

**Secretary's Order No. : 2009-CZ-0023**

**RE: Application of Grantham Lane Associates, LLC, for a Coastal Zone Act Permit for operation of a diesel-powered aggregate crusher for crushing/recycling operations at their existing facility located at 761 Grantham Lane, New Castle, Delaware**

Date of Issuance: **June 30, 2009**

Effective Date: **June 30, 2009**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control under 29 Del. C. §§8001 et seq., the following findings and conclusions are entered as an Order of the Secretary:

Grantham Lane Associates, LLC (“Applicant”), located at 761 Grantham Lane, New Castle, Delaware, is a Delaware corporation whose primary business is construction, with a focus on civil projects. The scope of the construction work performed by this Applicant includes, among other things, site work, including the demolition and excavation of existing structures and/or roadways. A significant portion of the Applicant’s current workload is the DelDOT Community Transportation Needs (CTN) Program in New Castle County. The CTN work consists of removing and replacing concrete sidewalks, curbs, and gutters. The scope of work of the construction projects also entails the installation of new structures and roadways, involving placement of aggregates for foundations and sub-bases.

Pursuant to Grantham Lane Associates, LLC’s most recent CZA permit application dated February 20, 2009, the Applicant seeks permission to install a diesel-powered aggregate crusher construction that will allow the business to recycle construction debris into useful products. This operation will also enable the Applicant to

better compete in the construction market by reducing overall costs and recycling demolition debris into suitable construction materials.

The Department requires a CZA Applicant to set forth in its application the proposed project's possible environmental impacts, including, but not limited to, any increased air emissions of pollutants, stormwater runoff, and the disposal of solid and hazardous wastes, as well as to propose an environmental offset (commonly referred to as an "Offset Plan") greater than the proposed environmental impacts of any proposed project. In the present matter, the expected environmental impacts from the crusher operation primarily involve increased air emissions from the operation of the equipment. The proposed crusher will be operated approximately 1,000 hours per year, and will employ water sprays to reduce particulate matter emissions. The diesel engine powering the crusher will have a peak power rating of 475 hp, and an EPA Tier 3 certification. It is estimated that said crusher will emit approximately 1.50 tons of air pollutants annually, 1.07 tons of which will be nitrogen oxides (NO<sub>x</sub>).

With regard to the environmental offset proposal associated with this proposed project, the Applicant's Offset Plan involves several items, including:

1. Obtaining two tons of emissions credits from the Delaware Economic Development Office ("DEDO");
2. Converting a heating system from fuel oil to propane at one of the Grantham Lane Associates buildings at the site;
3. A one-time financial contribution of \$2,500 to a local school to assist in the conversion of a hot water heating system from fuel oil to natural gas;
4. Removing a solid waste stream from Delaware's solid waste management system;

5. Planting of 200 native species trees onsite; and
6. Extending the life of Delaware's landfills, thereby deferring the environmental impacts of construction and operation of newly permitted landfill space.

A duly noticed public hearing was held on May 6, 2009, at the Department's office at Lukens Drive in New Castle, Delaware. The only member of the public that attended the public hearing was Brenna Goggin, Environmental Advocate for the Delaware Nature Society, who presented formal written comment in support of the Applicant's pending CZA permit application. Representatives from the Department and the Applicant were also in attendance at this hearing, and made presentations to develop the record. Hearing Officer Lisa A. Vest, in a report dated June 26, 2009 ("Report"), and appended hereto and incorporated herein, recommended approval of the permit, subject to the standard and reasonable conditions in a CZA permit that are included to protect Delaware's precious environment.

I find and conclude that the record developed in this matter supports approval of issuing the Applicant a CZA permit, as recommended in the aforementioned Report. Based on the record, and the technical expertise of the Department's personnel who assisted in this application, the record supports approval of Grantham Lane Associates, LLC's application for the permit, as consistent with the CZA and its regulations.

I find that Grantham Lane Associates, LLC's application is consistent with the CZA, which is to balance the economic and environmental interests of the State of Delaware. Given that the expected environmental impacts from the crusher operation primarily concerns the increased air emissions arising from the operation of the

equipment, and that the Offset Plan as proposed by Applicant includes (but is certainly not limited to) the procurement of two tons of emission (air) credits from DEDO, the proposed project satisfies the strict environmental standards imposed by the CZA. Accordingly, I direct that the permit be issued to the Applicant, and enter the following findings and conclusions:

Further, I recommend the Secretary adopt the following findings and conclusions:

1. The Department has jurisdiction under its statutory authority to issue a CZA Permit to the Applicant, subject to reasonable permit conditions deemed appropriate and consistent with the CZA's purposes;
2. The Department provided adequate and lawful public notice of the Coastal Zone Act Application of Grantham Lane Associates, LLC, and of the public hearing held on May 6, 2009, and held said hearing to consider public comment on the application, in a manner required by the law and regulations;
3. The permit approved by this Order is for production/manufacturing activities which will take place within the defined Coastal Zone of Delaware, and is for the expansion of existing manufacturing uses of Grantham Lane Associates, LLC, which requires a CZA permit for the same, to wit: to install a diesel-powered aggregate crusher construction that will allow the business to recycle construction debris into useful products, as proposed by the Applicant in its aforementioned application;
4. The Department has considered the factors required to be weighed in issuing a CZA permit, and finds that the proposed use is allowable for the Coastal Zone

at the proposed location, and that it should be permitted as set forth in Grantham Lane Associates, LCC's application;

5. The Department shall issue a permit to the Applicant, Grantham Lane Associates, LLC, and said permit shall include all conditions consistent with the final Order and any other reasonable conditions that the Department includes in a CZA permit, to ensure that Delaware's environment will be protected from harm, consistent with the CZA and its regulations;
6. The issuance of the aforementioned permit will allow the Applicant to conduct the proposed aggregate crusher operation as proposed in its application, and also enable the Applicant to better compete in the construction market by reducing overall costs of aggregate materials;
7. Furthermore, issuance of the aforementioned permit will benefit Delaware's environment by recycling demolition debris into suitable construction materials (as opposed to simply dumping such materials into landfills), and will also help the Applicant retain existing Delaware jobs, thus benefiting Delaware citizens, as the Applicant's workload has recently slowed due to current economic conditions;
8. The Department carefully has considered all the statutory factors to be considered in making a decision on a CZA permit and those required to be considered under the CZA regulations;
9. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;

10. The Department shall serve and publish its Order on all affected persons in a manner consistent with the service and publication of Secretary's Orders; and
11. This proposed project will allow the Applicant to continue to expand its manufacturing business, while reducing the overall environmental impacts to the Coastal Zone area, in furtherance of the purposes of 7 Del. C., Ch. 70.

/s/ Collin P. O'Mara

Collin P. O'Mara  
Secretary

## HEARING OFFICER'S REPORT

**TO:** The Honorable Collin P. O'Mara  
Cabinet Secretary, Department of Natural Resources and Environmental Control

**FROM:** Lisa A. Vest  
Public Hearing Officer, Office of the Secretary  
Department of Natural Resources and Environmental Control

**RE:** **Application of Grantham Lane Associates, LLC, for a Coastal Zone Act Permit for operation of a diesel-powered aggregate crusher for crushing/recycling operations at their existing facility located at 761 Grantham Lane, New Castle, Delaware**

**DATE:** June 26, 2009

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### **I. BACKGROUND AND PROCEDURAL HISTORY:**

On Wednesday, May 6, 2009 at 6:00 p.m., a public hearing was held at the Department of Natural Resources and Environmental Control's ("Department" or "DNREC") New Castle office, located at 391 Lukens Drive, New Castle, Delaware, in order to receive comment on an application filed by Grantham Lane Associates, LLC ("Applicant"), which requests a permit from DNREC under its authority in the Coastal Zone Act ("CZA"), 7 Del. C., Ch. 70. The CZA regulates new, or the expansion of existing manufacturing uses, within Delaware's "Coastal Zone", which is a geographic area along the Delaware Bay and Atlantic Ocean Coastlines, as defined by the CZA. This hearing was held pursuant to the aforementioned Delaware Coastal Zone Act and Delaware's *Regulations Governing Delaware's Coastal Zone*.

The Applicant's business, located at 761 Grantham Lane, New Castle, Delaware, is a Delaware corporation whose primary business is construction, with a focus on civil projects. The scope of the construction work performed by this Applicant includes,

among other things, site work, including the demolition and excavation of existing structures and/or roadways. A significant portion of the Applicant's current workload is the DeIDOT Community Transportation Needs (CTN) Program in New Castle County. The CTN work consists of removing and replacing concrete sidewalks, curbs, and gutters. The scope of work of these construction projects also entails the installation of new structures and roadways, involving placement of aggregates for foundations and sub-bases.

Pursuant to Grantham Lane Associates, LLC's most recent CZA permit application dated February 20, 2009 (which was then supplemented with additional information at the request of the Department on April 1, 2009 and again on April 29, 2009<sup>1</sup>), the Applicant seeks permission to install a diesel-powered aggregate crusher construction that will allow the business to recycle construction debris into useful products. This operation will also enable the Applicant to better compete in the construction market by reducing overall costs and recycling demolition debris into suitable construction materials.

The Department requires a CZA Applicant to set forth in its application the proposed project's possible environmental impacts, including, but not limited to, any increased air emissions of pollutants, stormwater runoff, and the disposal of solid and hazardous wastes, as well as to propose an environmental offset (commonly referred to as an "Offset Plan") greater than the proposed environmental impacts of any proposed project. In the present matter, the expected environmental impacts from the crusher operation primarily involve increased air emissions from the operation of the equipment.

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<sup>1</sup> The receipt date does not determine when an application is deemed administratively complete, pursuant to CZA Regulations 8.3.1 and 8.3.6. The application was deemed administratively complete on April 9, 2009, which began a 90 day time period in which the Department must render its decision concerning this matter.

The proposed crusher will be operated approximately 1000 hours per year, and will employ water sprays to reduce particulate matter emissions. The diesel engine powering the crusher will have a peak power rating of 475 hp, and an EPA Tier 3 certification. It is estimated that said crusher will emit approximately 1.50 tons of air pollutants annually, 1.07 tons of which will be nitrogen oxides (NOx).

With regard to the environmental offset proposal associated with this proposed project, the Secretary's Environmental Assessment Report<sup>2</sup> verifies that the Applicant's Offset Plan involves several items, including:

7. Obtaining two tons of emissions credits from the Delaware Economic Development Office ("DEDO");
8. Converting a heating system from fuel oil to propane at one of the Grantham Lane Associates buildings at the site;
9. A one-time financial contribution of \$2,500 to a local school to assist in the conversion of a hot water heating system from fuel oil to natural gas;
10. Removing a solid waste stream from Delaware's solid waste management system;
11. Planting of 200 native species trees onsite; and
12. Extending the life of Delaware's landfills, thereby deferring the environmental impacts of construction and operation of newly permitted landfill space.

The Department provided public notices of this CZA Application's submission and the determination of an administratively complete application following the Secretary's Assessment, which was signed on April 9, 2009. Consequently, as noted

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<sup>2</sup> The Secretary's Assessment is a procedural step in the Department's application review process, as required by CZA Regulation 9.1.5. The Secretary's Assessment is a preliminary determination that an application is sufficiently administratively complete in order to schedule a public hearing and receive public comments on the application.

above, the Department held a public hearing on May 6, 2009, at the Department's office at Lukens Drive in New Castle, Delaware.

## **II. SUMMARY OF THE PUBLIC HEARING RECORD:**

The public hearing record consists of a verbatim transcript and twenty-one documents introduced at the public hearing and marked by this Hearing Officer as Department Exhibits 1-21. An additional exhibit was received at the time of the public hearing from a representative of the Delaware Nature Society, and the same was marked by this Hearing Officer as "DNS Exhibit #1". The Department's person primarily responsible for reviewing the CZA Application, Kevin Coyle, developed the record with the relevant documents in the Department's files. Additionally, representatives of the Applicant were present at the hearing and answered questions.

The only member of the public that attended the aforementioned hearing held on May 6, 2009 was Brenna Goggin, Environmental Advocate for the Delaware Nature Society. Ms. Goggin presented formal written comment (which, again, was entered into the record as "DNS Exhibit #1") at the public hearing in support of the Applicant's pending CZA permit application. Although Ms. Goggin did voice some concerns with regard to the monitoring of the proposed offsets, the same were responded to by the Applicant (and discussed at length) during the public hearing, to the satisfaction of the Delaware Nature Society. No additional comments were received by the Department from the public concerning this pending matter.

At the conclusion of the public hearing on May 6, 2009, this Hearing Officer formally closed the record with regard to any additional public comment, as all proper notification and noticing requirements concerning this pending CZA application had been

met by the Department at that time. However, the record was kept open through close of business Friday, June 5, 2009, for the sole specific purpose of the Applicant to provide the Department with verification of receipt of the two tons of emission (air) credits needed from DEDO, as set forth in the proposed Offset Plan as described above. On June 4, 2009, the Department was provided with said verification by Jeff Stone, Director of Infrastructure & Intergovernmental Relations at DEDO.

### **III. DISCUSSION AND REASONS:**

This application is for a permit issued under the CZA. Preliminarily, I find that the Applicant's existing facility is located within Delaware's "Coastal Zone", and that the proposed project would be an expansion of existing manufacturing uses within the Coastal Zone of Delaware. Additionally, the proposed aggregate crusher operation is not a prohibited use, as it will not be "heavy industry use" or an "offshore bulk transfer facility".

The Department is to evaluate a CZA application based upon a consideration of the CZA's balancing of economic and environmental factors. The CZA requires the Department to consider the following issues of any given proposed project: (1) environmental impacts; (2) economic impacts; (3) aesthetic impacts; (4) the number and type of supporting facilities required and their impacts on all other factors; (5) the impact on neighboring land uses; and (6) the county and municipal comprehensive plans. 7 Del.C. §7004. The record developed in this matter indicates that the Department's experts have considered these factors, and have recommended issuance of a permit to the Applicant in this matter. Further, the experts recommended that the application was sufficient, and that the engineering calculations used to estimate the potential emissions

from the crusher and the emission reductions from said project and correlating Offset Plan, as proposed by the Applicant, are all reasonable. I agree with the recommendations of the Department's experts.

**IV. RECOMMENDED FINDINGS AND CONCLUSIONS:**

Based on the record developed, I find and conclude that the Applicant has adequately demonstrated its compliance with all requirements of the Delaware Coastal Zone Act Regulations and Statutes, as noted herein, and that the record supports approval of Grantham Lane Associates, LLC's CZA permit application. In conclusion, I recommend that a Coastal Zone Permit consistent with the record developed in this matter be issued by the Department in the customary form, and with appropriate conditions, to ensure continued improvement of environmental quality in the Coastal Zone of the State of Delaware.

Further, I recommend the Secretary adopt the following findings and conclusions:

12. The Department has jurisdiction under its statutory authority to issue a CZA Permit to the Applicant, subject to reasonable permit conditions deemed appropriate and consistent with the CZA's purposes;
13. The Department provided adequate and lawful public notice of the Coastal Zone Act Application of Grantham Lane Associates, LLC, and of the public hearing held on May 6, 2009, and held said hearing to consider public comment on the application, in a manner required by the law and regulations;
14. The permit applied for by Grantham Lane Associates, LLC, is for production/manufacturing activities which will take place within the defined Coastal Zone of Delaware, and is for the expansion of existing manufacturing

uses, which requires a CZA permit for the same, to wit: to install a diesel-powered aggregate crusher construction that will allow the business to recycle construction debris into useful products, as proposed by the Applicant in its aforementioned application;

15. The Department has considered the factors required to be weighed in issuing a CZA permit, and finds that the proposed use is allowable for the Coastal Zone at the proposed location, and that it should be permitted as set forth in Grantham Lane Associates, LCC's application;
16. The Department shall issue a permit to the Applicant, Grantham Lane Associates, LLC, and said permit shall include all conditions consistent with the final Order and any other reasonable conditions that the Department includes in a CZA permit, to ensure that Delaware's environment will be protected from harm, consistent with the CZA and its regulations;
17. The issuance of the aforementioned permit will allow the Applicant to conduct the proposed aggregate crusher operation as proposed in its application, and also enable the Applicant to better compete in the construction market by reducing overall costs of aggregate materials;
18. Furthermore, issuance of the aforementioned permit will benefit Delaware's environment by recycling demolition debris into suitable construction materials (as opposed to simply dumping such materials into landfills), and will also help the Applicant retain existing Delaware jobs, thus benefiting Delaware citizens, as the Applicant's workload has recently slowed due to current economic conditions;

19. The Department carefully has considered all the statutory factors to be considered in making a decision on a CZA permit and those required to be considered under the CZA regulations;
20. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary; and
21. The Department shall serve and publish its Order on all affected persons in a manner consistent with the service and publication of Secretary's Orders.

          /s/ Lisa A. Vest            
Lisa A. Vest  
Public Hearing Officer

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