

Potential Issues for the Coastal Zone Conversion Permit Act Regulatory Advisory Committee

Note: The RAC may decide to send any question to the Work Groups to consider first and provide the RAC with options.

Overarching Issues

- What is the appropriate baseline to use: prior use, current state, or something in between? (Note: The same baseline needs to be used for evaluating economic effect and environmental impact.)
- How should “previous use” and “most recent heavy industry use” be defined?
- How should economic effect and environmental impact be balanced or weighed?
- Can environmental and economic conditions be described by a common denominator, such as dollars? If so, what model for quantifying these should be used (e.g., natural resource damage assessments, cost of environmental services, value assigned to natural resources preserved through conservation easements)?

Evaluating Economic Effect

- What should be included in the scope of economic effect, particularly that which is beyond the statutory requirements (see Coastal Zone Act § 7004 Uses allowed by permit only; nonconforming uses)? Should secondary or cumulative impacts be accounted for?
- How are short-term (e.g., construction-related) and long-term (e.g., ongoing jobs) effects reconciled?
- Should there be a threshold that would be considered “enough” to make the project viable?
- Should annual reporting be required (e.g., sustained employment levels)?
- Who should conduct the economic effect review?
- (Potential work group question: What are the implications of using various baselines for measuring economic effect: prior use, current state, or something in between?)
- (Potential work group question: What information must the applicant provide regarding the economic effect of the previous use?)

Evaluating Environmental Impact

- What should be included in the scope of environmental impact, particularly that which is beyond the statutory requirements (see Coastal Zone Act § 7004 Uses allowed by permit only; nonconforming uses)? Is it only the permitted emissions or does it go further to secondary and cumulative impacts, for example:
 - Water extraction and discharges (e.g., effect on the watershed and local hydraulics)
 - Discharges vs. effect/impact
 - Environmental services (e.g., capacity to clean or store air and water, remove CO₂, support endangered species habitat or food crops)
 - Recreation
 - Human health
- How is environmental impact measured or calculated? (e.g., Environmental Impact Statement, Natural Resource Damage Assessment)
(Note: The work group should develop options for the RAC on this.)
- Where is the footprint or boundary of the impact drawn? (e.g., Is it the footprint of the facility, the airshed, watershed, neighboring homes? Does it include the railroad lines outside of the Coastal Zone?)
- Should there be thresholds for impacts (e.g., permitting/regulatory thresholds in other programs?)
- (Potential work group question: What are the implications of using various baselines for measuring environmental impact: prior use, current state, or something in between?)
- (Potential work group question: What information must the applicant provide regarding the environmental impact of the previous use? Or should DNREC determine this for each of the 14 facilities?)
- (Potential work group question: What documentation must the applicant provide regarding the environmental impact of the proposed use?)

Offsets

- How is “more than offset” defined?
- Should the offset program normalize across media, account for varying toxicity of emissions/discharges, etc.?
- What will be accepted for offsets?
- The statute requires that the offset proposal “favor offsets that directly benefit Delaware.” Is Delaware the entire state or just the Coastal Zone? Related Question: If an applicant proposes to offset air emissions by reducing emissions from a conventional power plant upwind of Delaware, does that benefit Delaware directly?

- Should offsets be able to address neighboring community concerns, such as traffic impacts, historic contamination in the community, and other considerations?
- Should offset projects be third-party verified?
- How often should offset projects that will provide recurring offsets be verified?
- How should the program account for potential climate change preparations? What if the permittee plans or offers to move structures to a higher elevation on the site, thereby removing structures from future flood zones that would displace water and exacerbate flooding? Should there be a credit for such preparations and if so how should such a credit be valued?

Financial Assurance

- For what scale of “incident” should financial assurance need to be provided? Is it the worst case scenario? A series of potential events? Will it be one scenario or multiple scenarios?
- What types of securities will be acceptable in providing financial assurance (e.g., bonds, insurance, self-insurance)?
- How does risk to public health and safety factor into the calculation?
- Will there be a financial assurance ratio like there is for environmental offsets? (e.g., 1.3:1)
- Does financial assurance from one program count for CZA or should it stand on its own? (e.g., If a facility is permitted under RCRA, and must meet those FA obligations, how does that relate to the CZA requirements?)
- (Potential work group question: How should inflation be taken into account over the life of the permit? Should there be an automatic escalation tied to the CPI or other index? An annual analysis/update?)
- (Potential work group question: How will the “final plan” be approved? Is this part of the permitting process, or is it done before or after the permit is issued?)
- (Potential work group question: Who assesses and verifies the financial assurance level and documentation? How does DNREC incorporate this expertise into its review, as there is limited/no in-house expertise?)

Bulk Products

- What documentation is necessary to determine whether bulk products are necessary for and fully utilized in the Coastal Zone?
- What documentation is necessary to determine whether bulk products are produced by one or more facilities within the Coastal Zone?

- What is the process for DNREC to verify such information?
- What is the expectation for routine reporting to DNREC regarding production, shipments, and use of bulk products?

Prohibited Uses

- Does the LNG Prohibition in the statute include Natural Gas Liquids (NGLs)?

Sea-Level Rise and Coastal Storm Plan

- What defines an acceptable plan?

Application Process

- Should the application process mimic the process for existing (i.e., standard) CZA permits?
- What requirements should there be regarding meetings with community members?