

# Coastal Zone Conversion Permit Act Regulatory Advisory Committee

## Draft Procedures for RAC Operations For CZCPA RAC Review at July 12, 2018 Meeting Content Revisions in Highlighted Yellow Text

### 1. Background

Delaware House Bill 190, the Coastal Zone Conversion Permit Act (CZCPA), amended the state's Coastal Zone Act (CZA) to allow heavy industrial redevelopment and limited bulk product transfer at 14 heavy industry sites in the state's Coastal Zone. CZCPA requires that the Delaware Department of Natural Resources and Environmental Control (DNREC) develop regulations for Conversion Permits by October 1, 2019. Consistent with this requirement, and informed by public desire for wide participation, DNREC decided to convene and serve as the lead agency for a Regulatory Advisory Committee (RAC).

### 2. Purpose and Scope

The purpose of the RAC is to provide consensus recommendations, to the extent possible, to the Secretary of DNREC regarding the content, form, and scope of regulations for Conversion Permits. These Procedures for RAC Operations detail this process further below. The RAC will focus solely on the creation of additional regulations necessary to implement the intent of the CZCPA. The RAC is not charged with addressing the existing Regulations Governing Delaware's Coastal Zone.

### 3. RAC Composition

The RAC is composed of members representing diverse constituencies and expertise. RAC members were chosen from nominations submitted to DNREC. All members completed a disclosure form to address potential conflicts of interest.

### 4. Designation of Alternates

All RAC members are encouraged to designate an alternate who can attend meetings if the member is not available. Alternates should be from the same constituency but do not have to be from the same organization. Qualification as an alternate is contingent upon formal (written, including by email) designation by the member and fulfillment of the conflict of interest disclosure by the alternate. In all cases, the member and his or her alternate should actively coordinate to ensure that each understands upcoming events, votes, etc. All alternates shall complete a disclosure form to address potential conflicts of interest.

### 5. Membership Responsibilities

In general, members (or, in lieu of a member, his or her designated alternate) shall:

- Attend all meetings.
- Prepare for meetings ahead of time by reviewing materials relevant to issues on the agenda.

- Participate in associated public meetings, workshops, and outreach (see Part 12 “Public Engagement” below).
- Negotiate in good faith with a commitment to the process, openness, and goals of the process.
- Operate under the assumption that all written materials, such as emails and documents, are or will be publicly accessible under the Delaware Public Records Law.

## 6. Membership Code of Conduct

In and between meetings, members and alternates are expected to conduct themselves in the following manner:

- Respect the rule that only one person will speak at a time and no one will interrupt when another person is speaking.
- Make every effort to stay on track with the agenda, and move the deliberations forward.
- Communicate concerns, interests, and ideas openly.
- Express one’s own views rather than speaking for others at the table.
- Be respectful of other participants, even those with whom they disagree.
- Listen as well as speak.
- When speaking with others outside the RAC, clarify that they are representing their views and concerns as an individual (or as an organizational representative) and cannot speak for the RAC as a whole.
- Avoid making personal attacks or issue statements, blaming others for specific actions or outcomes. If a personal attack is made, the facilitator may ask the members to refrain from personal attacks. If personal attacks continue, the facilitator may ask the group to take a break to “cool off” and/or ask offenders to leave the meeting.
- Avoid grandstanding and filibustering (extended comments and questions) so that everyone has a fair chance to speak and contribute. The facilitator will ask members to hold their comments and allow time for others to comment, as needed.
- Clearly articulate why they disagree and offer alternatives that might meet their and others’ interests.
- Abide by this conduct when communicating with one another on RAC business via phone, email, or other means throughout the duration of this process.

## 7. Responsibilities of DNREC

DNREC will staff the RAC but is not a member. Overall, DNREC will consider seriously, and in good faith, the input of the RAC when it develops and makes available draft and final draft regulations or policies.

Specifically, DNREC will undertake the following activities:

- Provide support for meeting planning, meeting logistics, and site tours.
- Provide staff to support RAC deliberations, provide information, conduct research, and develop ideas and options.
- Provide agendas, background documents, presentations, and draft ideas and options to review, as appropriate and practicable, at least three (3) business days prior to each meeting.

- Prepare and provide presentations on relevant technical, legal, and other pertinent issues, as requested by the facilitator or RAC members.
- Direct the work of technical consultants supporting the effort.
- Identify the parameters within which the Conversion Permit regulations can operate, such as what falls within and outside the purview of the RAC.
- Provide advice and guidance on which regulatory recommendations will be most beneficial and which ones might be unacceptable to DNREC due to statute, policy, implementation, or other considerations.

Regarding rules development, DNREC, assisted by the Delaware DOJ will:

- To the extent practicable during RAC deliberations, provide draft regulations for RAC review and comment upon receipt of consensus recommendations from the RAC on various topics under discussion.
- For the formal and required rulemaking administrative process in accordance with the Delaware Administrative Procedures Act (DEAPA), develop draft regulations and submit for formal public comment.
- Provide an opportunity for a final RAC review of revised regulations after the formal public comment and hearing process and prior to the submission of Final Regulations to the Delaware Office of the Registrar of Regulations.
- Retain the final decision-making authority on the submittal of regulations to the Delaware Office of the Registrar of Regulations.

## 8. Role of the RAC Chair

The Chair, appointed by the Secretary, will:

- Chair a fair, effective, and credible process, but remain nonpartisan with respect to the outcome of the deliberations. The Chair will be non-voting.
- Open and close Committee meetings.
- Determine whether there is a quorum for each meeting (a quorum is greater than half of the official number of members of the RAC).
- Assist with or lead the surveying of the RAC for consensus/agreement.
- Interface with DNREC.
- Interface with RAC members.
- Plan agendas and work plans with DNREC and the facilitator.
- With the facilitator, confer with individual members and sectors to understand issues, concerns, and differences, with the aim of helping resolve them within or across sectors or members.
- Address infractions of ground rules, lack of participation, or difficult behaviors with individual RAC members confidentially.
- Work closely with the facilitator on process and consensus building.
- Make the final determination of whether consensus has been achieved.
- Communicate on behalf of the Committee as a whole with the press.

## 9. Role of Facilitator

The facilitator(s) are expected to:

- Assist in formulating the agendas.
- Facilitate meetings.
- Assist the RAC members in complying with ground rules.
- Identify and synthesize points of agreement and disagreement.
- Prepare meeting summaries, and track action items.
- Advocate for a fair, effective, and credible process, but remain completely nonpartisan with respect to the outcome of the deliberations.
- Serve as a communication channel for RAC members, as needed. The facilitator(s) may also work with parties between meetings, as necessary, to resolve conflict.
- Keep in confidence individual conversations between the facilitators and individual RAC members
- Work closely with the Chair on process and consensus building.

The facilitators are bound to the Society for Professionals in Dispute Resolution’s Code of Ethics, which states: “The neutral must maintain impartiality toward all parties. Impartiality means freedom from favoritism or bias, either by word or by action, and a commitment to serve all parties as opposed to a single party.”

## 10. Work Groups and Technical Expertise

DNREC and/ the RAC will establish Work Groups that will include technical expertise from members and outside resources. Typically, Work Groups will be established to support the work of the full Committee under the following rules:

- Work Groups are for deliberation, exploration, and option generation, but they are not decision-making bodies. Decisions will rest solely with the full Committee, deliberating in public.
- Work Groups may include participants outside of Committee membership.
- The scope and charge of each Work Group will be clearly set by DNREC with an opportunity for RAC review and comment.
- Work Groups will keep a record of their meetings and key points discussed. These will be posted on the **CZCPA RAC** page on the DNREC website.
- Work Groups will report regularly to the RAC on their scope, process, and efforts.
- Work Group meetings are considered public meetings. All Work Group meetings must be posted on the DNREC public meeting calendar and include provisions for public comment.

## 11. Logistics

Meeting Locations: The RAC will hold its meetings at various locations in or near the Coastal Zone (partially restrained by venue options) in order to allow RAC members and the public to participate. At least some meetings will be held in or near fence line communities, those communities being ones abutting or near one or more of the 14 coastal zone facilities.

Notice of Meetings: DEAPA requires that public meetings be posted seven days in advance of the meeting. DNREC intends to post meetings with as much lead time as possible. Notice of RAC meetings will be made by notifying members via email and will be posted on the DNREC website and public meeting calendar. Members of the public subscribed to DNREC’s CZA email list serve will also receive an email notification.

Website: All RAC and Work Group agendas, meeting summaries, and meeting materials will be posted on the **CZCPA RAC** page on the DNREC website.

Public Comment: All meetings will be open to the public and the media and there will be a time provided for public comment during each meeting. The public will also be given the opportunity to provide written comments to DNREC during the RAC process that, in turn, will be distributed to RAC members for consideration. Written comments may be submitted in writing in person at meetings, with sufficient copies for members, if possible, or via the email address [cza\\_conversion\\_permits@state.de.us](mailto:cza_conversion_permits@state.de.us).

Meeting Summaries: The facilitator will prepare draft meeting summaries of key issues discussed, input offered, action items, and next steps. Each draft meeting summary will be reviewed by the Chair, distributed to RAC members for review, correction as needed, and approval. Final meeting summaries will be posted on the **CZCPA RAC** page on the DNREC website once approved by the RAC.

Media: Members of the media are invited to attend all meetings **and are expected to behave in an unobtrusive manner**.

Audio and Video Recordings: Members and meeting attendees may audiotape or videotape the proceedings. Any individual recording a meeting should notify the Chair or facilitator(s). Any cameras or recording equipment should remain stationary during proceedings to avoid disrupting the dialogue.

## **12. Public Engagement**

The RAC will host additional public meetings or workshops during the deliberations. This might include early “listening sessions” for the RAC to hear issues, concerns, and ideas from the public. This might also include public meetings or workshops, once options and specific ideas for regulations have been developed, to allow the public to weigh in and comment before the RAC completes its deliberations.

The RAC, in conjunction with DNREC, will make a concerted effort to reach out to, communicate with, and build working relationships with potentially affected communities, neighborhoods, and groups. The RAC will form a Work Group to address the needs of these communities and groups in the development of regulations.

### 13. RAC Decision Rule

The RAC will operate by consensus as defined below:

- Consensus is defined as the consent of all or most committee members on the final recommendations issued by the RAC.
- Only members (or, in lieu of a member, his or her designated alternate) can participate in the testing for and achievement of consensus.
- Any vote or poll of consensus taken by the RAC will record members (or, in lieu of a member, his or her designated alternate) and may be taken only when there is a quorum. A quorum is greater than half of the official number of members of the RAC.
- No one member can stop the final deliberations and recommendations of the RAC, but, in turn, almost all members of the RAC must consent for the recommendations to be considered consensus-based. The RAC has come to consensus when almost all of the RAC members can “live with” the final package set of recommendations. The Chair will make the final determination of whether consensus has been achieved.
- For those RAC members whose stance differs from the consensus opinion, the Chair and facilitator will ensure that their stated reason(s) for disagreement are captured in the meeting summary or other appropriate document.
- The RAC will issue a final report with consensus, as defined generally above, within the time and resources allocated to the RAC. Should the RAC only reach consensus on some, but not all, issues, for those remaining areas of disagreement, the RAC will: 1) clearly delineate and explain the remaining differences of opinion; 2) narrow the options for that issue to the fewest degrees and numbers possible; 3) delineate the pros and cons of each remaining option; and 4) explain, as needed, how decisions on these outstanding item(s) may affect areas of agreement elsewhere in the final work product.

### 14. Approved RAC Work Products

The RAC will produce and/or approve: 1) an overall work plan; 2) meeting agendas; 3) meeting summaries; 4) Work Group reports; 5) interim updates, documents, and recommendations, as appropriate; and, 6) a final report. In addition, to the extent practicable, the RAC will have the opportunity to review and comment on specific draft regulatory language, as developed by DNREC, where the RAC has reached consensus.

The RAC final report will include detailed, prescriptive guidance to provide DNREC with the conceptual approach and details necessary for DNREC to draft the actual Conversion Permit regulations. The RAC may also include in the report draft, broad principles to guide DNREC in its regulatory development.