



**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF STATE PLANNING COORDINATION**

September 14, 2011

Mr. Greg Swift  
McBride & Ziegler  
2607 Eastburn Center  
Newark, DE 19711

RE: PLUS review – 2011-08-04; Twin Spans Business Park, Parcel 7D

Dear Mr. Swift:

Thank you for meeting with State agency planners on August 24, 2011 to discuss the proposed plans for Parcel 7D of the Twins Spans Business Park located on Route 9 within the City of New Castle.

According to the information received, you are seeking to eliminate parcel 5 of the existing industrial part and make it part of parcel 7D to expand the existing warehouse on parcel 7D by adding a 138,466 sq. ft. warehouse addition. In addition, you propose to eliminate the existing stormwater management extended detention basin and replace it with an underground stormwater management storm tech unit.

Please note that changes to the plan, other than those suggested in this letter, could result in additional comments from the State. Additionally, these comments reflect only issues that are the responsibility of the agencies represented at the meeting. The developers will also need to comply with any Federal, State and local regulations regarding this property. We also note that as the City of New Castle is the governing authority over this land, the developers will need to comply with any and all regulations/restrictions set forth by the City.

**Strategies for State Policies and Spending**

- This parcel is located in a level 1 area according to the *Strategies for State Policies and Spending*. In addition, the proposed warehouse facility is within the City of New Castle and is part of an existing approved industrial park. Investment Level 1 reflects areas that are already developed in an urban or suburban fashion, where infrastructure is existing or readily available, and where future redevelopment or infill projects are expected and encouraged by State policy.

## **Code Requirements/Agency Permitting Requirements**

### **State Historic Preservation Office – Contact Terrence Burns 736-7404**

- There are no known cultural or historic resources such as a national registered listed property, archaeological site, or historic structure or dwelling on this parcel (property). However according to the Pomeroy and Beers Atlas of 1868 (an historical map), it indicated that there was a dwelling or structure very close to the site that was associated with a Wm. Booth Estate, also known as Hawthorn. In addition, this area, which is next to the stream, also has very high potential for both prehistoric-period and early historic-period archaeological sites or remains as well. With this in mind, it is important that developer be aware of the Unmarked Human Burials and Human Skeletal Remains Law of 1987 (Delaware Code: Title 7, Chapter 54), which pertains to the discovery and disposition of such remains in the State of Delaware.
- Abandoned or unmarked family cemeteries are very common in Delaware. Especially on historic farm sites, rural areas, and open space lands. Disturbing unmarked burials triggers Delaware's Unmarked Human Burials and Human Skeletal Remains Law of 1987 (Delaware Code: Title 7, Chapter 54), and such discoveries can result in substantial delays while the procedures required under this law are carried out. The Division of Historical & Cultural Affairs recommends that owners and/or developers have a qualified archaeological consultant investigate their project area for the presence of such a cemetery. If one is discovered and delineated, it is very costly to have it archaeologically excavated and the burials moved. In the event of such a discovery, the Division of Historical & Cultural Affairs also recommends that the plans be re-drawn to leave the cemetery on its own parcel or in the open space area of the development, with the responsibility for its maintenance lying with a homeowners association or development. For further information, please see following websites at: [www.history.delaware.gov/preservation/umhr.shtml](http://www.history.delaware.gov/preservation/umhr.shtml) and [www.history.delaware.gov/preservation/cemeteries.shtml](http://www.history.delaware.gov/preservation/cemeteries.shtml)
- Prior to any demolition or ground-disturbing activities, the developer should consider hiring an archaeological consultant to examine the parcel for potential archaeological sites, a cemetery or unmarked human remains.
- If there is any federal involvement with the project, in the form of licenses, permits, or funds, the federal agency, often through its client, is responsible for complying with Section 106 of the National Historic Preservation Act (36 CFR 800) and must consider their project's effects on any known or potential culture or historic resources. Owners and developers who may plan to apply for an Army Corps of Engineers permit or for federal funding, such as HUD or USDA grants, should be aware of the National Historic Preservation Act of 1966 (as amended). Regulations promulgated for Section 106 of this Act stipulate that no ground-disturbing or demolition activities should take place before the Corps or other involved federal agency determines the area of potential effect of the

project undertaking. These stipulations are in place to allow for comment from the public, the Delaware State Historic Preservation Office, and the Advisory Council for Historic Preservation about the project's effects on historic properties. Any preconstruction activities without adherence to these stipulations may jeopardize the issuance of a permit or receipt of funding if it is determined that such opportunity to comment has been foreclosed. For further information on Section 106 and the Advisory Council's role, please review the Advisory Council's website at [www.achp.gov](http://www.achp.gov)

Department of Transportation – Contact Bill Brockenbrough 760-2109

- The information on the PLUS application indicates that the proposed warehouse expansion will generate no additional traffic. DelDOT understands from the applicant's engineer that the present tenant simply needs additional storage space and that they anticipate no increase in traffic with the proposed expansion. However, realizing that tenants change, DelDOT must consider what could occur when the next tenant moves in. For warehouse uses (their Land Use Code 150), the Institute of Transportation Engineers' Trip Generation report shows a positive correlation between floor area and trip generation and more specifically suggests that the daily trip generation associated with this building to increase from about 1,698 trips per day to about 2,168 trips per day for a net increase of 470 trips per day. At that volume, the proposed development meets DelDOT's volume warrants for a Traffic Impact Study (TIS), 400 trip ends per day, or 50 trip ends in the peak hour. Those warrants can be found in Section 2.3 of DelDOT's Standards and Regulations for Subdivision Streets and State Highway Access.

DelDOT recognizes that warehousing uses vary widely and they are willing to consider traffic counts or other evidence supporting lower trip generation numbers for this business park. Absent such evidence, DelDOT anticipates requiring either preparation of a TIS or payment of the Area Wide Study Fee, and potentially construction of offsite improvements as a condition for a Letter of No Objection. The Area Wide Study Fee, discussed in Section 2.3.2 of the Standards and Regulations, is a contribution toward a future area wide study in lieu of performing a TIS. The fee is calculated as \$10 per daily trip, or for a 470 trip increase, \$4,700.

If the applicant can demonstrate that the trip generation of the business park would increase by less than 400 trips per day and less than 50 trips in the peak hour, no study and no fee would be required.

- Separate from the TIS requirement, DelDOT may require a Traffic Operational Analysis (TOA), in accordance with Section 3.9 of the Standards and Regulations to assess the adequacy of the park entrance on Delaware Route 9. Depending on the results of that TOA, improvements to that entrance could be required. If the applicant can demonstrate that the trip generation of the business park would increase by less than 200 trips per day no TOA would be required.

Department of Natural Resources and Environmental Control – Contact Kevin Coyle 739-9071

## **Wetlands**

- The applicant is responsible for determining whether any State-regulated wetlands (regulated pursuant to 7 Del.C. Chapter 66 and the Wetlands Regulations) are present on the property. This determination can only be made by contacting the Division of Water Resources' Wetlands and Subaqueous Lands Section at 302-739-9943 and consulting the State's official wetland regulatory maps, which depict the extent of State jurisdiction. The area regulated by State law may be very different from the area under federal authority. State-regulated tidal wetlands may be impacted by this project. Wetlands mapped by the State Wetland Mapping Project (SWMP) as E2EM1P (Figure 1) are tidally-influenced wetlands regulated by the State; no activity may take place in State-regulated wetlands without a permit from DNREC's Wetlands Section. Please contact the Wetlands and Subaqueous Lands section at 302/739-9943 for a definitive assessment of the wetlands on this parcel.
- In addition, most perennial streams and ditches and many intermittent streams and ditches are regulated pursuant to the Subaqueous Lands Act (7 Del.C. Chapter 72) and the Regulations Governing the Use of Subaqueous Lands. Ponds, which are connected to other waters, are also regulated, while isolated ponds are not. Any work in regulated streams, ditches or ponds requires a permit from the Wetlands and Subaqueous Lands Section. An on-site jurisdictional determination is recommended in order to determine whether any regulated watercourses exist on the property. Please contact the Wetlands and Subaqueous Lands Section at 302-739-9943 to schedule an on-site visit. Such appointments can usually be scheduled within 2 to 3 weeks.

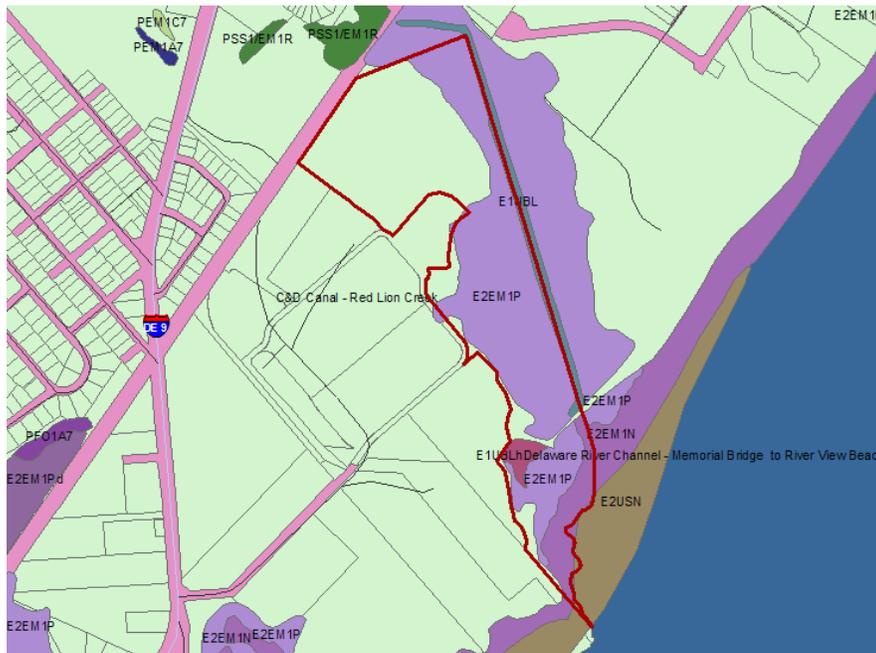


Figure 1: SWMP mapped wetlands in the vicinity of the proposed project

## TMDLs

- The project is located in the greater Delaware River and Bay drainage; specifically, within the C & D Canal and Red Lion Creek watersheds. In the Red Lion Creek watershed, the State of Delaware has developed specific Total Maximum Daily Load (TMDL) pollutant reduction targets for nutrients (e.g., nitrogen, phosphorus), and bacteria (under the auspices of Section 303(d) of the Federal Clean Water Act). A TMDL is the maximum level of pollution allowed for a given pollutant below which a “water quality limited water body” can assimilate and still meet State water quality standards (e.g., dissolved oxygen, nutrients, and bacteria; *State of Delaware Surface Water Quality Standards, as amended July 11, 2004*) to the extent necessary to support use goals such as, swimming, fishing, drinking water and shell fish harvesting. The TMDL for the Red Lion Creek watershed calls for a 40 percent reduction in nitrogen and phosphorus from baseline conditions. The TMDL also calls for a 38 percent reduction in bacteria from baseline conditions. Although a TMDL has not been developed for the C&D Canal watershed to date, the existing TMDL developed for the Red Lion Creek will apply to the entirety of the project area.
- A nutrient management plan is required under the *Delaware Nutrient Management law (3 Del. Chapter 22)* for all persons or entities who apply nutrients to lands or areas of open space in excess of 10 acres. This project’s open space may exceed this 10-acre threshold. Please contact the Delaware Nutrient Management Program at 739-4811 for further information concerning compliance requirements or view the following web link for additional information: <http://dda.delaware.gov/nutrients/index.shtml>

## **Water Supply**

- The project information sheets state water will be provided to the project by City of New Castle via a public water system. DNREC records indicate that the project is located within the public water service area granted to New Castle County Water and Light Company under Certificate of Public Convenience and Necessity 88-WS-05.
- Should dewatering points be needed during any phase of construction, a dewatering well construction permit must be obtained from the Water Supply Section prior to construction of the well points. In addition, a water allocation permit will be needed if the pumping rate will exceed 50,000 gallons per day at any time during operation.
- All well permit applications must be prepared and signed by licensed water well contractors, and only licensed well drillers may construct the wells. Please factor in the necessary time for processing the well permit applications into the construction schedule. Dewatering well permit applications typically take approximately four weeks to process, which allows the necessary time for technical review and advertising.
- Potential Contamination Sources exist in the area, and any well permit applications will undergo a detailed review that may increase turnaround time and may require site specific conditions/recommendations. In this case there is a Groundwater Management Zone associated with Chicago Bridge & Iron located within 1000 feet of the proposed project.

## **Sediment and Stormwater Program**

- The project will require a revised detailed sediment and stormwater plan prior to any land disturbing activity taking place on the site. Contact the reviewing agency to schedule a project application meeting to discuss the sediment and erosion control and stormwater management components of the plan as soon as practicable. The site topography, soils mapping, pre- and post-development runoff, and proposed method(s) and location(s) of stormwater management should be brought to the meeting for discussion. The plan review and approval as well as construction inspection will be coordinated through the New Castle Conservation District. Contact the New Castle Conservation District at (302) 832-3100, Ext. 3 for details regarding submittal requirements and fees. (Title 7, Delaware Code, Chapter 40 and Delaware Regulations, Title 7, Administrative Code, 5101)

## **Flood Management**

- Portions of Parcels 3 and 7D are currently located in the high risk floodplain according to the current effective, regulatory Flood Insurance Rate Map panel 10003C0170J dated 1-17-2007. The developer should never depict the floodplain on the site plan following the contours on the site. The site plan submitted shows the floodplain following the 10 foot contour line around all the buildings. We recommend the developer apply for a

Conditional Letter of Map Revision based on Fill (CLOMRF) to formally change the floodplain on the Flood Insurance Rate Map for the entire site.

### **Hazardous Waste Sites**

- If it is determined by the Department that there was a release of a hazardous substance on the property in question and the Department requires remediation pursuant to the Hazardous Substance Cleanup Act, the provisions of 7 Del.C. Chapter 91, Delaware Hazardous Substance Cleanup Act and the Delaware *Regulations Governing Hazardous Substance Cleanup* shall be followed.
- The proposed project includes an environmental covenant executed pursuant to 7 Del. C. Chapter 79, Subchapter II, Uniform Environmental Covenants Act. It shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to 7 Del. C. Section 7910(a), subject to amendment or termination as set forth herein. The term “Transferee,” as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees. It may be enforced pursuant to 7 Del. C. Section 7916. Failure to timely enforce compliance with this Environmental Covenant or the use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party’s right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the Secretary of DNREC from exercising any authority under applicable law. There shall be no interference with this environmental covenant, such as any land disturbing activities, without the prior written approval of the Department.

### **Tank Management Branch.** Please be aware:

- If a release of a Regulated Substance occurs at the proposed project site, compliance of 7 Del.C. Chapter 60, 7 Del.C., Chapter 74 and DE Admin. Code 1351, State of Delaware *Regulations Governing Underground Storage Tank Systems* (the UST Regulations) is required.
- There is only one confirmed leaking underground storage tank (LUST) projects are located within a quarter mile from the proposed area:
  - NCC Department of Community Development & Housing, Facility: 3-001501, Project: N9407161 (Inactive)
- Per the **UST Regulations: Part E, § 1. Reporting Requirements:**
  - “Any indication of a Release of a Regulated Substance that is discovered by any Person, including but not limited to environmental consultants, contractors, utility

companies, financial institutions, real estate transfer companies, UST Owners or Operators, or Responsible Parties shall be reported within 24 hours to:

- The Department’s 24-hour Release Hot Line by calling 800-662-8802; and
- The DNREC, Tank Management Branch by calling 302-395-2500.”

Delaware State Fire Marshall’s Office – Contact Duane Fox 739-4394

- Since this project lies within the jurisdiction of the City of New Castle, we defer comment to the City Fire Official to provide any technical review and assistance.

**Recommendations/Additional Information**

This section includes a list of site specific suggestions that are intended to enhance the project. These suggestions have been generated by the State Agencies based on their expertise and subject area knowledge. **These suggestions do not represent State code requirements.** They are offered here in order to provide proactive ideas to help the applicant enhance the site design, and it is hoped (**but in no way required**) that the applicant will open a dialogue with the relevant agencies to discuss how these suggestions can benefit the project.

Department of Natural Resources and Environmental Control – Contact Kevin Coyle 739-9071

**Wetlands**

- When designing a project on a site with regulated watercourses, any extensive piping, filling or burying of streams or ditches in excess of the minimum needed for road crossings should be avoided. Where road crossings are necessary, bridge spans which avoid significant impacts to stream banks and channels should be used wherever possible. Where placement of culverts is unavoidable, culvert designs which utilize multiple barrels at different elevations to preserve a low flow channel are usually preferred.

**Soils Assessment**

- According to the NRCS soil survey update, poorly and very poorly drained hydric Othello (OtA) and Transquaking/Mispiration (TP) soil mapping units were mapped on subject parcel. The occurrence of hydric soils is indicative of wetland presence on this parcel(s). Hydric soils have severe limitations for development; thus we strongly recommend that they be avoided (See figure 2).

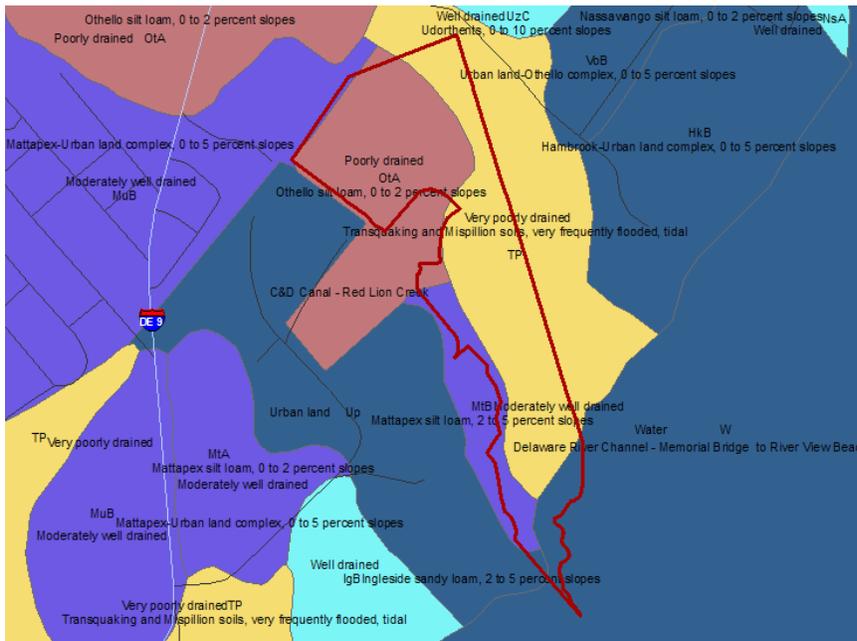


Figure 2: NRCS soil survey mapping update in the immediate vicinity of the proposed project

### Additional information on TMDLs

- A Pollution Control Strategy (PCS) is the regulatory directive requiring the implementation of various best management practices (BMPs) that help reduce transport of nutrient and bacterial pollutant runoff from all waters draining into a “greater” common watershed, with the ultimate objective of achieving the obligatory TMDL reduction requirements for that watershed. However, the PCS for the C&D canal and Red Lion creek watersheds have not been formally completed to date. In absence of a final PCS, the applicant is strongly urged to reduce nutrient and bacterial pollutants through the voluntary commitment to the implementation of the following recommended BMPs:
  - Maximize open space by retaining as much of the existing native tree cover as possible. Plant additional native trees and /or native herbaceous cover, wherever possible.
  - A United States Army Corps of Engineers (USACE) approved field wetlands delineation is strongly recommended before commencing any development activities on this parcel(s). The USACE can be reached by phone at 736-9763. It should be noted that compliance with USACE regulations does not preclude compliance with State wetland-regulatory requirements.
  - Based on a review of existing buffer research by Castelle et al. (Castelle, A. J., A. W. Johnson and C. Conolly. 1994. *Wetland and Stream Buffer Requirements – A Review*. J. Environ. Qual. 23: 878-882.), an adequately-sized buffer that effectively

protects wetlands and streams, in most circumstances, is about 100 feet in width. To protect water quality, maintain/establish a minimum 100-foot upland buffer (planted in native vegetation) from all water bodies (including ditches) and all federal and State-regulated wetlands. Buffers are also an integral component of aquatic and wetland habitats, reducing the amount of sediments, pollutants, and other non-point source material that may affect the function and integrity of habitat and the condition and survivability of aquatic organisms. In addition, some wetland dependent species utilize upland buffers during a large portion of their life cycle.

- The applicant should calculate post-construction surface imperviousness with all forms of created (or constructed) surface imperviousness (e.g., rooftops, driveways, parking lots, sidewalks, open-water storm water management structures, and roads) included in the calculation. It is strongly recommended that the applicant implement best management practices (BMPs) that reduce or mitigate some of its most likely adverse impacts. Reducing the amount of surface imperviousness via the application/use of pervious paving materials (“pervious pavers”) in lieu of asphalt or concrete in conjunction with an increase in forest cover preservation (or establishment of additional forest cover acreage) are some examples of practical BMPs that could easily be implemented to help reduce surface imperviousness.
- Limit paved surface imperviousness through substitution of pervious paving materials instead of conventional paving materials (e.g., asphalt and concrete), wherever possible.
- Rain gardens and green-technology storm water management structures (in lieu of open-water management structures) should be utilized as BMPs to reduce nutrient pollutant impacts.
- The applicant should voluntarily assess nutrient and bacterial pollutant loading at the preliminary project design phase. To this end, the Watershed Assessment Section has developed a methodology known as the “Nutrient Load Assessment protocol.” The protocol is a tool used to assess changes in nutrient (e.g., nitrogen and phosphorus) and bacterial loading that result from the conversion of individual or combined land parcels to a different land use(s), while providing applicants with quantitative information about their project’s impact(s) on baseline water quality. We strongly encourage the applicant/developer use this protocol to help them design and implement the most effective BMPs. Please contact Lyle Jones at 302-739-9939 for more information on the protocol.

#### **Additional information on hazardous substances**

- There are four SIRS sites found within a ½-mile radius of the proposed project.

1. The proposed project is located on the Chicago Bridge and Iron (CBI) Site (DE-0038). In the past the Site was a foundry producing steel piping until 1929, and then later re-opened to produce and paint steel plating from 1956 until 1980. In 1980 CBI was classified as a RCRA transporter/Storage/disposer facility. A Preliminary Assessment was conducted in 1984 followed by a Site Investigation in 1988. A Consent Decree was signed between DNREC and CBI in 1997. A Certificate of Completion of Remedy (COCR) was issued in 1996 with continued annual Operation and Maintenance (O&M) inspections. A Groundwater Management Zone was established on the site. This ensures that no wells will be installed on site or the surrounding area of the site without prior review and approval of DNREC.
  2. New Castle Container Site (DE-0148) is located adjacent to the western border of the project site. The Site was the location of a warehouse operation that stored trailers of chemical materials. The EPA's On-Scene Coordinator's Report associated with a CERCLA Emergency Removal Response indicated that all hazardous substances were removed from the site between February and April 1985. The report states that "the warehouse (and associated structures, surface water and soil) was decontaminated and was found to be safe for normal use." A No Further Action designation was issued to the Site in 1987.
  3. New Castle Spill Site (DE-0033) is located 0.10 miles west of the proposed project site. In the summer of 1977, a hazardous material leaked into the soil and groundwater and migrated to the property of New Castle Board of Water and Light (adjacent to the north). In 1982 the Site was placed on the EPA's National Priority List (NPL). A Remedial Investigation, Endangerment Assessment, and Feasibility Study were all completed in 1989. The Site was removed from the NPL in 1996 and considered to no longer be a threat to human and environmental health.
  4. Castle Ford (DE-0192) is located 0.11 miles west of the proposed project site. In 1988, a Preliminary Assessment was completed on the site followed by a Site Investigation in 1989. A Certificate of Completion of Remedy was issued in 1996 and filed with the office of the Recorder of Deeds in New Castle County on March 9, 1999. No O&M was required. The Site is recommended to be closed and will be going through the closeout/delisting process.
- SIRS strongly recommends that the land owner perform environmental due diligence of the property by performing a Phase I Environmental Site Assessment (**including a title search to identify environmental covenants**) in accordance to Section 9105(c) (2) of the Delaware Hazardous Substance Cleanup Act (HSCA). While this is not a requirement under HSCA, it is good business practice and failure to do so will prevent a person from being able to qualify for a potential affirmative defense under Section 9105(c) (2) of HSCA.

**Additional remediation may be required if the project property or site is re-zoned.**

- Should a release or imminent threat of a release of hazardous substances be discovered during the course of development (e.g., contaminated water or soil), construction activities should be discontinued immediately and DNREC should be notified at the 24-hour emergency number (800-662-8802). SIRS should also be contacted as soon as possible at 302-395-2600 for further instructions.

**Additional information on tank management.**

- When contamination is encountered, PVC pipe materials should be replaced with ductile steel and nitrile rubber gaskets in the contaminated areas.
- If any aboveground storage tanks (ASTs) less than 12,500 gallons are installed, they must be registered with the TMB. If any ASTs greater than 12,500 gallons are installed, they are also subject to installation approval by the TMB.

**Following receipt of this letter and upon filing of an application with the local jurisdiction, the applicant shall provide to the local jurisdiction and the Office of State Planning Coordination a written response to comments received as a result of the pre-application process, noting whether comments were incorporated into the project design or not and the reason therefore.**

Thank you for the opportunity to review this project. If you have any questions, please contact me at 302-739-3090.

Sincerely,



Constance C. Holland, AICP  
Director, Office of State Planning Coordination

CC: City of New Castle