COASTAL ZONE CONVERSION PERMIT ACT REGULATORY ADVISORY COMMITTEE
OPEN HOUSES
FEBRUARY 25-27, 2019
PUBLIC FEEDBACK SUMMARY

OPEN HOUSE OVERVIEW

DNREC and the RAC hosted three Open Houses in February 2019 located in Claymont, Delaware City, and Wilmington. Each Open House ran from 5pm-8pm with the public able to attend at their convenience during those hours. The goal of these Open Houses was to provide opportunities for members of the public to engage with the topics the RAC has being discussing and deliberating and give feedback on the RAC's preliminary recommendations. The Open Houses included an overview presentation of the process, in video form (per the recommendation of the RAC), as well as information stations staffed by DNREC employees. The information stations included details on the overall regulatory development process and the RAC's preliminary recommendations. Feedback gathered during earlier community meetings was used to inform the materials and presentations that were used at the Open Houses. 74 members of the public attended the three open-houses in total.

DNREC's Open House outreach efforts up until the day included: distribution of public notices and press releases; emails to the coastal zone listserv, press outlets, community groups, and legislators who have one (or more) of the 14 sites in their districts; and, per the RAC's recommendation, the creation of Facebook events for each Open House. RAC members were encouraged to attend the Open Houses and assist DNREC staff in pre-Open House outreach efforts.

DNREC posted all of the Open House materials (including the video presentation, informational posters, and paper handouts) on a dedicated web page on the DNREC website: https://dnrec.alpha.delaware.gov/coastal-zone-act/conversion-permits/open-houses/

PUBLIC FEEDBACK

During and after the Open Houses, the public was offered the opportunity to provide focused, written feedback with the purpose of informing future RAC discussions and recommendations. These comments were collected by DNREC both through the hard copy forms provided during the Open Houses, as well as through the online feedback form. 27 individuals provided comments either in the Open Houses or electronically after the workshops.

The initial portion of this document summarizes the public comments received. The follow-on section of the report shares the comments verbatim, organized by key theme. For a full accounting of all comments and their specifics, please read the verbatim comments in full.

Please note the following:

- The comments are organized in the order that the RAC discussed each of the key issues during their monthly meetings and pertain to those topics for which recommendations are being developed.
- We also include at the end any comments received not directly related to the RAC's scope, purview, and recommendations.
- Comments are not uniform in appearance due to preserving the original formatting in which they were submitted.

Please note that this summary was prepared by the Consensus Building Institute (CBI), a non-profit entity contracted by the Delaware Department of Natural Resources and Environmental Control

(DNREC) to facilitate the Coastal Zone Conversion Permit Act (CZCPA) Regulatory Advisory Committee (RAC). Any errors or omissions are solely CBI's.

Brief Summary of Comments Received

Below we briefly summarize the key comments or requests made by commenters, recognizing this is a brief summary of comments received only and it does not capture every point made nor provide the specifics offered in the full comments. Therefore, *please read with these limitations in mind.*

Plan for Potential Impacts of Sea Level Rise and Coastal Storms

- Concerns that the default, 30-year planning horizon for the useful life of the facility is too short, given the long-term impacts of sea level rise and coastal flooding
- Concern that the 10-year plan update will lead to potential costly changes for a permitted facility
- Concerns about the quality and up-to-date nature of FEMA floodplain maps
- Concerns that Category 1 hurricanes and 95 mph wind speeds are insufficient standards for coastal storms planning
- Requests that sea level rise and coastal storm plans include details on safe shutdown in the event of storms, containment of hazardous materials in a storm or flood, disaster planning, and resilient design practices

Bulk Product Transfer

- Requests that grain be treated the same as other bulk products and that all products bear the same requirements
- Concern that the details to be included in the required annual summary are not delineated specifically enough in the draft recommendations
- Concern about bulk transfer of natural gas liquids
- Request to add disaster planning in the event of a spill of bulk products

Economic Effect

- Concern that DNREC cannot compel an outside party to prepare the baseline economic impact report
- Concerns that by limiting the phrase "existing or previous use" to only heavy industry uses, the Secretary would not be required (under 7014(c)(1)) to consider the environmental impact and economic effect of a site's existing use if it is not heavy industrial (i.e., the Secretary should consider whether the proposed new heavy industry use would supplant an existing, less harmful and possibly more economically beneficial use of the site by a non-heavy industry)
- Concerns that the recommendations do not require the Secretary to consider the potential negative economic effect of a given project; for example, lower property taxes due to reduced property values for nearby residential or commercial properties; harm to tourism and recreation-related businesses; harm to local fisheries; financial impacts regarding the health of residents; livability/viability of communities; resale/property values; residents' willingness to invest/maintain/improve properties; and the stability of communities/businesses whose taxes support Delaware towns, counties, schools, and state
- Concern that under Section 7014(c)(3), the RAC does not spell out how environmental or economic improvement is analyzed or measured
- Concerns that environmental justice and public health concerns are not accounted for in the permitting process

- Requests that the "Employment" category of economic metrics specify the number of jobs and the expected duration and type of each job or category, including whether the job is permanent/temporary, full time/part time, contractor/permanent
- Requests that only outside, independent analysts conduct (or at least verify) economic effect assessments

Financial Assurance

- Concern that the duration of financial assurance needs to be more clearly prescribed, such as linked to the duration of the permit
- Concern that the recommendations do not cover how to determine the required dollar amount of financial assurance, leaving too much discretion to DNREC
- Concerns about self-insurance being allowed as a financial assurance instrument and the Secretary's discretion to allow its use
- Concerns that the time period of financial assurance review is not clearly specified.
- Request that contamination events must covered by financial assurance tools.
- Request that the terms "environmental damage" (or environmental contamination) be more clearly defined by the Secretary under financial assurances

Environmental Impact and Offsets

- Concern that proposing a "baseline" of "current use and existing conditions" does not meet the required comparison to the "most recent heavy industry use" for either net environmental improvement or offset determination purposes
- Request that the RAC modify the recommendations to make clear that the steps in Recommendations #3-8 be sequential, so that an applicant must first engage in Step #3 and not move to Step #4 unless it can show to DNREC's satisfaction that a Step #3 offset is not feasible.
- Concerns that offsets don't address cumulative impacts over time from existing and new multiple facilities over time.
- Request that minimizing or avoiding impacts should be the first and clearly stated priority, not offsetting them.
- Concern that the recommended offsets process allows for offsets that don't directly relate to the environmental impact (e.g., donation to a bird rescue and rehabilitation organization)
- Concerns that assessment of public health, community and environmental justice impacts are not clearly spelled out and called for
- Request that environmental impacts include all potential impacts to all flora and fauna, not just those listed at the state and federal level, as well as estimating the potential direct and indirect impact to flora and fauna of accidental release or malfunction.
- Concern that the recommendations are not explicit about including carbon dioxide emissions as a pollutant
- Concern that the required environmental impacts are not delineated as clearly and specifically as the economic impacts
- Concern that the RAC does not address how environmental or economic improvement is determined or measured
- Request that the offset proposal cover environmental impacts over the expected life of the facility rather than the duration of the permit
- Request that offset proposals offset more than the expected adverse impacts by a quantified number (e.g., at least 50% more)

Cross-Cutting Issues

- Request that there be a time period defined within which DNREC must act on permit renewals so that the permit cannot continue indefinitely
- Concern that there is a presumption that a permit will be renewed
- Concerns about the permit duration, particularly that it should be shorter (10 or 5 years were mentioned)
- Concern that permit renewal does not include a review of "Environmental Impacts" listed specifically as a focus in the second paragraph
- Request that inspections occur annually
- Concern that the 14 heavy industry use sites can be subdivided, potentially resulting in more than 14 conversion permits over time. Request that only one industrial use be allowed on each of these 14 sites
- Concern that the permit modification language should be differently defined or is may not be necessary since new activities should require a new permit application.
- Question about how CZA applies to possible expansion into properties adjacent to the 14 CZA sites.

Other

- Concern that past failure to compile a comprehensive list of Coastal Zone Indicators and establish an appropriate baseline for each has meant that we lack data that could show clearly whether the environment in the Coastal Zone has improved or not

COMPILATION OF COMMENTS RECEIVED BY CATEGORY

A. Plan for Potential Impacts of Sea Level Rise and Coastal Storms

The RAC's recommendations state that the conversion permit plan addresses the "High sea level rise scenario" over the anticipated useful facility life. This is critically important to design for the most conservative sea level rise scenario. Given recent reports of greenhouse gas emissions trends, it is increasingly likely that the "high" sea level rise scenario is expected (or perhaps even an underestimate). Flyvbjerg, B. (2005). Policy and planning for large infrastructure projects: Problems, causes, cures (Working Paper 3781) (p. 32). Washington, DC: World Bank. Retrieved from: http://documents.worldbank.org/curated/en/968761468141298118/pdf/wps3781.pdf
The Preliminary Recommendations state that "The Plan [should] address the following hazards over the anticipated useful facility life…" Heavy industry redevelopment in the Coastal Zone should anticipate long-term effects of applicants' actions beyond the useful facility life because some changes made to these sites may continue to affect Sea Level Rise processes beyond that time frame. For instance, any additional hardening of shoreline or loss of open space on the coastline may continue to cause SLR-related issues well into the future, for example by preventing inland migration of coastal wetlands. The default definition of 30 years is inadequate for full consideration of Sea Level Rise impacts, especially due to uncertainty about future rates of relative Sea Level Rise.
I agree with permittee update of Sea Level Plans every 10 years, or any determined time of reason. Have permittees submit plans for most extreme case, not least.
Having to reevaluate and potentially have to move or rebuild a facility has a result every 10 years will put a financial burden on the proprietor. The assessment & recommendation needs [to be a] one-time event when the permit is granted.
Typos on satellite-view charts: p. 2, inundation - should be Claymont, not Edgemoor. p. 7-9, Port of Wilmington - Didn't see Croda Atlas Point; is it where Uniqema is? Did I miss definitions for A, AE, floodway, and VE, re satellite and summery charts? What do they mean? Living nearby, existing contaminants at Edgemoor and Fox Point State Park (under impermeable barrier) are a concern for me with sea level rise and storms.
• The FEMA maps identified as the basis for defining 1% and 0.2% chance floods are frequently described as being outdated and inaccurate. Because of this flaw in the underlying data, the more conservative 0.2% chance flood should be used when considering the combined effects of sea level rise and flooding. The regulations should be updated when better and more accurate maps are available. • The Plan is only asked to account for winds up to 95 mph/Category 1 hurricane. How was this maximum wind speed selected? With climate change, the regulations should anticipate higher category hurricanes than Delaware has previously experienced. • As a general comment, this area of the regulations should be reviewed and updated every ten years with more rigorous standards, as the science and data evolve. • A map of the property showing areas of concern and long-term plans to address impacts of sea level rise and storm surge over the useful facility life should be a required facet of permit application. Details should include topographic detail, elevation, etc.
A map of the property showing areas of concern and long-term plans to address impacts of sea level rise and storm surge over the useful facility life should be a required facet of permit application. Details should include topographic detail, elevation, etc. The more conservative 0.2% chance flood should be used when considering the combined effects of sea level rise and flooding.
Plans should be based on most recent data - not FEMA 100-year flood plain maps as they are out-of-date - plans should reflect latest sea level rise expectations over expected life of proposed plant - plans should reflect impact of Cat 4 hurricane hit - not category 1 - flooding maps should reflect impact on storm and sanitary sewer systems with flooding.

I think the Hazard #3, Category 1 hurricane should do well to include at least a level 2, because there are 5 full levels of hurricane, so 2 does not even address the full middle. I also understand 3 would be more than half, so I only am asking for Category 2 to be considered here.
Global Climate Change may result in more storms, and the likelihood of more severe storms. The applicant's plans should address what will happen if winds are above 95 mph (category 1 hurricane) are encountered. During 2018 there were 16 named storms, 3 were category 1 hurricanes, 3 were category 2 hurricanes and 2 were category 4 hurricanes.
I am not sure why it is important to call out the five categories of geographic areas on a site as opposed to requiring a plan for the entire site and all structures and facilities on the site.
• I am concerned that the 1% and 0.2% chance flood are being defined by the current FEMA maps for 100-year floodplain and 500-year floodplain respectively. The FEMA maps are frequently described as being outdated and inaccurate. Is there a better map available? If not, then I would suggest using the more conservative 0.2% chance flood when considering the combined effects of sea level rise and flooding. • The Plan is only asked to account for winds up to 95 mph/Category 1 hurricane. How was this maximum wind speed selected? With climate change, shouldn't we be anticipating higher category hurricanes than Delaware has previously experienced?
The thirty-year time frame is too short, even considering 10-year updates. Sea level rise and climate change are occurring over a prolonged period and expecting everything to be settled within 30 years is not realistic. Also, given that most plants will be around for a lot longer than 30 years, it's even more problematic.
Any new or upgraded facility should be built to withstand any anticipated level storm for the duration of its operation and be immune to sea level rise for its anticipated lifespan
New development should be required to have adequate on-site back up power generation to insure storm related power outages on commercial supply (DP&C) do not cause processes in plant to fail and cause potential fires, explosions, o rother effects that cause pollution. A major coastal storm will likely cause utility outages that will interrupt industrial activities
Is it worth considering critical supply and demand elements relative to SLR and coastal storms? For example, will a crucial raw material supply be affected by SLR that will cause the use to cease if that supply is lost over a period of time? Most other circumstances require or use the median SLR scenario. Why is the RAC requiring the high scenario?
We also need to consider runoff from inland towns and cities whose watershed empties into these two locations Plus, development of land from open space to paved or roofed will add runoff to many calculations. Be sure to plan for deep growth that is not green/eco-friendly.
Risk assessments and mitigations should be based on the combined effects of climate change, not singular events. The scenario should combine projected sea level rise, soil saturation levels (resulting from sea level rise), storm water run-off capacity (actual not planned), sinking land rates, and a Category 3 (not Cat. 1 given the projections for increased storm intensity). All the previous factors except the storm rating will be givens and present a more accurate description of the future effects of a storm/heavy rain event on the facility. Disasters seldom originate from a single variable. Risks to safe operation should be considered in addition to those listed…especially for high hazard processes. The ability to safely shut-down hazardous processes when there is a loss of power, the location of critical process equipment relative to flood level projections, the containment of stored hazardous chemicals and waste in a flood scenario are examples for inclusion.
1. The RAC recommendations should be forward looking, encompassing the best practices of today to build resilient structures, able to withstand sea level rise and coastal storms.

2. The applicant should also need to provide a potential disaster plan for the possibility of a hurricane hitting its facility. This plan should include how the hazardous materials will be protected or removed, what conditions will cause the process to shut down and the evacuation of the employees. The disaster plan should also include plans for containing water that has been contaminated during the storm. 3. Responding to sea level rise should include both mitigation and adaptation. Adaptation usually refers to adapting to life in a changing climate and it involves adjusting to current or expected future climate. 4. DNREC should provide examples of potential negative impacts to adjacent parcels resulting from development and flood mitigation activities. Costs of the potential negative impacts should also be considered. 5. Flood insurance should be a requirement for the applicant.
RAC recommendation state: *"(5) A plan to prepare the site for potential impacts of sea-level rise and coastal storms over the anticipated useful life of the facility and infrastructure in connection with the applied-for use."* I suggest specifying that the plan will be updated regularly (every 10 years?) throughout the life of the facility, as new scientific information and possible unpredicted changes in rate of SLR and coastal storms dictate. Otherwise requirements noted are germane.
Great recommendations.

B. Bulk Product Transfer

The record-keeping portion may do well to specify a 'chain of custody' form named as the bulk product transfer information required to be kept on site at the facility.
Grain bulk product transfer should have the same requirements of recording categories of data as other bulk products.
First bullet #2 - why track grain now? Has something happened in the past 50 years? This needs justification
Bulk transfer is okay so long as it strictly adheres to regulations
The recording keeping requirements should be same for all bulk products.
A new bulk product category MUST require a permit modification with public notice and comment.
Records of certain "specified bulk product information" are required to be kept on site. And a Summary of "the specified information" is required to be provided annually to DNREC. 1) Who decides what is included in "specified information"? What is DNREC's role? 2) Will the summary be readily available to the public?
Provide for a review period for bulk transfer at 10-year intervals
Classes within the product catering relative to potential harm. Permittee plans and agree to the highest class of potential harm the handle.
Major concerns continue to exist about the possible misuse of the conversion permit for new bulk transfer facilities. A particular concern is that a facility for transferring natural gas liquids could be built under current law, with the result that bulk transfer of a material far more dangerous than liquefied natural gas (which we have banned in Delaware) would be allowed under the CZA.
Ports will survive if allowed "open shop" and to be of expanded goods TRANSSHIPMENT origin. Limit on site storage. Enforce severe penalties, including forced abandonment of use. Abandon the Jones Act element to allow International carriers between U.S. Coastal Ports.
If I understood correctly, Port of Wilmington is in some ways separate from CZ regulation, as would port expansion at Edgemoor. Since both sites have contaminants, and are among the 14 CZA sites, more clarification regarding ports may be helpful for understanding the differences regarding CZA and other jurisdictional oversight. Regardless, every possible environmental protection is just as important for ports as for other industrial activities along our coastal and throughout DE. Thankfully, LNG is absolutely prohibited, but living near Edgemoor, our concerns also include remediation of pollutants, dredging impacts, hours of operation, and associated impacts including exhaust, noise and light pollution, train and truck traffic, type and toxicity of contained materials, etc.
1. The RAC recommendations need to be forward looking and anticipate future issues. Consider requiring a disaster plan that addresses what happens if there is a spill at the bulk product transfer facilities due to human error, sea level rise and a storm as a result of climate change. Detail what needs to be included in the disaster plans. 2. Consider defining what is an environmental spill and what needs to be done in the event of a spill. 3. Need to address the size and type of docking facility or pier that is permitted at the transfer facilities. Also address what can be done with abandoned docks and what is permitted to refurbish an existing docking facility or pier. 4. Monitoring of the water pollutants around the dock should also be required before construction, during construction and after the operation begins. Require continued water monitoring of pollutants during operation of the transfer facility.

There have been numerous complaints about the failure of DNREC to properly limit the nature, level and destination of bulk shipments from the Delaware City refinery. Attempts to appeal the decisions by DNREC to the Coastal Zone Industrial Control Board (CZICB) have almost uniformly been denied by the Board 's refusing to give standing to the individuals and/or groups appealing. A decision by Superior Court Judge giving standing to the LWVDE and Audubon Society was a rare exception. Whether it will influence the CZICB in future decisions remains to be seen. Now that new bulk transfer operations have been made possible, it is not clear that the proposed regulations will allow citizens any right to appeal. The legislation that overturned the prohibition on new bulk transfer facilities might be described as inherently flawed in that wording in the section on bulk transfer was deemed to be ambiguous by an environmental lawyer testifying at hearings before the legislature, but no attempt to correct the language in the bill was made. Since the preliminary recommendations do not consider the issues caused by this ambiguity, residents of the Coastal Zone and those living near possible transportation routes throughout the state are left wondering whether they will be exposed to life-threatening situations involving shipments of large amounts of toxic or highly explosive materials.
I spoke with DNREC who expertly explained this to me (and others in attendance). It seems to nicely handcuff those who might violate the spirit of this topic. Kudos!
This is an extremely problematic part of the new law. In the first place, we don't need additional barge traffic on the Delaware River. In the second place, the only dangerous cargo specifically prohibited is liquified natural gas. There are other obnoxious materials that should also be prohibited! But I recognize that this aspect of the new law was not under the purview of the Regulatory Advisory Committee. A specific definition of liquified natural gas ought to be included in the Regulations in order to avoid later confusion.
RAC Recommendation states in italics: *Bulk product transfer of grain only be required to keep records on the quantities and dates of imports and exports, and* *A summary of the specified information be submitted to DNREC on an annual basis;* Should the information be submitted more often? Semi-annually? Infractions should be caught quickly! RAC Recommendation states: *Addition of a new bulk product category, not included in the existing permit, may require a permit modification or new permit due to potential impacts on financial assurance or environmental offset.* Does this refer to an as yet unforeseen category? Or is this something that can be given contemporary example(s)?

C. Economic Effect

The first recommendation is that the regulations define "existing or previous use" in § 7014(c)(1) to mean the "most recent heavy industry use." This recommendation is good in that it avoids the potential for an applicant to want to use the vacant, non-operating current condition of a site as the baseline—which would result in a baseline of very little economic effect so that almost any new heavy industry use would show a "net economic improvement." By requiring the baseline to be the economic effect of the "most recent heavy industry use," the RAC correctly requires a showing of greater economic effect for the proposed new conversion permit use in order to have a "net economic improvement."

There is, however, an ambiguity in the phrase "most recent heavy industry use:" at what time in the life of the heavy industry use should one obtain the baseline economic effect data? The final year of operation? Some average over the use's lifetime? All businesses are subject to the ups-and-downs of the business cycle, and thus will have some years that are better than others. For those sites on which businesses no longer operate, the last few years may well have shown declining economic activity that ultimately led to the shutdown of the plant. Using those declining years as the baseline (or select "down years" of a still-active business) would likely understate the economic effect of the prior use. The RAC should consider providing additional guidance as to how to measure the economic effect of the "most recent heavy industry use." Some kind of average over a large enough period of time would seem to be the best way to capture the baseline number.

Perhaps in anticipation of the issue outlined above, the RAC also recommends that the State of Delaware prepare a "baseline report" of economic effect for each of the sites. This approach—while perhaps theoretically addressing the above issue—has two potential problems with it. First, it is unclear whether the regulations DNREC will draft can force any other agency of the State to prepare this report. This is not an argument for DNREC to prepare the report (indeed, there are probably other agencies in State Government better suited for such economic analyses). Rather, it is important that there be a specified method or commitment that the report will in fact be prepared. Indeed, one of the unfortunately flaws in the 1999 promulgation of the main regulations under the Coastal Zone Act was that the regulations were drafted based on the assumption that DNREC would in 12 months develop "environmental goals and indicators" that would then be used during the permitting process. *See 7* Del. Admin. 101 at § 8.3.3 ("The Secretary shall also consider any impacts the proposed activity may have on the Department's environmental goals for the Coastal Zone and the environmental indicators used to assess long-term environmental quality within the zone"). DNREC never developed the environmental indicators, and so it is currently impossible for DNREC to satisfy § 8.3.3's mandatory duty. If the RAC wants to rely upon a baseline report as specified in its recommendations, then it needs to recommend (and upon review of the draft regulations, require) that the report's development be mandated in the draft regulations.

This also raises a related timing problem: what happens if an application is filed before the baseline report is completed? The RAC should recommend that the regulations deal with this interim time period. One solution is to require the applicant to develop the baseline on its own, which DNREC can then verify pursuant to the 4th recommendation under this Topic. Indeed, the RAC can avoid the report development problem altogether by simply having the applicant develop and provide the baseline data.

- I disagree with the RAC recommendation to define the phrase "existing or previous use" to mean the same as "most recent heavy industry use." The phrase "existing or previous use" appears in Section 7014(c)(1) without limitation to heavy industry. The legislature could have used the phrase "most recent heavy industry use," which appears in 7014(c)(3), but it did not. By limiting the phrase "existing or previous use" to only heavy industry uses, the Secretary would not be required (under 7014(c)(1)) to consider the environmental impact and economic effect of a site's existing use if it is not heavy industrial. As I understand it, some of the 14 sites are currently used for industrial purposes other than heavy industry, and presumably therefore have less of an environmental impact on the site and the State. The same sites may not have been used for a heavy industry purpose for many years. In that

case, the purposes of the CZA set forth in Section 7001 are best served if the Secretary considers whether the proposed new heavy industry use would supplant an existing, less harmful and possibly more economically beneficial use of the site by a non-heavy industry. A nearby resident who has purchased a home with the knowledge that the site is being used for light manufacturing, for example, would be quite dismayed to learn that a new chemical plant will now be located on the site. I don't think the purpose of the conversion permits is to allow backsliding from an existing, low impact, and economically beneficial use to a new, more harmful use. How would that provide a net benefit to the State? • To follow up on the previous comment, I would also suggest that the baseline report consider the economic effects of the existing use, regardless of whether it is heavy industry or another type of use. The most recent heavy industry use could also be evaluated in the baseline report. • I note that all the "economic effects" outlined by the RAC are actually economic benefits of the proposed project. Where in the permit process does the Secretary consider the potential negative economic effects of a given project, for example, lower property taxes due to reduced property values for nearby residential or commercial properties, harm to tourism and recreation-related businesses, and harm to local fisheries? • DNREC should not use applicant-provided data and case studies alone to verify economic information submitted by an applicant. DNREC needs sufficient resources to conduct in-house reviews and/or consult with outside experts. • Applicants should be required to specify how many fulltime, permanent positions will be created by the new use and whether these will be regular employees or contractors. • Where are environmental justice concerns accounted for in the permitting process?
• [We] disagrees with the RAC recommendation to define the phrase "existing or previous use" to mean the same as "most recent heavy industry use." The phrase "existing or previous use" appears in Section 7014(c)(1) without limitation to heavy industry. The legislature could have used the phrase "most recent heavy industry use," which appears in 7014(c)(3), but it did not. By limiting the phrase "existing or previous use" to only heavy industry uses, the Secretary would not be required (under 7014(c)(1)) to consider the environmental impact and economic effect of a site's existing use if it is not heavy industrial. Some of the 14 sites are currently used for industrial purposes other than heavy industry, and presumably therefore have less of an environmental impact on the site and the State. The same sites may not have been used for a heavy industry purpose for many years. In that case, the purposes of the CZA set forth in Section 7001 are best served if the Secretary considers whether the proposed new heavy industry use would supplant an existing, less harmful and possibly more economically beneficial use of the site by a non-heavy industry. • The baseline report should consider the economic effects of the existing use, regardless of whether it is heavy industry or another type of use. The most recent heavy industry use could also be evaluated in the baseline report. • Regulations should require that "economic effects" and "net economic improvement" evaluations use the same economic metrics. • The "economic effects" outlined by the RAC are all economic benefits of the proposed project. Where in the permit process does the Secretary consider the potential negative economic effects of a given project, for example, lower property taxes due to reduced property values for nearby residential or commercial properties, harm to tourism and recreation-related businesses, and harm to local fisheries? • DNREC should not use applicant-provided data and case studies alone to verify economic information submitted by an applicant. DNREC needs sufficient resources and funding to conduct in-house reviews and/or hire outside experts as needed to verify the information provided by the applicant. • For Section 7014(c)(3), how is environmental or economic improvement analyzed or measured? The RAC recommendations do not appear to address this.

• For the "Employment" category of metrics, applicants should be required to specify the number of jobs and the expected duration and type of each job or category, including whether permanent/temporary, full time/part time, contractor/permanent. It would also be useful to know how persons hired will be from Delaware versus coming from other states. • Where are environmental justice concerns accounted for in the permitting process? The neighborhoods surrounding the sites, especially in northern New Castle County, are disproportionately impacted by heavy industry and manufacturing sites located nearby.
• The table on Category/Specific Info Requested needs clarification. One citizen thought the incoming developer would need to provide his personal tax returns. • Overall, the video was great! Many people watched it.
Land required - What are the actual acres for each of the 14 sites? Net improvement - Require both environmental AND economic improvement. State/Community effect: Address all mentioned programs. Address worker access to buses, sidewalks and bike paths to limit traffic impacts. Consider financial impacts re health of residents, livability/viability of communities, resale/property values, residents' willingness to invest/maintain/improve properties, stability of communities/businesses whose taxes support DE towns, counties, schools, and state. Revenues and costs to state: Opposed to state incentives/tax credits to huge corporations that increase their economic wealth at state/taxpayer expense instead of funding their own development.
Defining the "existing or previous use" to mean the same as "most recent heavy industry use" may not make sense in all cases. For example, if the site is currently unused, comparing the economic benefit to a previous operational period may not make the most sense (it would be more appropriate to compare the economic benefit to the "existing" condition where there is *no* use occurring at the site). The responsibility of assessing the baseline for economic affect is more appropriate as an applicant burden. DNREC does not have the resources to compile such a background report, and expending the necessary resources may be wasteful. Realistically, many of the sites will never be the subject of a conversion permit, so DNREC compiling baseline information on such sites would be a fruitless expenditure of resources.
I support the recommendation: Regulations should also hold that "economic effect" and "net economic improvement" use the same economic metrics. Under the employment category, relating to the number of jobs - the expected duration of each job or category should be included (i.e. permanent or temporary, full or part time, contractor or permanent staff.) It would also be informative to understand how many of the hires are from DE and other states. DNREC should verify the data and info. submitted by the applicant company. DNREC should also have sufficient funding to be able to hire the services of outside experts should the need arise. The part that seems to be missing is the analysis of environmental improvement as noted in 7 Del. C. § 7014 and in this first topic. I don't see this anywhere else in the recommendations. (3) The net environmental improvement or economic improvement, or both, inherent in the alternative or additional heavy industry use or bulk product transfer activity as compared to the most recent heavy industry use engaged in at that site. The "economic effects" outlined by the RAC are actually economic benefits of the proposed project. Where in the permit process does the DNREC Secretary consider the potential negative economic effects of a given project, such as reduced property values for nearby residential or commercial properties, harm to tourism and recreation-related businesses, and harm to local fisheries? Where are environmental justice concerns accounted for in the permitting process? The neighborhoods surrounding the sites, especially in northern New Castle County, are disproportionately impacted by heavy industry and manufacturing sites located nearby.
More specific clarifications of heavy industry use that would be permitted
I agree with all of the recommendations, and highly support local hiring, purchasing, and inventing preferences. I have concerns about the validation of the reported numbers and would like verification to be handled by a third party, independent of the benefits of development.

Economic metrics: Five categories are provided. Project cost, tax revenues, employment, state-and-community-level effect, and other costs to the State. The first two categories are maybe private and privileged information. These financial "metrics" have no effect on the public, just the applicant. The latter 3 categories are appropriate. It is not the State's business to assess how much the applicant profits or loses. Rather, it is the state's business to determine whether the economic gain to the public is sufficient relative to the existing condition at the site.
I realize that every dollar spent must have a return, but the metrics are sometimes tough to accept. Creating or mandating impossibly green space often doesn't have a measurable economic impact. Otherwise, the metrics seem fine for short-term items, long term thinking- 25, 50, or 100 years into the future - is a smart mentality to take.
The specificity of this section is very helpful in that it provides clear guidance to all concerned. It will benefit the Applicant, DNREC, members of the public and all those interested in specific applications.
If tax credits or incentives are granted, hiring should be required (not just encouraged) from local and state communities. There should be an audit process throughout the life of the permit to ensure all metrics are met as promised, with some form of consequence for failing to meet the agreed targets (i.e. proportional repayment of tax incentives).
It is critical that independent analyses are conducted to validate the economic impact figures provided by the conversion permit applicant. There is clear evidence, across all industries, that when cost-benefit analyses are performed by the industries themselves, the costs tend to be underestimated and the benefits tend to be overestimated (Flyvbjerg, 2005). DNREC should therefore be skeptical of economic impact analyses provided by conversion permit applicants. To ensure the veracity of the economic effect, third party validation of the analysis must be conducted. The RAC's recommendations state that options for verification include "state agency review by the appropriate agencies and staff, retention of an expert academic or consulting economist or economics firm, or the establishment of a more formal panel of experts from across the state (state employees and/or others)." Validations by state agencies or consulting economists could be subject to political pressure and hence lead to a less-than-objective evaluations. A "panel of experts" would be preferable since multiple (and hopefully balanced) views would be represented. To ensure that the public is confident in the analyses provided by the conversion permit applicant and the State's follow-up evaluation, all documents and methodologies should be available in the public domain and subject to Freedom of Information Act Requests.
If tax credits/incentives are granted: hiring should be REQUIRED from the town/county. There should be an audit process throughout the life of the permit to ensure the agreement is being kept along with some consequence for failing to meet the agreement.
The statutory language implies that more can be considered in addition to income and jobs created. The nature of the legislative language implies that all economic effects will be positive and related to employment. Economic effect can be much broader in terms of demands on municipal resources (i.e. services, roads, waste management, reduction in property values related to noise, odor, etc.). Economic effects should be interpreted to be holistic and not focus on positive effects. This should include the negative economic effects of a large storm event and of sea level rise on the proposed use. Any consideration of economic effect is only meaningful in terms of a comparison to something else. The regulations should require a holistic economic effects analysis of 3 alternatives - the proposed alternative, a no action alternative and an alternative that has less environmental impact than the proposed alternative since the purpose of the act is to control industrial development to protect the coastal zone for tourism and recreation.

Having your recommendation packet less than one day and today's deadline, please accept apologies on cursory response: Noting our State's notoriously bad decisions in regard to investments--cost-value analysis, etc., it is MANDATORY that an outside, third party Economist/Industrial analyst be engaged and to prevail (suggest John Stapleford or Carolyn Craig be engaged). Despite the offered lack of credibility offered by those in the shipping industry and dredging/harbor industry, the State, while demanding organized labor for the Ports of Wilmington, proceeded to give away the Port-and Edgemoor sites and with no commitments by the recipient for necessary road access improvements, etc.. Parochial political assuage has prevailed in this State for the last thirty years--DNREC, void of adequate funding for aggressive legal pursuit of the delinquent, absent necessary expertise at the leadership level-due to politically appointees, now requires Land Use, particularly the Coastal zone Act (which pre-empted local government authority, yet acquiesced to commercial and residential saturation within the Sussex County Zone Area--re industrialization (former Fisher Industries/Lewes/Menhadden fish processing is conveniently ignored-and due to obvious reasons. The State must seek an independent Authority to overall Land Use rule. Sites along our River banks. Environmental Control must be placed over to the Division of Public Health---they to be granted adequate means of determine, advise and enforce. Any re definitions must ascribe to Gov. Russ Petersen's initiatives: Maximize Open Space and stop airborne pollutants. The State should welcome transshipment centers-renewed viability of ports but to include inland clean manufacturing-all under open shop (Cite: The Charleston South Caroline Regional Port Authority) Noting the negative economic impact of continued suburban residential sprawl, do not allow these earlier riverside sides be allowed be diminished to residential--despite evidences of "failing" industrial (Cite: North Claymont and Fort DuPont/Delaware City.) Tax revenues ?---in our "tax free" State?
Economic effect must also include assessment of adverse economic effects, including during any construction phase - jobs created analysis should include anticipated staffing levels over time so annual economic impacts can be assessed on an annual basis
1. The RAC Preliminary Recommendations do a good job considering the Economic, Sea Level Rise, and Environmental Impacts…but I didn't see anything on Public Health Impacts that result from bringing heavy industry into the 5 sites that do not currently have active industrial or commercial businesses operating. I believe the Public Health Impacts are equally as important, if not more important than the other impacts being considered. The Public Health Impacts should also be considered for the 9 active heavy industry sites as well. 2. I agree with the RAC Preliminary Recommendations that the State of Delaware should prepare a "baseline report" that details the economic effect of the existing or most recent heavy industry use of the 14 sites. This "baseline report" will also serve as a model of what is expected in the applicant's analysis. The "baseline report" should be very detailed oriented and also include the negative economic impact of the heavy industry. (This might include the cost of the remediation thus far for the site and the cost of remediation of the property at the end of useful life of the current heavy industrial company.) 3. I agree with RAC's recommendation to emphasize that local, robust hiring is an intent and goal of the CZCPA. 4. DNREC employs very competent staff to assess the environmental impacts…but I'm not sure they have the staff competency to assess the economic effect. I agree with the RAC recommendation that "DNREC should verify the economic information submitted by the applicant" and that they "may use any number of options for verifying the applicant's submitted economic effect data and conclusions".
Economic metrics should be reworded as follows: 1) project "cost" should be project "investment"; 2) Tax "revenue" should be tax "benefits"; 3) "Other costs" to the State should be "Investments" by the State
RAC Recommendation states: "In order to ensure a commonly understood baseline for economic effect, the State of Delaware will prepare a "baseline report" that will detail the economic effect of the existing or most recent heavy industry use of the 14 sites. The applicant may use this baseline report, plus additional information they want to include, to prepare their conversion permit application." If not using the State report, what? Economics consultant? Give an example.

D. Financial Assurance

With regard to the FA table and discussion, the duration of FA should be linked to the duration of the permit. This provides the applicant a means to plan for risk and financial stability and allows DNREC to have a scheduled time (each permit renewal) to reassess FA needs. How the applicant wishes to provide FA should be up to the applicant, rather than the Secretary dictating what type of FA is required. Each situation is unique. A large company like Exelon may be a better FA in and of itself than an insurance company.
Good to hold investors to their promises. Make it clear and put the onus on the industry to walk the line, not the state to enforce and penalize. Short and long-term impacts must be considered, both environmentally and financially.
The recommendations in the Packet on financial assurance does a good job of identifying the tools that can be used to provide such assurance, and some helpful rules concerning prioritization. The one thing that the recommendations do not cover (beyond the general rule set forth in the first recommendation on Packet p. 9) is the inputs and calculation of the necessary dollar amount for which the applicant must provide financial assurance. In effect, the RAC leaves it to DNREC to decide. The statute mandates that certain yardsticks be used: the costs of § 7014(c)(4) cleanup; the costs of minimizing environmental damage and stabilizing and securing the site in the event of "an incident resulting in environmental contamination" or upon "termination, abandonment, or liquidation of all activities at the site." If the RAC is uncomfortable wading into those specifics (which is understandable), it should at least recommend that DNREC identify methodologies for calculating and/or reviewing the calculation of these numbers so as to satisfy the statutory mandate. Given that the statute mandates that a "concept plan" be developed by the applicant and approved by DNREC, it may make the most sense to deal with this inputs and calculation problem by having the regulations specify what must be in the concept plan.
• Will the financial assurance instrument cover harm to public health or economic harm caused by a contamination event? This goes to the RAC's request that the term "environmental damage" (or environmental contamination) be more clearly defined by the Secretary. • The RAC recommends that the FAs be reviewed at "appropriate periodic intervals." This should be defined more fully and specifically. Who reviews the FAs and how often? Also, the RAC states that the reviews should continue for the duration of the permit. Why would the FA review not continue for the useful life of the facility? The FAs should cover the useful life, so the reviews should cover this period also. • I have great concern about allowing self-insurance at all. Third party instruments are identified for all of the risk categories in the chart, so there does not appear to be a need to allow self-insurance. • Why would FA instruments classified with yellow or red dots on the chart be acceptable? They should not be an option.
Self-insurance should be a means of last resort for financial assurance. The review of financial assurance should be no less than every 5 years - commensurate with many permit cycles. If self-insurance is allowed, review of the assurance should happen more frequently, and the permit holder should have to pay for the costs of the additional review. Environmental damage should have a broad definition to take into account a holistic assessment of impacts to include natural resource damages, public health damages, economic loss related to damages to recreational and commercial activities dependent upon natural resources (i.e. recreational and commercial fisheries impacts, recreational and commercial boating impacts, etc.).
Self-insurance should not exceed $1M and bond or other security should be provided to cover that $1M (we can't afford to get stuck with clean-up costs) - Insurance and Reinsurance should be required with A rated company; - State of Delaware should be listed as additional insured on all policies - minimum on policy should be set by DNREC to cover total loss of facility and impacts on surrounding land and roads that would be impacted

• Will the financial assurance instrument cover harm to public health or economic harm caused by a contamination event? This goes to the RAC's request that the term "environmental damage" (or environmental contamination) be more clearly defined by the Secretary. • Who has the knowledge to understand the potential problems a new heavy use presents? How will DNREC have enough money to hire consultants to identify the risks and recommend an appropriate type and level of FA? • The RAC recommends that the FAs be reviewed at "appropriate periodic intervals." This should be defined more fully and specifically. Who reviews the FAs and how often? Also, the RAC states that the reviews should continue for the duration of the permit. Why would the FA review not continue for the useful life of the facility? The FAs should cover the useful life, so the reviews should cover this period also. • How will DNREC track or review financial assurances to identify when a policy lapses in a timely manner? • Self-insurance should not be allowed for financial assurances. Self-insurance could quickly disappear in times of financial distress as noted by the recommendations. Third party instruments are identified for all of the risk categories in the chart, so there does not appear to be a need to allow self-insurance. • Why would FA instruments classified with yellow or red dots on the chart be acceptable? They should not be an option.
Companies must be held fully liable and financially responsible, instead of governments paying to clean up sites. Agreed, (p. 9), "environmental damage" should be clearly outlined, including all possible damages and impacts (hopefully to be avoided in the first place). Regarding resource/recreational activities, use of and access to Fox Point State Park should not be negatively impacted.
The Secretary is given too much leeway here in determining if self-insurance or third-party insurance is suitable. Because Administrative decisions regarding implementation of the Coastal Zone Act have in the past sometimes been made on the basis of economics, we should make it clear that self-insurance is never an option. Such a ruling would protect the Secretary from undue Administration influence. "Reviews the tools regularly" is too subjective. Again, economic pressures are likely to have far more weight than environmental logic would suggest.
The question posed, "Does such damage include natural resources damages, public health damages, or economic loss associated with natural resource-related activities such as fishing, swimming, boating, and beach going?" I say the answer is a resounding 'Yes.'
RAC did a nice job with financial assurance recommendations. I agree with most of the recommendations. I'm not in favor of the self-insurance options…especially if the company gets into financial difficulties.
Each applicant or operator must provide financial assurance or bonding to ensure acceptable (by regulation) of any subsequent pollution or cleanup. Possibly the state could gather these into a common fund to be used at the authority's discretion
I would like no self-insurance investments, only third-party.
Simply require full private bonding/underwriting be required from the outset. Historically, demonstrated "Financial Assurance" provided to the State has been treated but as a wink. The number to be employed as a criteria has proven to be a myth.
Initial cleanup of site, and financial assurance must be upheld. Each company applying for a permit MUST without exception, prove they are capable of cleaning up any 'accidents'.
All forms of self-insurance are not acceptable. Those forms of 'self-insurance' could quickly disappear in times of financial distress as noted by the recommendations. Especially for those that are set up as LLCs. A third-party instrument must be used. How will DNREC track or review financial assurances to identify when a policy lapses in a timely manner? Where will DNREC find this expertise? Will funds be available for a hire or for a consultant? Will the financial assurance instrument cover harm to public health or economic harm caused by a contamination event?

E. Environmental Impact and Offsets

With the large amount of adaptation available for offset options I only ask for sound judgment on the end of permit approval.
Again, offsets are nice and measurable, but sometimes improvement and economic yield are immeasurable. Lessening waste form residences and industry by improving processes and packaging is key. Basically, minimize impact now by thinking long-term.
The first recommendation under Topic #3 in the Packet (at p. 5) is that DNREC "*should produce a baseline report of current use and existing environmental conditions, impacts, and risks on the 14 heavy industry use sites."* The recommendation goes on to propose that the applicant "*may describe any proposed changes from that baseline."* This recommendation does not seem consistent with the statutory requirements for the following reasons: • The proposed DNREC baseline focuses on "current use and existing conditions." That would not satisfy the §§ 7014(c)(1-3) backward-looking requirement of a "baseline" of the environmental impact for the "most recent heavy industry use" if the site is currently vacant or if the current use is not a heavy industry use. It also would not satisfy the forward-looking requirements for environmental impacts of the proposed use required in §§ 7014(c)(1-3), (6), and (8). It may help to identify current soil and groundwater contamination for purposes of § 7014(c)(4), but otherwise does not meet the requirements of the statute. • By proposing a single "baseline," and reducing the applicant's burden to simply describing "proposed changes from that baseline," the recommendation fails to require the necessary comparisons mandated under §§ 7014(c)(1-3), (6), and (8). This risks the creation of regulations that are subject to challenge for failure to comply with the statute. • By proposing a single "baseline," the recommendation risks creating confusion via the conflation of different tests. For example, while the calculation of the proposed use's environmental impacts plays a role in both the §§ 7014(c)(1-3) net environmental improvement calculation and the § 7014(c)(6) determination of appropriate offsets, they are not one and the same thing. More than offsetting the negative environmental impacts of the proposed use does not automatically mean that there is a net environmental improvement compared to the most recent heavy industry use. Because they are two separate things, the regulations should reflect that fact. • The statutory definition of "environmental impacts" in § 7004(b)(1) includes a number of impacts beyond the typical impacts of air and water pollution; these include "glare, heat, noise, vibration, radiation, electromagnetic interference and obnoxious odors." Many of these impacts can only be determined during operation of the facility. An analysis of "current use and existing conditions" would not capture the environmental impacts of the most recent heavy industry use if the site is currently vacant or the operation currently there is not the most recent heavy industry use. Thus, it may not generate the necessary "baseline" information for the net environmental improvement calculation in §§ 7014(c)(1-3) or the forward-looking impacts necessary for offset determination in § 7014(c)(6) or future environmental releases in § 7014(c)(8). Thus, while the proposed "baseline" may be helpful for purposes of § 7014(c)(4), it will likely not generate all of the information required for the analyses in §§ 7014(c)(1-3), (6), and (8). Therefore, a different approach to environmental impacts should be taken. It would be better for the RAC to recommend that the regulations require each of the four assessments outlined above, so that each assessment can be tailored to meet the statutory requirements of the particular assessment.
I commend the RAC for recommending that all offsets "shall directly benefit Delaware," and for proposing a stepped analysis, starting as close as possible to the site and in the same medium/pollutant, and then expanding outward from the site. I suggest that the RAC modify the recommendations to make clear that the steps in Recommendations #3 – 8 be sequential, so that an applicant must first engage in Step #3 and not move to Step #4 unless it can show to DNREC's satisfaction that a Step #3 offset is not feasible. Step #8 should be a step of last resort.

- The permit application should require a map of the property indicating current conditions, impacts and risks.
- For Sections 7014(c)(1)&(2), how is the scope of environmental impact defined? Must the applicant consider the impact on the site, the town, the county, the State, the region? Some problems, like light noise and release of possibly harmful vapors, have a disproportionate effect on people living in the immediate community. Also, how are secondary environmental impacts considered? Secondary impacts of a proposed use should be considered in the application. Examples would be increased train or truck traffic through communities inside and outside the coastal zone and the risks associated with transporting any hazardous materials to/from the site.
- For Section 7014(c)(3), how is environmental or economic improvement determined or measured? The RAC recommendations do not appear to address this.
- How would the baseline report recommended by the RAC be used in the application process? It is not clear from the recommendations how the baseline fits into the considerations listed in Section 7014(c).
- The baseline report for all 14 sites should be vetted by an outside expert or drafted by an outside expert.
- How are environmental justice concerns incorporated into the environmental impact assessment and the offsets?
- The offset proposal should cover environmental impacts over the expected life of the facility rather than the duration of the permit.
- How will the applicant show that the proposed offsets lead to environmental improvement?
- Will DNREC staff make inspection visits to ensure offsets are implemented? Or will DNREC depend on only the 3rd party verification? (Also in Topic 6)
- A donation to an environmental or other nonprofit organization is not an acceptable offset. Meaningful, tangible offsets for environmental harms must be implemented and enforced.

In general, the offsets recommendations seem well thought out. But they will work only when they are rigorously enforced through DNREC. Offset requirements have not always been enforced in the past, so enforcement for the conversion permit offsets it a concern.

- Concerned about the adequacy of the following RAC recommendation: *"For CZCPA purposes, environmental impacts should be characterized in the same manner used to characterize environmental impacts under the current CZA permit program, consistent with the existing CZA statutory definition of "environmental impact" (Section 7004(b)(1))."*
- RAC Recommendation states: *"The Secretary should provide greater clarity on the process and procedures for demonstrating offset consistency with these rules and priorities."* Greater clarity is certainly in order given the experiences to date following the development of regs for the CZA) Could the RAC give more direction on this point? Monitoring long term? Evaluation of efficacy long term?
- The hierarchical approach to offsets is laudable. It is what many of us on the first RAC tried unsuccessfully to do; it was watered down in the writing of regs and further in the implementation. The collapse of the environmental indicators' development process made the use of offsets generally ineffectual. EIs are still a valid metric but difficult to administer in many cases.

THE "LINKED GOALS" 7 Del. C. § 7014 states that "an application for a conversion permit … must include … to be considered in assessing a conversion … the environmental impact and economic effect". Note the equivalence of requirements: environmental impact and economic effect are paired – as they are in the Act itself which seeks to "strike the correct balance" between the overall linked goals of economic benefit and acceptable environmental impact. Note also that preliminary recommendations addressing "Topic #3, Economic Effects" are clearly organized. They require that Applicants provide metrics in each of five Categories in order that the Secretary may adequately assess the proposed project's overall economic impact. Each Category is accompanied by a listing of specific information that Applicants are requested to provide. The specificity of this section is very helpful in that it provides clear guidance to all concerned. It will benefit the Applicant, DNREC, members of the public and all those interested in specific applications. Yet while applicants would be required to report on the extensive and detailed listing of economic effects, this specificity is largely absent from the section on environmental impacts. Aside from the portion on offsets, Recommendations on environmental impacts are described – in toto – as follows: "For CZCPA purposes, environmental impacts should be characterized in the same manner used to characterize environmental impacts under the current CZA permit program (P.S. exactly what does this mean?), consistent with the existing CZA statutory definition of "environmental impact" (Section 7004(b)(1))." I believe there is great value, to all those affected by conversion permits, to avoid regulation-by-reference. AND IT IS PREFERABLE TO ADOPT REGULATIONS WHICH FEATURE IDENTICAL FORMATS AND DEPTH OF DETAIL FOR ITEMIZING BOTH ECONOMIC AND ENVIRONMENTAL CATEGORIES AND REQUIREMENTS. FYI, DNREC already adopted a list of linked goals which can be viewed as environmental categories; see the 76-page report issued by the Department IN 1999: "Revised Coastal Zone Environmental Goals". Almost 100 individuals, and almost all Delaware organizations with concerns about the state's environmental assets, contributed. As might be expected, the report has Goals addressing air quality and water quality. But goals also include Living Resources, Habitat/Land Cover and Aesthetics – three important environmental parameters which are of great significance to many in the general public, though sometimes unaddressed by those developing regulations. AT LEAST SOME OF THESE NEED TO BE CONSIDERED AS POSSIBLE CATEGORIES AS THE COMMITTEE CONTINUES TO REFINE ITS RECOMMENDATIONS. Revised Coastal Zone Environmental Goals: Habitat/Land Cover: "Protect the mosaic of land cover in the coastal zone, including upland, wetland, shoreline and aquatic areas, to ensure a healthy ecosystem. Encourage appropriate land use and land cover." Air Quality: "Improve air quality which directly or indirectly affects all forms of life within the coastal zone." Water Quality: "Improve water quality and quantity which directly or indirectly affects all forms of life within the coastal zone." Living Resources: "Preserve and maintain healthy native animal and plant populations, or biodiversity, in the coastal zone. Preserve and improve the ability of non-invasive populations to lie and thrive in the coastal zone." Aesthetics: "Ensure the protection of natural vistas in the coastal zone for public employment."
Comment on: Offsets, Related Considerations, 9 (a) "To the extent feasible the offset process should encourage concurrent permitting or consultation to provide administrative efficiencies and facilitate coordination among the applicant and regulators." What is "concurrent permitting"? Could/should this be clarified?
Given Delaware's poor air quality rating and the recently released EPA 2014 National Air Toxics Assessment depicting higher than acceptable cancer rates from airborne toxins in the residential areas surrounding several of the 14 sites, DNREC should seriously reconsider the application of "off-sets", specifically for air and water pollution. If historical pollution levels serve as the baseline, and only marginal improvements beyond that level are required for an "off-set", then the health of residents will continue to be compromised. Even worse, if applicants are allowed to purchase credits from facilities where improvements have been made, or facilities that are no longer in operation, real and substantial reductions of air/water borne toxins will be reversed…such a scheme is

unacceptable. Furthermore, allowing companies to apply offsets at locations beyond the local site results in increased exposure to toxins for residents living near the facility, and at least implies DNEC has little value for the affected residents…an environmental injustice. 9 c. should be amended to read: Minimizing environmental AND HEALTH impacts is a priority in the CZCPA process. This is an area where DNREC needs to rebalance its role as an economic catalyst vs. protecting the health and wellbeing of Delaware's citizens.
DNREC needs to rebalance its role as an economic catalyst vs. protecting the health and well-being of Delaware's citizens. Given Delaware's poor air quality rating and the recently released EPA 2014 National Air Toxics Assessment depicting higher than acceptable cancer rates from airborne toxins in the residential areas surrounding several of the 14 sites, DNREC should seriously reconsider the application of "off-sets", specifically for air and water pollution. NO OFFSETS. My asthma won't improve with an offset, give me CLEAN AIR. 9 c. should be amended to read: Minimizing environmental AND HEALTH impacts is a priority in the CZCPA process.
What are "offsets"? Announcing individual compromise to be within DNREC is but one further reason to remove DNREC from any decision level. Sadly, though initiated and with clear intent by Governor Petersen, recent Governors and, ongoing, by the Legislative branch, have not only underfunded the Department but by passed with political preferential regard. Such demands relief of duties by DNREC and challenged Legislative over reach must occur. Nowhere is it mentioned that our largest air polluter remains to be road vehicles. Why? And why are the Ports to be limited to bulk? ---fear of tank farms? Blow offs? This restriction should be definitely challenged in Court as well as the job limiting controlled labor.
I am very disappointed that the information that was provided at the open house did not include anything about health impacts, community impacts or environmental justice.
Offset proposals should offset more than the expected adverse impacts by at least 50% (for a total of 150% mitigation) - draft regulations don't specify amount more than expected impacts - catastrophic event planning should reflect flooding on any evacuation and emergency vehicle/first responder routes
I respectfully suggest removal of items 5, 6, 7 and 8. The language "If it is not possible," there is created a sense of unwillingness, not necessarily denoting the ability being present or absent. I think the safest thing to do is to enforce, properly and well, the first few items. Money and or different 'offsets,' which are not directly related to the original environmental impact is a moot point, it does not address a specific object of concern, but rather points around it.
The Preliminary Recommendations state that applicants should consider "the environmental effect and attempt to identify an offset as close to the site as possible that will counter that negative effect (e.g., if the project could negatively affect waterfowl habitat that can't be restored or protected, make a donation to a bird rescue and rehabilitation organization)" This is a poor example, as a donation to bird rescue organization would not be an appropriate offset for loss of waterfowl habitat. Habitat losses in the Coastal Zone should be offset with habitat protection in the coastal zone or at least a financial contribution to habitat protection. We respectfully request that a much higher bar be set for proposed offsets in the Coastal Zone of this globally significant estuary.
The Preliminary Recommendations state that "For CZCPA purposes, environmental impacts should be characterized in the same manner used to characterize environmental impacts under the current CZA permit program, consistent with the existing CZA statutory definition of "environmental impact" (Section 7004(b)(1))." It is important to note that the existing application package for regular CZA permits only asks the applicant to describe a subset of impacts. Under the

existing program, the applicant must describe, "any effect on… threatened or endangered species (as defined by the DNREC and/or the Federal Endangered Species Act)."

Due to the fact that heavy industry was never an intended use of the Coastal Zone, Coastal Zone Conversion Permits should require a higher standard of environmental documentation, including potential impacts to all flora and fauna, not just those listed at the state and federal level. Numerous bird species of conservation concern, for instance, could be adversely impacted by a project, and the process as described in the Preliminary Recommendations would not require the applicant to disclose or address those impacts. Plant species are especially vulnerable as they are afforded no protection under the current process unless they are Federally listed. This approach is not compatible with the intent of the Coastal Zone Act.

Further, no specific requirement occurs in the existing application for estimating the potential direct and indirect impact to flora and fauna of accidental release or malfunction. This information should be critical to an application for Conversion Permit. Lastly, cumulative impacts are not addressed in any way in the proposed Preliminary Recommendations. Cumulative impacts of industrial development in the Coastal Zone across all eligible sites should be considered.

The Coastal Zone Regulations concerning offsets for the environmental damage predicted to result from construction and operation of a new facility were clearly and simply stated. Nevertheless, in recent years, the requirement for offset transparently beneficial to the Coastal Zone were essentially abandoned and replaced by "offsets" for EPA criteria air pollutants that were obtained through DEDO in a process that can only be described as totally opaque insofar as the public is concerned.

The preliminary regulations do not inspire confidence that the situation with industries allowed by the conversion permits will be any better. These regulations go into great detail about where and what type of offset projects may be used, but the fact remains that it is difficult to identify and quantify appropriate offsets when there are no standards as to what environmental indicators are relevant and no assurance that baseline measurements for appropriate indicators will be made. As written, these regulations appear to be unenforceable. And, based on past experience, even enforceable regulations may not be enforced because there are no penalties prescribed for failure to enforce these laws.

- For Sections 7014(c)(1)&(2), how is the scope of environmental impact defined? Must the applicant consider the impact on the site, the town, the county, the State, the region? Also, how are secondary environmental impacts considered? Secondary impacts of a proposed use should be considered in the application. Examples would be increased train or truck traffic through communities inside and outside the coastal zone and the risks associated with transporting any hazardous materials to/from the site.
- For Section 7014(c)(3), how is environmental or economic improvement determined or measured? The RAC recommendations do not appear to address this.
- How would the baseline report recommended by the RAC be used in the application process? It is not clear from the recommendations how the baseline fits into the considerations listed in Section 7014(c).
- How are environmental justice concerns incorporated into the environmental impact assessment?
- I would like to see the offset proposal cover environmental impacts over the expected life of the facility rather than the duration of the permit.
- A donation to an environmental or other nonprofit organization is not an acceptable offset.

The RAC recommendations should be forward looking, requiring best practices be used to ensure the reduction in environmental impacts. This echoes one of the preliminary recommendations (9c) … "minimizing environmental impacts is a priority in the CZCPA process". 2. Sewer best practices should be used to pre-treat the wastewater so that it does not impact the WWTP owned by the City of Wilmington. 3. The environmental impacts should also include potential Public Health impacts to the local area residents, flora and fauna. 4. The environmental impacts should also address the likely destruction of wetlands, flora and fauna and how this will affect sea level rise in the area. 5. I agree with the suggestion that DNREC should produce a baseline report of current use and existing environmental conditions, impacts and risk on the 14 heavy industry use sites. This report should be as detailed as possible to provide a guideline of what is expected with the applicant's analysis of what has changed from the baseline. 6. Need definition of what is a net environmental improvement or economic improvement. 7. RAC needs to elaborate on what is meant by "the offset proposal must more than offset all environmental impacts (including but not limited to one-time impacts and annual environmental impacts over the duration of the permit". 8. RAC might consider including a weighted aspect for offsets. Purchasing offsets is much easier than developing an offset program for the site…. Therefore, give more weight to an onsite offset program than for purchasing offsets. Also consider that the State may give away offsets in the future.
It is crucial that we include in the Regulations a provision for carbon dioxide emissions to be included as pollutants. The Coastal Zone Act requires that pollutants be regulated, yet carbon dioxide emissions have somehow historically been omitted. The EPA says carbon dioxide emissions are pollutants. Both Governors Markel and Carney have included them in public comments as pollutants. Even though I trust our current Coastal Zone administrator and Climate Change Division to identify carbon dioxide emissions as pollutants, and to require offsets for them as appropriate, we ought to have this determination spelled out in the Regulations so that subsequent administrations will include them.
I have similar comments for the "baseline report" for environmental impacts as I did for the economic baseline report. This task should be the burden of the applicant to ensure the DNREC is not wasting its already limited resources on compiling information for sites that will never be the subject of a conversion permit. The recommendation to characterize environmental impacts "in the same manner used to characterize environmental impacts under the current CZA permit program" is punting on an issue that is one of the more problematic ambiguities in the existing CZ program. DNREC should instead take this opportunity to clarify that "environmental impacts" should be characterized such that the environmental aspects of a proposed project are evaluated against real criteria to determine if these aspects in fact produce an actual "negative environmental impact". For example, the recommendations include a "For example" that characterizes a 10lb NOx annual emission rate over the useful life of the plant as an "environmental impact" that would need to be offset. While programs like the Clean Air Act did not exist at the time of the original CZA, we now have the benefit of robust environmental regulatory programs that have proven to be effective over the years to not only protect but improve air quality. In no such program would a 10 lb NOx annual emission rate in itself be characterized as a significant emissions increase that would prompt any offsetting or action on the part of an applicant. The applicant should be afforded an opportunity to evaluate the environmental aspects of its project to demonstrate that no actual adverse environmental is reasonably likely to occur as a result of its implementation. In order to achieve the proper balance between encouraging development and protecting the environment, the Department should rely, as much as possible, on existing environmental protection/permitting programs that are more robust than the CZ can attempt to determine which emissions or discharges rise to a level of requiring mitigation or offsetting by an applicant. The hierarchy of evaluating proposed offsets, especially across different pollutants or media is sensible and well thought out. However, it feels like this hierarchy would be more appropriate to be put out as a guidance document for applicants to consider rather than be a prescriptive step by step mechanism for applicants to go through. This affords the opportunity for flexibility on the part of the applicant and the Department to deliver the greatest environmental good/improvement as a result of the project. For example, a project could result in the creation of 2 tons per year of particulate matter (PM). Offsetting this increase by reducing PM by a greater amount elsewhere in the plant may be technically feasible; however, it may be more cost effective and even preferable to the Department to deliver an even greater

offset of a different pollutant onsite. PM is an attainment pollutant (meaning, simplistically, we don't have an air quality problem for PM). What if an applicant could deliver 20 tons per year of VOC reductions (VOC is a precursor for ozone, a pollutant for which we are in nonattainment, meaning a more "problematic" pollutant) at a lesser cost? It may be in the best interest of everyone to proceed with the latter option (VOC) than the former (PM). The applicant and the Department should have the flexibility to consider such alternatives.
Include human health and well-being. Referring to odors as "obnoxious" (=disagreeable, offensive, odious) is important, but also specify "noxious" (=injurious or harmful to health). Prohibit any high decibel noise. Offsets - Adamantly opposed. No offsets can possibly "benefit" DE if any of its land and life is negatively impacted. How can we justify bartering away the health of one place to allow routine harmful practices? Industry must redesign, limit and contain adverse impacts. DE's commitment to the Coastal Zone (and whole state) must be at forefront of protective innovation to make routine processes neutral. If humans and environment are hurt, what good are offsets? The toxic Croda incident could have had horrific consequences. I noticed a "sweet smell" (Croda?) in Edgemoor area, but what of those stranded for hours on the bridge? Couldn't vehicles on the bridge have been allowed to continue off it immediately, with less danger? Who oversees such aspects of environmental hazard?
I am concerned that only those activities that require a conversion permit are required to have a plan for the potential impacts of sea level rise and coastal storms over the anticipated life of the facility. I think ALL uses in the coastal zone should be required to have such a plan particularly since chemical manufacturing poses an enormous threat to the environment and the community when located within the coastal zone that is susceptible to large storm events and sea level rise. The provisions of the statute that require consideration of drainage and flooding in the permitting process should now require a different assessment from DNREC because of what we now know about climate change, the frequency of large storm events, and sea level rise. Again, it seems to me that an assessment of environmental and economic impacts is only meaningful in comparison. The regulations should require analysis of at least three alternatives - the proposed alternative, a no action alternative and an alternative with less environmental impact than the proposed alternative since the purpose of the act is to control industrial development to protect the coastal zone for tourism and recreation. As provision of offsets becomes more removed from the site, medium, duration, timing and pollutant, the needed offset should be increased. For example, if an emission of 10 LB of NOx cannot be offset by the reduction of that pollutant on site, then the amount of the offset should be increased if it is to be achieved off site. It should be further increased if the offsite location is more than X miles away from the site in the Coastal Zone. It should be increased again if the offsite location is outside the Coastal Zone but in Delaware, and again increased if it is offsite and outside of Delaware. The amount of the increase does not have to be equal for each of these steps away from the site. I would also note that impacts to water resources should be considered within catchments, sub-watersheds, watersheds, and basins areas (i.e. measurements of drainage areas). It is fine to say that the applicant should propose an offset project "of commensurate value" to Delaware's coastal resources, but that is a very vague standard. The regulations must define a process for assessing the offset value, a process that takes a holistic and ecosystem services approach to natural resource valuation.
The baseline report for all 14 sites should be vetted by an outside expert or drafted by an outside expert. This section of the permit application should require a map of the property indicating current conditions, impacts and risks. Under offsets, how will the applicant show that the proposed offsets lead to environmental improvement? A donation to a conservation group is not sufficient to constitute an offset. A calendar should be set-up so that the work of the Secretary to provide clarity in the recommendations, noted below, would happen soon. " 4. The Secretary should provide greater clarity on the process and procedures for demonstrating offset consistency with these rules and priorities." Will DNREC staff make inspection visits to ensure offsets are implemented? Or will DNREC depend on only the 3rd party verification? (Also in Topic 6).

F. Cross-Cutting Issues

• It may be worth making permit duration and useful life similar, otherwise you will be requiring, directly or indirectly, the applicant to make investments for the useful life without any guarantee (i.e. permit) that the applicant may be able to realize the useful life investment/commitment/liability/FA. • Suggest changing "minor & major" modifications to "administrative and functional and physical modifications"
• There should be a time period defined within which DNREC must act on permit renewals. Otherwise, the existing permit could continue indefinitely. • There should be no presumption that a permit will be renewed. Conditions and circumstances change over time and must be considered anew after the 20-year limit is reached. • The Secretary should be able to revoke a permit for repeated pollution incidents or permit exceedances. • The permittee should be required to report any lapse in FA to DNREC immediately. • "Project site" should be defined in text in each permit application and permit, along with a map of the entire site illustrating the new project's relation to the original heavy industry.
• There should be a time period defined within which DNREC must act on permit renewals. Otherwise, the existing permit could continue indefinitely. • There should be no presumption that a permit will be renewed. • The Secretary should be able to revoke a permit for repeated pollution incidents or permit exceedances. • The permittee should be required to report any lapse in FA to DNREC immediately.
Thanks to the DNREC support team, CBI and all Committee members for their efforts. There is much to like in the very thorough preliminary recommendations – for example the requirement that "DNREC should produce a baseline report of current use and existing environmental conditions, impacts, and risks". Also, precise and detailed requirements for assessing economic effects. The Committee deserves public thanks for the work they have done to date.
30 years is a start, but longer-term penalties or planning must be considered to truly keep Delaware green and prosperous.
Permit duration should be limited to 10 years (vs. 20) given the unpredictable effects of climate change. This would also provide DNREC the ability to adjust to changing conditions and apply learnings sooner. Permit Renewal: need stronger wording on compliance…remove "should take into account" as the operator's compliance record should be equal to the other criteria. There should be no presumption that the permit would be renewed unless ALL requirements have been met. Permit revocation: excessive NOV's, exceedances, and compliance issues are not listed as potential causes for revocation? Monitoring and Reporting: Sea Level/ Storm Impacts…should be 5 years vs 10 given the non-linear rate of climate change.
• Definition of "Permit Duration," should equal at least what the Clean Water Act requires of National Pollutant Discharge and Elimination System (NPDES) permit holders, a five (5) year length of permit. • Permit Modifications should be considered major, or held in public record, if ownership or operators change name for transparency and clarity. This is an important distinction. *Please note: The word change is spelled incorrectly in this first paragraph under Minor modifications. • Permit Renewal does not at this time include, "Environmental Impacts," listed specifically as a focus in the second paragraph, and it seems a logical choice to be included.
Permit duration should be limited to 10 years (vs. 20) given the unpredictable effects of climate change. There needs to be stronger wording on compliance. here should be no presumption that the permit would be renewed unless ALL requirements have been met. Excessive NOV's, exceedances, and compliance

issues are not listed as potential causes for revocation. Monitoring and Reporting: Sea Level/ Storm Impacts…should be 5 years vs 10 given the non-linear rate of climate change
I am concerned that DNREC will not have sufficient resources to fully implement the regulations and to perform the review and oversight responsibilities specified by the statue and regulations.
Push the federal government to clean up the superfund site west of Route 9
Setting a rigid 30-year useful life may not be realistic. This is ok for a facility design engineering basis. Also, if a facility closes prior to 30 years, will the coastal zone permit transfer to the next owner? Make it easy to transfer the permit for the next business that comes in.
If possible, annual inspections by DNREC. All else I agree with.
Oversight of operations at facilities. Because of the inherent dangers of operating chemical industries and the bulk transport of dangerous chemicals, not only the environment, but the safety and health of Delawareans will be dependent on regular oversight and inspections of these types of facilities. However, years of significant cuts to DNREC's budget have created a situation in which the agency does not have and cannot hire staff in adequate numbers and with sufficient expertise to properly carry out such oversight. As the recent release of ethylene oxide at the Croda plant shows, dangerous situations can arise from seemingly trivial failures in equipment or procedures. It can only be considered fortunate that this incident did not result in great property damage and the loss of lives.
It should be made clear that these parcels cannot be subdivided so as to allow for additional new heavy industrial uses. It is my reading of the statute that only ONE industrial use can be made on each of these sites, so there can only be 14 conversion permits ever in Delaware. Those uses can be expanded or extended under the statute but there cannot be two heavy industrial uses at any one of these sites. I am also concerned that DNREC is now going to have to interpret the language of the statutory definition of "heavy industrial use" for the first time since 1971. There is no departmental expertise to assist given the fact that new heavy industrial uses have not been allowed. I think the RAC should discuss this issue and consider what kinds of uses would now be considered heavy industrial uses. For example, it is deeply troubling to me that the original definition did not include leather goods manufacturing as a heavy industrial use despite the definition's focus on "potential to pollute" since we now know that leather goods manufacturing caused enormous negative impacts on water quality. We need to re-assess what heavy industrial uses are now likely to have the "potential to pollute" and consider how our definition of pollution has changed, including but not limited to our increasing identification of carcinogenic chemicals. I also think it is important to consider the role that climate change, large storm events, and sea level rise impact a determination of "potential to pollute." Definitions of heavy industrial uses in the land use setting can include a much larger list of uses. The RAC needs to think "outside the box" - it needs to consider what kinds of uses could be proposed, it needs to consider what kinds of new pollutants could threaten the health and welfare of the people of Delaware, pollutants that would not necessarily be addressed through a Clean Air Act or Clean Water Act permit because pollution limits would not be adopted for them yet, as is the case right now for PFAs. We should not be so unimaginative to think that we will avoid the mistakes of the past by relying on our federal statutes that work well to protect us against identified pollutants but are not proactive in helping to protect us against future pollutants.
"Cross-cutting"--to now mean corresponding with adjacent jurisdictions and neighbors? The Coastal Zone Act as implemented, removes local input-----with New Castle County near demanding to be heard (only quietly in regard to Fort DuPont/Delaware City and totally disregarded for N. Claymont re development. Mandatory, particularly, for the potentially expanding Delaware City facilities, adequate open space-farming, re foresting, must be determined and set aside for the demonstrated stack fallout zones.
Plans for Sea Level Rise and Coastal Storm Plan (the "Plan") should be updated more often than every 10 years; particularly as new data re: flooding expectations is issued. - DNREC should have authority to require any industrial uses in the coastal zone update their Plans whenever DNREC reasonably

believes that the Plan is out of date. - financial assurance information should be provided annually and if not produced as required, daily fines imposed by DNREC (at least $1000 a day).
Not sure where this fits, but I'm wondering how CZA applies to possible expansion into properties adjacent to CZA sites. Could the Edgemoor port or other industry at the site purchase the IKO or Holland Mulch properties to expand the size of their same operations, or would this be prohibited? Could a CZA site expand, but then come under a separate jurisdiction, as those other business must be now? Thank you for the open houses and for the opportunity to provide feedback, although practically at the last moment today.
It is unclear the need for permit modifications. Under the existing Coastal Zone Regulations, any "new activity" could require a new Coastal Zone permit. A transfer of ownership process should be developed consistent with the conditions and requirements of other permitting programs. In most other occasions, permit transfers are accommodated via an administrative amendment (which would fall under the recommended "Minor modification" bucket proposed) rather than a "Major Modification" that requires an opening of the permit, public notice, etc. A signed affidavit that a new owner is assuming all responsibility for the requirements listed in the permit should be sufficient to allow a permit transfer via an administrative process. Given the process/requirement for permitting "new activities" that exist currently and the proposed minor/major modification process, it is not apparent for the need for permit expirations/renewals. Any substantive change that would affect the existing requirements of the permit would already be captured by these processes. Changes that may occur that do not prompt permit modification would also not be relevant for making permit changes in a renewal process.
Conversion permit duration should be much shorter than twenty years. I suggest 10 years, with an update at the five-year level. Because the rate of sea level rise is increasing, scientists cannot reliably predict the extent of the need for precautions and adaptation for the security of toxic materials and the safety of the operational structure beyond ten years.
Project site – should be defined in text in each permit application and permit, along with a map of the entire site illustrating the new project's relation to the original heavy industry. I agree with the recommendation that the permit renewals should look at compliance with state laws as well as any accidents or incidents that may have occurred since the date the original permit was issued. I do not agree with the presumption that the permit will be renewed. Regarding permit revocation – repeated pollution incidents and/or permit exceedances should be added to the list – this relates to the chronic violator regulation. ALSO - I am concerned that there will not be sufficient resources for DNREC to fully implement the regulations, let alone perform the review and oversight responsibilities.
Need to highlight the importance of permit monitoring and reporting post-approval. Annual reports and inspections should be considered.
• On Preliminary Recommendations regarding Definition of "Useful Life": o The life of a facility will vary according to the nature of the active use, process, products, etc. Should the applicant specify? o 20 years is a long time. I would suggest that the Secretary be given discretion to set the duration: not less than 5 years but not more than 10 years.

G. General/Other or unrelated to CZMA or DNREC

The comment period for public feedback to the RAC in response to the Preliminary Recommendations is inadequate to encourage thoughtful and meaningful participation. Public workshops were held through Feb 27th, with comments due March 1st, less than 48 hours after the last of the three public workshops and only 8 days after the RAC's preliminary recommendations were made available. Workshops were not advertised early enough to draw attendance from stakeholders. Because RAC meetings have been held during the workday, when many interested parties and stakeholders cannot attend, it is especially important to allow a reasonable period for public comment before the RAC presents its findings to DNREC. We strongly encourage the RAC to extend the deadline for public comment to allow for at least a 30-day public comment period.
A major overall concern about the implementation of the new conversion permit statute and regulations is that DNREC does not have sufficient resources to fully implement the regulations and to perform the review and oversight responsibilities specified by the statue and regulations. New heavy industry uses have the potential of introducing significant risk of environmental harm as well as harm to human health and life. For instance, some industrial processes introduce the possibility of major releases of toxic chemicals and major explosions, and other heavy industry uses have the potential to cause irremediable harm to the environment. Heavy industrial sites represent a constant source of worry to those who live near them. Given the serious impacts and risks involved, DNREC must have access to the expertise and resources they need to accurately assess the economic, environmental, and human health risks of any proposed heavy industry use. In addition, DNREC will require the appropriate expertise and resources needed to oversee the operations of any new heavy industry uses and rigorously enforce the CZA regulations and other environmental, health, and safety laws. Unfortunately, past experience suggests that DNREC will not have the resources it needs to fully implement the regulations or rigorously enforce the heavy industrial uses allowed.
There are a number of issues in the six areas of recommendations that raise my concerns. However, my main goal, as an environmentalist who is also concerned with the health and welfare of those living in or near the Coastal Zone, is to evaluate how effective the regulations concerning the Coastal Zone conversion permits are likely to be in protecting these interests. My approach has been to examine the regulations that were promulgated just under two decades ago concerning permits for new industries in the Coastal Zone that were not classed as heavy industry and to attempt to understand the factors that affected their enforcement (or lack thereof). <u>Comparing the Coastal Zone Regulations and the CZCPA/ RAC recommendations</u> In reading and discussing the Coastal Zone regulations with others, it seemed to me that many of those involved directly and indirectly in their drafting had relevant credentials and experience in such technical fields as manufacturing and chemical industries, architectural design and the biological sciences as well as a record of interest in the environment. The regulations seemed to offer some basis for reasonable protections of the environment although those involved, as well as others, noted that many aspects of the regulations could not be properly enforced until a class of "Environmental Indicators" had been selected and baseline measurements made for these indicators. This task was never implemented in any meaningful way. The group in the CZCPA/RAC tasked with suggesting regulations on the environmental effects of new industries would be expected to have a significant number of individuals with the technical training and experience in chemical engineering, process design or other fields that would have allowed them to make meaningful suggestions on regulations that could cover various types of chemical industries. In fact, the groups do not have sufficient expertise in the appropriate fields and there are no experts among those who would be expected to most strongly represent citizens' interests. The role of such experts in writing the regulations is even more important here than it was in the CZ regulations: Those rules were designed to regulate light industry and did not need to cover the specific challenges presented by chemical industries.

The failure to make a comprehensive list of Coastal Zone Indicators and establish an appropriate baseline for each has meant that we lack data that could show clearly whether the environment in the Coastal Zone has improved, remained the same or degraded since regulations were first promulgated 20 years ago. Lacking that data, I can only comment on cases in which environmentalists and residents concerned with the health and safety of their neighbors have found enforcement to be insufficient. Releases of noxious materials Over the years, there have been numerous reports of releases of noxious air or water pollutants that are in contradiction to the stated purpose of the Coastal Zone Act and may have resulted in harm to the overall environment and/or the health and quality of life of nearby residents. In the opinions of many in the affected communities, the responses have frequently been inadequate. The lack of adequate response in some cases may have been due to inadequate monitoring mechanisms installed between the facility and the affected communities. In other cases, it has been difficult to determine the extent of contamination caused by a given facility because no baseline measurements of appropriate indicators were ever made. Finally, in many cases, residents express the views that DNREC is simply failing to protect the quality of their air and water because of pressures from the offending industries. Examination of the preliminary regulations suggest that facilities permitted under the conversion permit process are likely to be involved in the same kind of incidents that have occurred at existing facilities in the Coastal Zone. There is nothing in the regulations that will prevent permitting of heavy industries or bulk transfer operations that are more dangerous to the environment and human life than are existing facilities. We cannot reasonably expect that oversight and regulation of these new facilities will be any better than that of existing facilities because many of the regulations will be unenforceable and there are no penalties for failures to enforce those regulations that can be enforced.
The preeminent risk is demonstrated, repeat storms/coastal flooding. The State's response has been to deny FEMA's recommendations not to build, but, instead advanced to favored political Developers, and at public cost, flood control devices, elevated sites, improved road access, etc. to thence build residential. Negative impact will continue as storm water displacement due to new building construction and elevated site but aggravates the neighboring property's storm water problems.
Jobs are good, but not at the expense of continued long-term pollution. Ignoring existing polluted sites is not in the state's long-term interest.