

**COASTAL ZONE CONVERSION PERMIT ACT REGULATORY ADVISORY COMMITTEE MEETING #4
SEPTEMBER 12, 2018
MEETING SUMMARY**

APPROVED BY THE CZCPA RAC ON OCTOBER 9, 2018

Disclaimer: This meeting summary was prepared by the Consensus Building Institute (CBI), a non-profit entity contracted by DNREC to facilitate CZCPA RAC meetings and draft meeting summaries. This summary is not intended to be a meeting transcript. Rather, it focuses on the main points covered during the meeting without attribution.

MEETING IN BRIEF

At its September 12, 2018 meeting, the Coastal Zone Conversion Permit Act (CZCPA) Regulatory Advisory Committee (RAC) discussed key issues related to its charge to advise the Delaware Department of Natural Resources and Environmental Control (DNREC) on drafting regulations to implement the CZCPA. The RAC reviewed and approved the meeting summary from its August 21 meeting. The RAC heard presentations on, and discussed the key issues related to, preparing heavy industry use sites for sea level rise and coastal storm impacts and bulk product transfer. The RAC also heard updates on the launch of the four Work Groups and CZCPA-related community engagement efforts. After an opportunity for the public to comment on topics being discussed by the RAC, the meeting closed with a brief discussion of next steps. A list of meeting participants is attached to the end of this summary. Presentation slides are available at de.gov/czcpa/rac.

ACTION ITEMS

Who	What
RAC members	<ul style="list-style-type: none"> • Review materials prior to next RAC Meeting. • Observe Work Groups, as desired.
DNREC/DOJ	<ul style="list-style-type: none"> • Post all presentation slides, background materials, and the approved August 21 meeting summary to the CZCPA RAC webpage at de.gov/czcpa/rac. • Research whether any existing DNREC permits cover air quality risks during coastal storms. • Develop white paper or other documentation on options for incorporating other guidance documents, rules, and policies into the CZCPA regulations by reference. • Discuss reporting of bulk grain transfer with the Delaware Secretary of Agriculture. • Determine what information about air quality related to bulk product transfer is already reported. • Develop language on the key issues of sea level rise and bulk product transfer for the RAC to discuss on October 9. • Distribute draft September 12 meeting summary to RAC for review (will finalize at October 9 meeting). • With CBI, develop draft agenda for October 9 meeting.
CBI	<ul style="list-style-type: none"> • Prepare draft meeting summary. • Draft agenda for October 9 meeting.

UPCOMING MEETINGS AND EVENTS

Event	Date	Venue
RAC Meeting #5	Tuesday, Oct. 9, 2018	Buena Vista Conference Center, New Castle
RAC Meeting #6	Wednesday, Nov. 7, 2018	DNREC Lukens Drive Office, New Castle
RAC Meeting #7	Tuesday, Dec. 11, 2018	Bellevue Community Center, Wilmington

The most detailed and up-to-date information on upcoming CZCPA meetings and events, including Work Group meetings, is posted on the Delaware Public Meeting Calendar at de.gov/czcpameetings.

DISCUSSION

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

RAC Business

The August 21 meeting summary was approved by the RAC with no changes.

Key Issue: Preparing Sites for Sea Level Rise and Coastal Storm Impacts

At the August 21 meeting, the RAC learned about and gave initial input to DNREC on the provisions of the CZCPA relating to sea level rise and coastal storm impacts. Since the August meeting, DNREC staff drafted options to present to the RAC for discussion. At this meeting, Susan Love (DNREC) presented an overview of background information, goals, potential plan details, and key questions related to sea level rise and coastal storm impact planning. There is a large body of available information about how to address these issues (e.g., FEMA documents) but few requirements in place at the state and local levels across the country. DNREC staff have reached out to researchers and state agency staff from Connecticut and New York about best practices for sea level rise and coastal storm impact planning, particularly relating to industrial facilities.

DNREC staff developed draft goals for the RAC to consider on these issues, including avoiding risk of damage to areas that have been remediated and demonstrating compliance with existing county and municipal requirements. There was general affirmation of the proposed goals among the RAC. However, RAC members also had the following questions and suggestions on the goals:

- **Pollution controls.** New facilities should be required to have the best available pollution controls for before, during, and after a major storm. Applicants should provide information on how the facility will avoid or minimize air emissions before, during, and after a major storm. Facilities should be required to monitor their emissions throughout a storm event. A RAC member requested that a new plan goal about protecting air quality be included and suggested a report on emissions and health impacts during Hurricane Harvey would be useful background information for the RAC.¹ One RAC member asked if any existing DNREC permits cover air quality risks during coastal storms; DNREC staff will look into this.
- **Emergency response and communications.** Facilities should be required to file a coastal storm preparedness plan with the Delaware Emergency Management Agency (DEMA) and the local governments surrounding the site, detailing how the site will address risks and communicate with the surrounding communities about those risks. Notification and disclosure of chemicals onsite

¹ <https://www.environmentalleader.com/2018/08/hurricane-harvey-preparedness-recommendations/>

are critical. Coordination on emergency plans with the Local Emergency Planning Committees (LEPCs) will be important for coastal storm preparedness.

- **Defining remediation.** The term “remediated” should be defined clearly (e.g., completed or active remedial activities) in the goal “avoid risk of damage to areas that have been remediated”.
- **Planning consistency in the Coastal Zone.** The RAC could recommend that sites within the coastal zone, but outside of the 14 heavy industry use sites, plan for sea level rise and coastal storm impacts as well. This would provide consistency across the Coastal Zone.

Ms. Love noted that DNREC staff reviewing a sea level rise and coastal storm plan for a site will want applicants to provide information on the existing conditions, future conditions, consequences of flooding, and how applicants are addressing those consequences in a way that mitigates risk. Another important consideration is the necessary level of detail. Comments or questions posed by the RAC in relation to this topic are summarized below:

- **Accommodating new scientific advances and data.** How can these regulations best incorporate scientific advances and new data and flood maps? DNREC should avoid including language in the final regulations that requires the agency to go back through the regulatory process to update data standards and sources. Requiring consistency and compliance with local ordinances may be one route, but DOJ staff need to clarify if this is possible under the current statutory language. Plan criteria and standards will only be enforceable if they are included in the final regulations, but the regulations likely cannot direct applicants how to meet those criteria or standards.
- **Acute effects.** The RAC should consider whether plans should include information about preventing and mitigating acute effects of a coastal storm (e.g., wind damage, structural damage).
- **Structural design.** The regulations could ask for plan information about structural design. Applicants could be asked if they have identified if there would be health risks to neighboring communities if an unplanned chemical or other release occurred during a storm event.
- **Operations risks.** Applicants could be asked if there are risks from the site’s operations during a coastal storm or flooding event.
- **Utilizing green infrastructure.** Applicants could be asked if they plan to use green infrastructure to mitigate flooding and other environmental impacts.

RAC members also weighed in on the following key issues relating to sea level rise and coastal storm impact planning:

- **Geographic scope of plan** (e.g., site only versus site and surrounding areas). RAC members generally felt that a plan should address potential impacts to adjacent properties and surrounding areas but that scope should be clearly defined. County codes already contain some language on this topic, but redundancy may be useful.
- **Scope of plan** (e.g., structures and infrastructure only versus including remediation areas). RAC members did not express an opinion on this issue. One RAC member raised the question of how a site should address in its plan any potential risks from contamination that was missed during previous remedial activities.
- **Anticipated facility life** (e.g., set a minimum lifespan threshold versus let the applicant determine lifespan). One RAC member expressed concern about having an overly prescriptive number. Most of the discussion focused on the question of whether a conversion permit should expire or require updating after the lifespan stated in a permit application is met. The CZCPA does not address this question.

- **Reporting and monitoring requirements** (e.g., require routine monitoring and reporting). The RAC will discuss this issue at a later time.
- **Other comments.** A RAC member asked if the existing state guidance on preparing state facilities for sea level rise could be applied to private development. DNREC noted that this is unlikely because jurisdiction for land use decisions lies with local governments; DNREC can only provide recommendations to local governments to adopt, but it cannot mandate adoption.

DNREC staff will develop draft recommendations on the topic of sea level rise and coastal storm impact planning for the RAC to discuss and possibly reach agreement on at its October 9 meeting.

Key Issue: Bulk Product Transfer

Andrea Kreiner (DNREC) presented proposed approaches to the regulations regarding bulk product transfer for the RAC's consideration, with a focus on the reporting and information needed to ensure adherence to the CZCPA. The RAC discussed the following questions on this topic and provided feedback to DNREC:

- **Is it reasonable and sufficient to request basic information on imports and exports of bulk products (e.g., quantity, point of origin final disposition)?** Does DNREC need the full picture of shipments into and out of a facility, regardless of whether the bulk products are used fully onsite or transferred? Or should the agency only require information on bulk products that are being transferred? DNREC should define "transformation" of a bulk product in the regulations.
- **Should DNREC request any information on bulk grain transfer?** The Delaware General Assembly may have intended that bulk grain be given a "pass" for conversion permits. DNREC could provide an opportunity for sites to voluntarily provide data on bulk grain transfer. DNREC staff will discuss this topic with the Delaware Secretary of Agriculture.
- **What should be the required reporting frequency and format?** DNREC could require that sites submit their reports to DNREC or keep the reports onsite. Reports could be submitted annually or on another timeline and contain the full data or only a summary of the data. DNREC will need to consider whether it has sufficient staff capacity to review these reports and what the agency would do if it found permit violations. DNREC should clarify what the purpose of the reporting is and tailor the reporting requirements accordingly. The reporting structure should not be unreasonably burdensome on the applicant. DNREC should also clarify what information is already being tracked by other entities and what additional information the agency might need from applicants to satisfy the provisions of the CZCPA.
- **Should conversion permits permit a generic family of bulk products or should they permit specific bulk products? How should sites notify DNREC of their intent to import or export a new bulk product?** Should permit modifications be allowed? Under what circumstances could a permit modification be required – and potentially a review of associated environmental impacts – if a new bulk product was imported or exported from a site (assuming permit modifications are allowed)? Some sites may need flexibility for the products they import (e.g., opportunity cargoes of grain and cattle) to stay competitive.² Some circumstances could only require notification while others could require permit modifications.

DNREC staff will develop draft recommendations on the topic of bulk product transfer for the RAC to discuss and possibly reach agreement on at its October 9 meeting.

² The Port of Wilmington's air permit, for example, has a mechanism for notification of new products.

Work Groups Update

Andrea Kreiner (DNREC) provided a brief update on the Work Groups' launch and progress. Three Work Groups met before the RAC meeting and one would meet in the afternoon after the meeting. Each Work Group began by discussing their charge and scope of work, and later meetings will focus on substantive issues the group needs to discuss and provide options on to the RAC. The Risk Evaluation and Financial Assurance Work Group and Economic Effect Work Group will present their initial work products at the RAC's October meeting. Necessary background materials on these topics will be provided to the RAC in advance of that meeting. Justice Holland, a member of the Risk Evaluation and Financial Assurance Work Group, noted that his Group had questions about what topics were and were not within the scope of their work. Justice Holland asked the RAC Members whether any of them would be opposed if the Work Group did not provide options that address: (a) the link between financial assurances and incentives (e.g., re-paying incentives provided to a developer in the event of certain incidents), and (b) third-party liability and compensation. No RAC Member raised an opposition.

Community Engagement Update

Ian Yue (DNREC) reviewed the RAC Community Engagement Goals and provided an update on DNREC's work to pursue these goals. DNREC has created a factsheet about the CZCPA, which includes information about the regulatory development process and how members of the public can get involved. DNREC has compiled a list of community organizations and contacts with whom the RAC and DNREC can engage. This list consolidates contact lists from government entities, state legislators, and RAC members. DNREC has created an option for people to join an email list and submit information to DNREC about how DNREC can engage with their organization or community.³ DNREC staff are in the process of arranging meetings in September and October with community groups and members in five areas with fence line communities: Claymont, Edgemoor, South Wilmington/New Castle, Delaware City, and Dover/Little Creek. DNREC staff will continue meeting and following up with community groups in these areas. They are planning Public Workshops for late 2018 and/or early 2019. Staff will keep the RAC apprised of feedback they hear from communities.

RAC members had the following questions and comments on community engagement (questions are underlined, followed by an answer, if offered):

- The Civic League for New Castle County expressed disappointment that RAC meetings are hard for the public to attend because they are held during normal working hours. DNREC staff replied that the agency wants to get as much input as possible from the public but that RAC meetings were scheduled primarily so that RAC members could attend. The Public Workshops will be held outside of the 9am-5pm workday and DNREC staff are attending community meetings (primarily at night) to create more opportunities to hear from the public.
- How can communities learn about this process and engage with DNREC? They should fill out the online submission form so we know how they prefer to receive information. DNREC staff can present at their meetings.
- DNREC should consider setting up a Facebook page for the RAC process or utilizing existing social media accounts to publicize the regulatory development process.
- Is DNREC planning to provide a remote meeting participation option for public use at RAC Meetings? DNREC has discussed doing this but it would limit the venues where the RAC can meet, as DNREC would like to hold RAC Meetings across the Coastal Zone and not all meeting facilities have the technological capabilities to host remote meetings.

³ de.gov/communityform

Next Steps

Patrick Field (CBI) reviewed the next steps in the RAC process and action items (listed on page 1). The next RAC meeting will be held on October 9, 2018. DNREC will present draft language on the topics of sea level rise and coastal storm impact planning and bulk product transfer, and the RAC will engage in agreement-seeking on priority options and preferences to the extent possible. The RAC will also discuss the first set of Work Group products from the Economic Effect and Risk Evaluation and Financial Assurance Work Groups. This RAC meeting, and all upcoming RAC and Work Group meetings, was and will be open to the public. Before the next meeting, RAC members, DNREC, DOJ, and CBI should plan to complete the action items detailed on page one of this summary.

Public Comment

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

Bill Dunn (Civic League for New Castle County): An option for remote participation in RAC Meetings should be provided. The RAC's community engagement goals should not be finalized until they have heard from the public on this subject. Facilities should be designed to handle the worst-case scenario for sea level rise and coastal storms. These designs should go beyond existing laws and regulations and today's conditions. The RAC and DNREC should consider what federal regulations regarding bulk product transfer already exist; much of this information is already tracked in detail at operating facilities. There should be someone with technical or industrial expertise on the RAC. Any bio-based materials (e.g., grain) that will be utilized or converted in the Coastal Zone should have some set of regulations tied to the product the heavy industry use site owner-operator produces.

Adjournment

The RAC Chair, Justice Randy J. Holland, adjourned the RAC at approximately 12pm.

APPENDIX A: PARTICIPANT LIST

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

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

DNREC staff and other state employees

Name	Affiliation
James Brunswick	Delaware DNREC
Sierra Davis	Delaware DNREC
Dirk Durstein	Delaware DOJ
Judy Jordan	Delaware DNREC
Todd Keyser	Delaware DNREC
Andrea Kreiner	Delaware DNREC
Susan Love	Delaware DNREC

Bob Scarborough	Delaware DNREC
Jameson Tweedie	Delaware DOJ
Ian Yue	Delaware DNREC

Facilitation team

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

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

Name	Affiliation
Chris Castagno	Self
Rachel DelVecchio	Industrial Economics
Bill Dunn	Civic League for New Castle County
Leslie Genova	Industrial Economics
Paul Morrill	The Committee of 100
Mary Peck (Designated Alternate for Brenna Goggin)	Delaware Nature Society
Angelique Rodriguez	Delaware LECET
David Swayze	Parkowski, Guerke & Swayze
Martin Willis	Self
Mark Wolanski (Designated Alternate for S. Douglas Hokuf, Jr.)	New Castle County