

COASTAL ZONE CONVERSION PERMIT ACT REGULATORY ADVISORY COMMITTEE MEETING #1
JUNE 14, 2018
MEETING SUMMARY

APPROVED BY THE CZCPA RAC ON JULY 12, 2018

Disclaimer: This meeting summary was prepared by the Consensus Building Institute (CBI), a non-profit entity contracted by DNREC to facilitate CZCPA RAC meetings and draft a meeting summary. This summary is not intended to be a meeting transcript. Rather, it focuses on the main points covered during the meeting.

MEETING IN BRIEF

At its June 14, 2018 meeting, the Coastal Zone Conversion Permit Act (CZCPA) Regulatory Advisory Committee (RAC) began its work to advise the Delaware Department of Natural Resources and Environmental Control (DNREC) on drafting regulations to implement the CZCPA. After opening remarks by DNREC Secretary Shawn Garvin and RAC Chair Justice Randy J. Holland, the RAC heard presentations on the CZCPA, the regulations drafting process, and the existing Coastal Zone Act (CZA) regulatory program and procedures. The RAC then discussed and provided feedback on the draft Procedures for RAC Operations, the draft RAC Work Plan, and community and public engagement. The meeting closed with a brief discussion of next steps and information about the upcoming formation of RAC Work Groups. The meeting also provided an opportunity for the public to comment on topics being discussed by the RAC. A list of meeting participants is attached to the end of this summary. Presentation slides are available at de.gov/czcparac.

ACTION ITEMS

Who	What
RAC members	<ul style="list-style-type: none">• Review background materials.• Reply to emails from Ian Yue (DNREC) re: designating alternates, providing suggestions for community engagement, and additional logistical information.
DNREC	<ul style="list-style-type: none">• Post all presentation slides, background materials, and the RFP for Work Group consultants to the CZCPA RAC webpage at de.gov/czcparac.• Before next meeting, distribute the following materials requested by the RAC: revised Procedures for RAC Operations; draft framing questions for Work Groups; current regulations indicating where revisions may be needed to incorporate conversion permits; draft public engagement approach based on RAC feedback during June 14 meeting; draft presentations for the meeting; map showing the 14 sites, political districts, demographic information, and community names; RAC member and alternate contact list; existing CZA permit application.• Explore feasibility of holding a tour of some of the 14 sites.• Explore call-in capacity for RAC meetings (listening-only option).• Distribute draft June 14 meeting summary to DNREC staff and RAC for review (will finalize at July 12 meeting).

	<ul style="list-style-type: none"> • With CBI, develop draft agenda for July 12 meeting.
CBI	<ul style="list-style-type: none"> • Develop a preliminary meeting calendar. • Prepare draft meeting summary.

UPCOMING MEETINGS AND EVENTS

Event	Date	Venue
RAC Meeting #2	July 12, 2018	DNREC Lukens Drive Office, 391 Lukens Drive, New Castle, DE 19720

DISCUSSION

Below is a summary of key topics discussed during the meeting. All presentation slides are available at de.gov/czcpa.

Opening Remarks, RAC Charge, and Introductions

Secretary Shawn Garvin (DNREC) and Justice Randy J. Holland (retired DE Supreme Court Justice and RAC Chair) delivered opening remarks to the RAC and the public. Secretary Garvin expressed his appreciation for RAC members’ time and dedication to the process and reviewed the RAC’s charge. The RAC is charged with providing guidelines and recommendations to DNREC by March 2019 – though preferably on a rolling basis – for DNREC to draft, hold public hearings on, submit to the Coastal Zone Industrial Control Board (CZICB), and issue final regulations to implement the CZCPA by October 1, 2019. Key regulatory issues that the RAC will need to address include environmental offsets, financial assurance, and calculating the potential environmental and economic impacts of future projects. In forming the RAC, DNREC sought to build a committee that represents many of the people and interests these regulations will affect. DNREC intends for this process to be fair, transparent, and inclusive.

In his remarks, Justice Holland emphasized his role as a neutral, non-voting Chair who will help guide the RAC toward consensus and ensure the process is fair and transparent. RAC members should keep their constituency and the broader public informed about this process, seek their views, and bring those views back to the RAC discussions. This process is an important opportunity to participate in civic engagement.

As the RAC members introduced themselves, they described their motivations for volunteering to serve on the RAC. Their comments included: responsibility to protect Delaware’s unique coastline; opportunities to attract new businesses to grow the economy and create jobs; protecting public health and community health; ensuring the interests of the public are considered in the process; ensuring Delaware will be a healthy place for future generations to live and work; maintaining the intent of the CZA; and striving to balance economic growth, recreation, and environmental protection in the Coastal Zone (CZ).

Review of the CZA and the CZCPA

Andrea Kreiner (DNREC) reviewed the respective histories and statutory mandates of the CZA and CZCPA. The presentation covered how the CZA defines the CZ, the Act’s intention of striking a balance between economic development and environmental protection, and the CZA’s statutory mandates (e.g., prohibited and allowed activities, what DNREC should consider before issuing a permit). Passed into

law in August 2017, the CZCPA allows expanded uses of 14 existing heavy industry sites in the CZ with a conversion permit. Ms. Kreiner reviewed allowable and prohibited uses under the CZCPA. The requirements for conversion permits are more demanding than those for standard CZ permits; conversion permits include additional requirements. DNREC staff will process both types of permits.

The existing CZA regulations, established in 1999, will be amended by DNREC, with guidance from the RAC, to incorporate regulations for conversion permits. Ms. Kreiner noted that a developer may apply for a conversion permit before the amended regulations are promulgated. Should this occur, DNREC would assess the application using the requirements outlined in the CZCPA and any recommendations from the RAC, if submitted by that point.

Below are the questions posed by the RAC in relation to this topic. Each question is underlined followed by an answer, if offered.

- Is the intention of the CZCPA's bulk product transfer stipulations to eliminate pass-through of products?
Yes, its goal is to keep the economic benefit of a project within the state. This language prevents someone from, for example, building a pipeline that would not deliver economic benefit to Delaware yet leave the state with the environmental risk.

Regulations: Role and Drafting Process

Dirk Durstein (Delaware Department of Justice) presented an overview of the role of regulations and the regulation drafting process. Mr. Durstein reviewed the statutory sources of authority for DNREC to develop regulations pertaining to the CZ, the distinction between regulations and statutes, and essential components of regulations. The presentation highlighted the steps DNREC will take to gather public input and ensure transparency, including posting RAC materials online and outreach to “fenceline” communities. The Delaware Administrative Procedures Act (DEAPA) lays out the steps for how a regulation must be developed. This process includes a takings analysis and multiple opportunities for public input and comment. Mr. Durstein emphasized that DNREC may only develop regulations that are within its statutory authority; the Secretary may not approve regulations that go beyond what the CZCPA allows.

Below are the questions posed by the RAC in relation to this topic. Each question is underlined followed by an answer, if offered.

- Does DEAPA require an agency to consider the resources that may be required to administer and enforce new regulations when drafting those regulations?
No. This responsibility rests with the Secretary, the Governor, and ultimately the General Assembly via a fiscal note attached to a law. The CZCPA, however, did not have a fiscal note attached. DNREC recognizes that it has limited CZ staff and that the CZCPA will likely require additional staff time. The RAC may need to consider how the conversion permit program can be designed to enable DNREC to meet the required 90-day turnaround for permit applications and conduct a thorough review of an application.

- Does a takings only apply to private property?
Yes.

Background on Existing Coastal Zone Act Regulatory Program and Procedures

Susan Love (DNREC) presented an overview of the existing CZA permit program and application process.¹ A party that wishes to receive a permit for a proposed activity in the CZ may seek a status decision from DNREC telling them whether or not they will need a permit. Parties generally seek a status decision only when the need for a permit is unclear, as status decisions are not required to apply for or be granted a CZ permit. The penalties for not obtaining a permit from DNREC when a permit was needed are clearly laid out in the CZA and are enforced by the Secretary.

Once a party has determined they will need a permit, they are encouraged to engage in pre-application meetings with DNREC staff before submitting a permit application. Applications include information on: the proposed project and site, environmental impact, economic effect, effect of the project on supporting facilities' requirements, aesthetic effects, effects on neighboring land uses, and an offset proposal. The permit process includes a public notice, determination of completeness, and a public hearing. The Secretary has 90 days (from the completeness determination) to grant, deny, or grant with special conditions a permit. After the decision is made, parties may appeal the permit to the CZICB. Ms. Love also reviewed in more detail the offset requirement for CZA permits.

Below are the questions posed by the RAC in relation to this topic. Each question is underlined followed by an answer, if offered.

- What happens if DNREC does not finish processing a permit within 90 days?
This has not happened before. The CZA does not allow application review extensions. The attorney for a party submitting an application could file a motion to compel DNREC to make a decision. The CZCPA, however, does have a provision allowing a review extension by mutual agreement between DNREC and the applicant.
- Do current CZA applications require an economic benefit rationale?
Yes, in the form of payroll and tax estimates. However, DNREC does not have a method to verify this information. The RAC will need to discuss this issue; what has been done in the past may not be sufficient for conversion permits and we are seeking input from experts on how DNREC can better verify economic benefits.
- Do you track emissions offset projects?
We would like to have verifiable offsets, but DNREC has not had the resources to track emissions offsets historically. We have now brought on Judy Jordan (DNREC) who has experience with verification. In the past, we've required applicants report to us when they've purchased offset credits. The CZCPA's requirement for annual offsets may change how we verify offset projects. A RAC Work Group will look at this issue.
- Who brokers the emissions credits and where is DNREC's guidance for this process?

¹ There is no separate application for a conversion permit at this time.

The DE Division of Small Business administers the credits, which are created when a facility closes. DNREC’s guidance can be found in a guiding document but not in the Code or our regulations.² We will share this guidance document with the RAC and post it on our website.

- How will DNREC handle offsets for water?

These will need to be addressed in the conversion permit regulations. Under the CZCPA, an applicant will still need to identify an offset project even if they already have a National Pollutant Discharge Elimination System (NPDES) permit allowing them to discharge.

RAC Procedures for Operations and Work Plan

The RAC reviewed and provided feedback on the draft versions of the Procedures for RAC Operations and the RAC Work Plan. These documents may be found at de.gov/czcparac. Guided by this feedback, DNREC and CBI will develop a revised version of these documents for the RAC to review and finalize at its next meeting.

There were no comments on the RAC Work Plan. RAC member feedback on the draft Procedures document is compiled below, with comments listed under the corresponding named section.

Comment type	Comment/Clarification
1. Designation of Alternates	
Proposed edit	All alternates should be required to fill out the Conflict of Interest form.
Clarification	Will alternates receive the same communications as members? <u>DNREC response:</u> Yes.
2. Membership Code of Conduct	
Clarification	What are RAC members allowed to share with people outside of meetings? <u>Facilitator response:</u> RAC members should abide by the RAC’s ground rules of only speaking on behalf of themselves or their organization. However, RAC members are encouraged to speak with their constituencies and any member of the public about the RAC’s work and bring that feedback back to the group. The RAC Chair will speak on behalf of the group as a whole.
3. Responsibilities of DNREC	
Clarification and proposed edit	What is the extent of the RAC’s advisory capacity? The RAC should be allowed to review and provide feedback on the draft regulations produced by DNREC before the regulations are submitted for public comment. <u>RAC Chair response:</u> The draft regulations will ultimately be the Secretary’s decision but if the RAC is able to reach consensus on certain topics, it is unlikely the Secretary would not follow those recommendations without a clear reason. It will be incumbent on the RAC to reach consensus on specific topics periodically and not wait to submit all of its recommendations to DNREC in March 2019. <u>DNREC response:</u> DNREC and the Office of the Attorney General have a strong

² Post meeting, DNREC reviewed this issue and no guidance for such currently exists in writing.

	<p>preference for receiving consensus recommendations as soon as they are available to allow the agency time to draft regulations and return them to the RAC for feedback. If time is short, the agencies may not be able to return draft regulations to the RAC and RAC members would need to rely on the public comment period to provide feedback. Mr. Durstein (DE DOJ) is committed, when possible, to drafting regulations for the RAC to review at its subsequent meeting if the RAC produces a consensus recommendation on a particular topic or section at a given meeting.</p>
Clarification	<p>Will DNREC tell the RAC when the group makes a recommendation that is not feasible? <u>DNREC response:</u> DNREC staff will speak up when they have concerns; however, the agency retains the ability to not follow a recommendation from the RAC, and the RAC has the ability to disregard the counsel of DNREC during its deliberations.</p>
Proposed edit	<p>Clarify the statement “Identify the parameters within which the conversion permit regulations can operate and regulatory recommendations will be most beneficial.”</p>
Proposed edit	<p>Add more explicit language in the document stating DNREC’s intention to act on the RAC’s recommendations. This language could be added in the section’s preamble and be based on Secretary Garvin’s opening remarks.</p>
Proposed edit	<p>Update statement to read “Provide agendas, background documents, draft presentations, and draft ideas and options to review, as appropriate, at least three business days prior to each meeting.”</p>
<p>4. Work Groups and Technical Expertise</p>	
Updates from DNREC	<p>a) DNREC tentatively plans to form four Work Groups on the following topics: risk and financial assurance, environmental impact offsets, economic valuation, environmental impact assessment. Per the RAC’s guidance, there is always the option to form additional Work Groups, such as one on community engagement. DNREC will staff the Work Groups and ensure they adhere to public meeting protocols.</p> <p>b) To focus the work of each Work Group, DNREC is developing a list of “framing questions”. DNREC will bring the draft list of framing questions and a version of the current regulations indicating which areas may need to be addressed by a Work Group to the next RAC meeting.</p> <p>c) DNREC has an active Request for Proposals (RFP) to identify technical experts in various fields (e.g., financial assurance, environmental impact assessment) who could serve on, and provide technical support to, the Work Groups.</p> <p>d) RAC members are highly encouraged to join at least one Work Group.</p>
Clarification	<p>How will Work Groups keep records? <u>DNREC response:</u> The official record will take the form of Work Group short meeting summaries, action items, and/or presentations.</p>

Clarification	How often will the Work Groups meet and report out? <u>DNREC response:</u> Work Groups will meet monthly, however, some may only meet a few times. Work Groups will report out monthly at full RAC meetings.
Clarification	How will DNREC determine the composition of Work Groups? <u>DNREC response:</u> DNREC is assembling a list of technical experts, consisting of staff from state agencies and contractors hired through the RFP process. DNREC will also be looking to the RAC for their recommendations. DNREC will provide the RAC with a draft list of Work Group participants and take feedback on the groups' composition.
Clarification	Are there lessons learned from other states and processes we can apply to this process regarding coastal zone act regulation development? <u>DNREC response:</u> There are some regulatory development models we may be able to look at, but the CZA is unique in the U.S. DNREC staff are researching some lessons learned (e.g., how other programs approached financial assurance), but we will need help from external, technical expertise.
5. Logistics	
Suggestion	Members of the public who cannot attend a meeting in person should still be able to participate in this process. Could we find locations that would allow for a call-in option? <u>DNREC response:</u> DNREC will explore the feasibility of this proposal.
Suggestion	RAC members are interested in touring some of the 14 sites named in the CZCPA. <u>DNREC response:</u> DNREC is looking at the feasibility of arranging this.
Clarification	Will the RAC hear any input from elected representatives? <u>DNREC response:</u> Elected officials will be treated as any other stakeholder; however, DNREC and the RAC can encourage them to share information with their constituents as appropriate.
6. Public Engagement	
Clarification	Will DNREC post presentations and summaries to the RAC website for the public to see? <u>DNREC response:</u> All presentations and meeting summaries will be posted in a timely manner.
7. RAC Decision Rule	
Proposed edit	Create an option for a RAC member to document their disagreement on an issue that the rest of the group has come to consensus on. <u>RAC Chair response:</u> We will ensure members who agree or disagree on a topic can agree on how their recommendations and concerns are characterized in any transmittal to DNREC. <u>Facilitator response:</u> Minority reports risk breaking the RAC into coalitions. It is important to capture any disagreement in one report and not a series of small reports.

Community and Public Engagement

Patrick Field (CBI) facilitated a discussion of how the RAC could best engage potentially-affected communities and the public during its work. DNREC is specifically interested in feedback regarding how to best interact with formal community organizations, how to engage less organized communities, and what formats could be used to gather public and community input on the regulations. RAC members suggested the following ideas to DNREC to incorporate into its public engagement plan:

- Clarify the goal of public engagement; what information is the RAC and DNREC seeking to get from these efforts (e.g., suggestions for offset projects in a community)?
- Face to face interactions are important (e.g., door to door communications, in-person meetings).
- DNREC should ask RAC members about the best way to utilize their communication networks.
- Create a short document explaining the importance of this effort, tailored to different stakeholders for outreach and communication.
- Reach out for assistance to specific organizations and types of organizations (e.g., religious groups, educational institutions).
- Research potential avenues of communication (e.g., post flyers in transportation hubs, present on the RAC's work at civic association meetings).
- Consider the best format(s) for gathering input (e.g., small focus groups, large meetings).
- Consider the best format(s) for engaging and informing the public (e.g., Facebook Live, public service announcements, flyers).
- Research demographics of the CZ and associated communities to better tailor communication strategies.

Next Steps in the RAC Process

Patrick Field (CBI) reviewed the next steps in the RAC process. The next RAC meeting will be held on July 12, 2018 at the DNREC office in New Castle, DE. This meeting and all meetings are and will be open to the public. Before July's meeting, RAC members, DNREC, and CBI should plan to complete the action items detailed on page one of this summary. DNREC and CBI will also develop a draft meeting calendar based on RAC members' stated availabilities.

Public Comment

Below is a summary of questions and remarks offered during the public comment session.

Martin Willis (self): We have known the regulations needed to be changed since the General Assembly passed H.B. 190 last summer. Time is of the essence. Can the RAC members bring to the next meeting what they would like to see changed in the regulations to implement the CZCPA? By next meeting, RAC members should be able to point out what needs to be changed and/or have an idea of what they want to see changed.

PARTICIPANT LIST

RAC members (and designated alternates sitting in for RAC members)

Name	Affiliation
Jennifer Adkins	Partnership for Delaware Estuary
Neeraj Batta	Batta Environmental
Brenna Goggin	Delaware Nature Society
Michael Hackendorn	Delaware Building and Construction Trades Council
Ronald Handy, Sr.	Boys & Girls Club of Delaware
Ronald “Kimoko” Harris	International Longshoreman's Association 1883 (alternate for William Ashe, pending)
S. Douglas Hokuf, Jr.	New Castle County
Hon. Randy J. Holland	Chair, CZCPA RAC
Tim Konkus	Delaware City Marina and Main Street Delaware City, Inc.
Tim Lucas	City of Wilmington (alternate for Herb Inden, pending)
Awele Maduka-Ezeh	Public Health Representative
James Maravelias	AFL-CIO
V. Eugene McCoy, Jr.	Council of Civic Organizations of Brandywine Hundred, Inc.
Jerry Medd	Pilots’ Association for the Bay and River Delaware
Jeffrey Richardson	Imani Energy
Robert Whetzel	Richards, Layton & Finger
Delores Whildin	Resident of Claymont
Marian Young	BrightFields, Inc.

DNREC staff and other state employees

Name	Affiliation
James Brunswick	Delaware DNREC
Charles Doordan	Delaware DNREC
Dirk Durstein	Delaware DOJ
Caren Fitzgerald	Delaware DNREC
Judy Jordan	Delaware DNREC
Andrea Kreiner	Delaware DNREC
Susan Love	Delaware DNREC
Jameson Tweedie	Delaware DOJ
Ian Yue	Delaware DNREC

Facilitation team

Name	Affiliation
Patrick Field	Consensus Building Institute
Rebecca Gilbert	Consensus Building Institute

Members of the public (including designated alternates not sitting in for RAC members)

Name	Affiliation
Danny Crowe	UA Local Union #74
Stephanie Herron	Sierra Club
Charlie King, Jr.	UA Local Union #74
Kenneth Kristl	Widener Environmental Clinic
Mary Peck	Delaware Nature Society (alternate for Brenna Goggin, pending)
Kathy Stiller	BrightFields Inc. (alternate for Marian Young, pending)
Martin Willis	Self
Mark Wolanski	New Castle County (alternate for S. Douglas Hokuf, Jr., pending)