compliance with this condition shall be demonstrated by the maintenance of a bound log of visible emissions and, if necessary, taking corrective action if visible emissions are observed. Corrective action shall be taken within forty-eight (48) hours and documentation shall be made. After corrective action is taken, the emissions will again be observed. If visible emissions are still observed these steps (observe, correct, document) will be repeated until no visible emissions are detected or the equipment is taken off-line.

## **5. Record Keeping Requirements**

- 5.1 The owner or operator shall maintain all records necessary for determining compliance with this permit in a readily accessible location for five (5) years and shall make these records available to the Department upon written or verbal request.
- 5.2 The following information shall be recorded, initialed and maintained in a log each day:
- 5.2.1 The hours of operation and location of the crusher, impactor and screener.
  - 5.2.2 The quantity, in weight, of concrete material processed.
  - 5.2.3 A statement that the water flow dust suppression system was operating properly during all times that the affected equipment was in operation.
  - 5.2.4 A statement of compliance with Conditions 2.5, 2.6, 3.8, and 3.9 of this permit.
  - 5.2.5 The presence or absence of visible emissions when operating, on a daily basis.
- 5.3 The following information shall be recorded and initialed in a log each month:
- 5.3.1 The total monthly and rolling 12-month hours of operation of the crusher, impactor, and screener.
  - 5.3.2 Manual Method 9 opacity observations of the crusher, impactor, and screener operations.
  - 5.3.3 The monthly and rolling 12-month total PM, NO<sub>x</sub>, and CO emissions and all supporting calculations.

- 5.4 The dates of all diesel oil deliveries, along with supplier certification as to the sulfur content of the fuel, shall be recorded and retained in a log. The owner or operator shall retain all supplier fuel certifications. Certifications shall state:
  - 5.4.1 The name of the fuel supplier.
  - 5.4.2 The oil complies with the specifications for fuel oil No. 2, as defined by the American Society for Testing and Materials in ASTM D396, "Standard Specification for Fuel Oils."
  - 5.4.3 The sulfur content of the oil as determined by ASTM methods: D129, D1552, D2622, or D4294.
- 5.5 A maintenance/inspection log shall be maintained detailing all routine and non-routine maintenance performed on the crusher, impactor, screener, diesel engines, and all associated equipment.
- 5.6 The Company shall maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an applicable source, or any malfunction of the air pollution control equipment.

**6. Reporting Requirements**

- 6.1 The owner or operator shall submit to the Department the following information about any replacement crusher facilities or any new equipment:
  - 6.1.1 For a crusher, grinding mill, bucket elevator, bagging operation, or enclosed truck or railcar loading station:
    - 6.1.1.1 The rated capacity in tons per hour of the existing facility being replaced.
    - 6.1.1.2 The rated capacity in tons per hour of the replacement equipment.
  - 6.1.2 For a screening operation:
    - 6.1.2.1 The total surface area of the top screen of the existing screening operation being replaced.
    - 6.1.2.2 The total surface area of the top screen of the replacement screening operation.
  - 6.1.3 For a conveyor belt:
    - 6.1.3.1 The width of the existing belt being replaced.
    - 6.1.3.2 The width of the replacement conveyor belt.
  - 6.1.4 For a storage bin:
    - 6.1.4.1 The rated capacity in tons of the existing storage bin being replaced.
    - 6.1.4.2 The rated capacity in tons of replacement storage bins.
- 6.2 Emissions in excess of any permit condition or emissions which create a condition of air pollution shall be reported to the Department immediately upon discovery by calling the Environmental Emergency Notification and Complaint number, (800) 662-8802.

- 6.3 In addition to complying with condition 6.1 of this permit, any reporting required by 7 DE Admin. Code 1203 "**Reporting of Discharge of a Pollutant or an Air Contaminant**", and any other reporting requirements mandated by the State of Delaware, the owner or operator shall for each occurrence of excess emissions, within thirty (30) calendar days of becoming aware of such occurrence, supply the Department in writing with the following information:
- 6.3.1 The name and location of the facility;
  - 6.3.2 The subject source(s) that caused the excess emissions;
  - 6.3.3 The time and date of the first observation of the excess emissions;
  - 6.3.4 The cause and expected duration of the excess emissions;
  - 6.3.5 For sources subject to numerical emission limitations, the estimated rate of emissions (expressed in the units of the applicable emission limitation) and the operating data and calculations used in determining the magnitude of the excess emissions; and
  - 6.3.6 The proposed corrective actions and schedule to correct the conditions causing the excess emissions.
- 6.4 One (1) original and one (1) copy of all required reports shall be sent to the address below:  
Division of Air Quality  
Blue Hen Corporate Center  
655 S. Bay Road, Suite 5N  
Dover, DE 19901
- 6.5 One (1) original and one (1) copy of the reports required by Condition 4.2 and 6.2 shall be sent to:  
US Environmental Protection Agency  
Region III, **3AP20**  
1650 Arch Street  
Philadelphia, PA 19103
- 6.6 The Company shall provide written notification to the Department at least 15 calendar days prior to each move of the equipment from one approved site to another approved site.

**7. Administrative Conditions**

- 7.1 This permit shall be made available on the premises.
- 7.2 Failure to comply with the provisions of this permit may be grounds for suspension or revocation.

**Draft Permit: APC-2008/0087-CONSTRUCTION/OPERATION(Amendment 13)(NSPS)(SM)**  
**Diamond Materials, LLC**  
**Roving Crusher, Impactor and Screener**  
August 31, 2015  
Page 9

7.3 This permit supersedes Permit: **APC-2008/0087-C/O(Amendment 12)(NSPS)(SM)**  
dated November 5, 2014.

Sincerely,

Paul E. Foster, P.E.  
Program Manager  
Engineering & Compliance Branch

PEF:ADM:CMD  
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pc: Dover File

**APPENDIX "A"**

<b>Date Submitted</b>	<b>Application Form(s)</b>	<b>Signed by</b>	<b>Location</b>
4/14/2008	AQM-1, AQM-2, AQM-3.1, AQM-3.3, AQM-3.9, and AQM-5	Michael D. Logan of Compliance Services, Inc.	394 S. Chapel Street, Newark
4/24/2009	AQM-1, AQM-2, AQM-3.1, AQM-3.3, AQM-3.9, AQM-5	Paul Lester, Superintendent	US Route 301 & State Route 71, Middletown
7/1/2009	AQM-1 & AQM-3.9	Toni Sartori	832 N. Manor Avenue, Claymont
9/15/2009	AQM-1, AQM-2, AQM-3.1, AQM-3.3, and AQM-5	Paul Lester	Village of Bayberry, Jamison Corner Road & Boyds Corner Road, Middletown
2/22/2010	AQM-1, AQM-3.9	Paul Lester	Christiana Mail North Parking, Newark
4/4, 16 & 18/ 2010	AQM-1, AQM-2, AQM-3.1, AQM-3.3, AQM-3.9, AQM-5, & Additional Information	Paul Lester, Superintendent & Jonathan Knight	36393 Sussex Highway, Delmar
9/28/2010 & 10/8/2010	AQM-1, AQM-3.9 & Letter	Jonathan Knight	734 Dexter Corner Road, Townsend
7/13/2011	AQM-1, AQM-3.9 & Letter	Paul Lester	560 South College Ave., Newark
4/27/2012	AQM-1, AQM-3.9 & letter	Paul Lester	100 Julian Way, Bear
5/14/2013	AQM-1, AQM-3.9 & letter	Paul Lester	3700 Bay Road, Dover
8/30/2013	AQM-1, AQM-3.9 & letter	Paul Lester	Indian River Inlet, Rt.1, Bethany Beach
10/9/2014	AQM-1 & Letter	Paul Lester	1107 Willow Grove Road, Felton
08/8/2014	AQM-1 & Letter	Paul Lester	200 Marsh Lane, New Castle
08/22/2014	AQM-1 & Letter	Paul Lester	200 Marsh Lane, New Castle

PEF:ADM:CMD  
 F:\EngAndCompliance\CMD\cmd15040.doc

pc: Dover File