

Bulk Product Transfer

DRAFT RECOMMENDATIONS

Recommendation BPT1: Recordkeeping & Reporting

1.1 The Coastal Zone Conversion Permit Regulations should require that records of the following information be kept on site at the Bulk Product Transfer Facility (BPTF):

For each Bulk Product imported to the BPTF:

- Quantity
- Date of import
- Final destination
 - Used on site:
 - Quantity
 - Shipped off-site:
 - Quantity
 - Date of shipment
 - Name and address of final destination

For each Bulk Products exported from the BPTF:

- Quantity
- Date of export
- Point of origin, including name and address

1.2 Bulk product transfers of grain should only be required to keep records on the quantities and dates of imports and exports.

1.3 The Coastal Zone Conversion Permit Regulations should require that a summary of the information listed above be submitted to DNREC on an annual basis.

Recommendation BPT2: Bulk Product Categories

2.1 Coastal Zone Conversion Permits should be written to include product categories, so as to minimize the need for permit modification or new permits with minor, related, changes in Bulk Products imported or exported.

2.2 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.



INDUSTRIAL ECONOMICS, INCORPORATED

Measuring Economic Effect in Coastal Zone Conversion Permits: Preliminary Findings

PREPARED FOR
Regulatory Advisory Committee

October 9, 2018

PREPARED BY
Leslie Genova
Industrial Economics, Inc.

Our Part of Section 7014

(c)(1). The ...economic effect of the existing or previous use. If the application is for a subsequent conversion permit, the Secretary of the Department of DNREC has the discretion to direct the applicant to provide information on the ... economic effect of any of the previous uses at the site.

 **Baseline**

(c)(2). The ...economic effect of the alternative or additional heavy industry use or bulk product transfer activity.

 **Effect of
Proposed
Action**

(c)(3). The net ...economic improvement...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.

 **Change**

Economic Effect Work Group Goals

To provide the RAC with options for regulations that:

1. Meet statutory requirements
2. Gather data that can be meaningfully assessed
3. Do not overly burden permit applicants

Key Question: How will economic effect data be used by decision-makers? Will approvals be made based on economics?

Underlying Issues Raised by Economic Effect WG

- The WG does not want to discourage applicants from considering Delaware as a location for business;
- The WG is concerned that excessive requirements will keep businesses away;
- The WG feels that providing information about past uses in particular is not useful to decision-makers.

Initial Scope Issues Addressed by Economic Effect WG

Develop options for:

1. Determining “existing or previous use”
2. Assumptions and data for estimating “existing or previous use”
3. Assumptions and data for estimating effects of the proposed action
4. How to estimate “economic effect”
5. How to estimate “net economic improvement”

Initial Scope Issue #1: Options for determining economic effect of “existing or previous use”

- The WG evaluated options for whether existing or previous use would be reported for different types of sites, as follows:

Option	Active Sites	Inactive Sites
1	Existing use	None
2	Existing use	Taxes
3	Existing use	Previous use
4	Existing and previous use (Applicant burden)	Existing and previous use (Applicant burden)
5	Existing and previous use (State burden)	Existing and previous use (State burden)

Initial Scope Issue #2: Assumptions for Existing or Previous Use [Part 1]

- The WG evaluated assumptions that should be made about geography and use type

Option	Geographic Limit	Use Type
1	Permit	Heavy industry use
2	Permit	All
3	Tax parcel	Heavy industry use
4	Tax parcel	All

Initial Scope Issue #2: Assumptions for Previous Use

- The WG also discussed additional assumptions that would be needed to evaluate economic effect of previous use

Option	Additional Previous Use Assumption
1	Report effects for one historic year
2	Report average annual effects
3	Report range of historical estimates
4	Report using Economics Baseline Report (from Issue #1)
5	Report no existing or previous use

Initial Scope Issue #3: Assumptions for Proposed Action

- The WG discussed assumptions related to economic effect metrics for the “alternative or additional heavy industry use or bulk product transfer activity” and whether those need to match existing or previous use measures.

Option	Assumptions for Proposed Action
1	Match geographic and use assumptions to Issue #2
2	Allow reporting of metrics limited to the permit boundary even if tax parcel data is reported under previous use
3	Allow additional reporting metrics than are provided for previous and existing use

Initial Scope Issue #4, Economic Effects Measures

- The WG discussed whether the statutory minimum required metrics should be provided or whether others should be provided.

Option	Direct Metrics	Indirect/Induced Metrics
1	Jobs, income, tax revenues	NO
2	Jobs, income, tax revenues	YES
3	Additional metrics	NO
4	Additional metrics	YES

*This will be further discussed at today's WG meeting.

Initial Scope Issue #5 [Part 1]: Net Economic Improvement

- The WG has discussed defining “net economic improvement” as the difference between the economic effect of the most recent heavy industry use and the economic effect of the planned action, where “most recent heavy industry use” is reported as:

Option	Active Sites	Inactive Sites
1	Existing Use	Zero reported
2	Existing Use	Effects during a previous point in time
3	Existing Use	Average annual historic effects
4	Existing Use	Effects for range of historical estimates
5	Existing Use	Effects from Economics Baseline Report (from Issue #1)

Initial Scope Issue #5 [Part 2]: Reporting Metrics

- WG noted that net economic improvement is not explicitly tied to economic effect metrics.
- As such, it is separately considering economic metrics that could be used to measure net economic improvement.

Option	
1	Use direct economic effect metrics
2	Use direct, indirect, and induced economic effect metrics
3	Direct, indirect, and induced jobs, income, tax revenues and other measures, such as community-level effect and environmental justice considerations

IEc

Thank You!

Risk Evaluation and Financial Assurance Deliberative Draft

October 9, 2018

DISCLAIMER: Industrial Economics, Incorporated endeavors to ensure that the information disclosed in these slides is correct and free from copyrights, but does not warrant or assume any legal liability or responsibility for the accuracy, completeness, interpretation or usefulness of the information that may result from the use of this report.

This report is provided 'as is' with no representations or warranties of any kind, either expressed or implied, including but not limited to the implied warranties or merchantability, fitness for a particular purpose, and non-infringement of third party rights. You assume total responsibility and risk for your use of this report, neither Industrial Economics, Incorporated, nor our affiliates is responsible for any direct, indirect, incidental, consequential special, exemplary, punitive or other damages arising out of or relating in any way to the information contained in the report.

Basics of Financial Assurance and Regulatory Design

- In the CZCPA context, the design of an effective financial assurance program requires balance:
 - Encourage **sound operational behavior** by site owners/operators;
 - Ensure that regulators have **timely access to funds** to undertake actions related to a facility's environmental impacts in the event the owner/operator is unable or unwilling to do so;
 - **Account for existing financial assurance** relevant to CZCPA sites that address environmental impacts and site closure/post-closure activities;
 - Target “gaps” in financial assurance coverage in a manner that is cost-effective and cognizant of the CZCPA goal to **facilitate site redevelopment**.

Example Financial Assurance Structure - Louisiana

- In 2017, Louisiana promulgated financial assurance regulations associated with coastal zone management.
- General FA Provisions
 - Identifies covered actions, establishes a process by which additional actions are identified
 - Identifies action-specific FA monetary amounts, establishes a process by which additional FA monetary amounts are identified
 - Specifies allowable FA instruments, and associated minimum requirements by instrument type
 - Establishes processes for updating FA monetary amounts over time, requiring additional FA, and releasing FA
- Enforcement Compliance Provisions

General Provisions: Covered Activities and FA Amounts

- Louisiana identified specific actions subject to FA, basing monetary amounts on independent cost estimates:

5. The amount of financial assurance shall be based on an itemized estimate provided by an independent contractor and shall include the following:

a. construction costs, equal to 100 percent of the estimated cost of completing the creation, restoration, or enhancement;

b. maintenance costs, equal to 100 percent of the estimated cost of monitoring and maintaining the site, to meet the performance criteria and other requirements of the restoration banking instrument;

c. corrective action or adaptive management costs, equal to 10 percent of the estimated cost of construction, unless otherwise determined by the BRT to meet the requirements of this Section;

d. an independent contractor is defined here as a licensed contractor with no existing business relationship with the sponsor. The contractor must be approved by the BRT.

WG in process of identifying specific actions or categories of actions potentially relevant to CZCPA and options for verifying cost estimates.

General Provisions: Allowable FA Instruments

- Louisiana explicitly identified allowable FA instruments:

11. Acceptable forms of financial assurance shall comprise one or more of the following financial instruments:

- a. a fully funded trust fund in accordance with §125.B below;
- b. a letter of credit in accordance with Subsection C of this Section below;
- c. a surety bond in accordance with Subsection D of this Section below; and/or
- d. other forms of financial assurance, other than self-insurance or self-guarantee, as determined by the BRT to meet the requirements of this Section.

WG in process of identifying pros, cons, and potential requirements for each type of FA instrument.

General Provisions: Adjusting FA Amounts

- Louisiana required annual adjustments for inflation with updated independent cost estimates for FA-covered actions every five years:

6. The sponsor shall update the face value of its financial assurance on the anniversary date of the instrument to reflect adjustments for inflation. On the fifth anniversary of the financial assurance instrument, the sponsor shall update the amount of financial assurance based on updated itemized estimates pursuant to Paragraph 5 of this Subsection.

WG will be identifying options for updating FA-related cost estimates over time.

General Provisions: Release of FA

- Louisiana established conditions for release of FA:

8. The portion of the financial assurance required under Subparagraph 5.a of this Subsection above shall be released upon the BRT determination that construction (including grading and planting) of the NRD restoration bank has been successfully completed in accordance with the restoration banking instrument.

9. The portion of the financial assurance required under Subparagraphs 5.b and c of this Subsection above shall be released when the BRT determines that the NRD restoration bank has met its restoration objectives and performance criteria, as applicable, or the BRT approves in writing the sponsor's request to permanently cease banking activities.

WG has not yet discussed the potential identification of circumstances under which relevant FA could be released (e.g., after site closure is completed).

General Provisions: Additional Site-Specific Flexibility

- Louisiana included additional clauses to provide flexibility, and to address site-specific circumstances:

7. The BRT shall require additional financial assurance if additional construction or monitoring is required to ensure success of the NRD restoration bank.

10. The sponsor may request, and the BRT may approve, the substitution of a financial assurance instrument. The form and content of any financial assurance instrument must be approved in advance by the BRT before a substitution can be used to satisfy the financial assurance obligations of this Section.

WG will discuss potential options for addressing additional, specific FA needs, if they arise post-conversion permit, as well as applicant substitution of FA instruments.

Enforcement Compliance Provisions (1 of 2)

- Louisiana specified compliance provisions to assist the regulator in accessing the FA instruments should it prove necessary to do so.
- Conditions that must be met prior to drawing on the FA instrument for this LA program:

1. If the BRT determines that the sponsor responsible for restoration and providing financial assurance has failed to complete an NRD restoration bank, including satisfying restoration objectives and performance criteria, as required by the restoration banking instrument, the BRT chair shall:

a. provide written notice of this determination to the sponsor; and

b. require that the NRD restoration bank be brought into conformance with the restoration banking instrument within 30 days of receipt of the notice, unless the timeframe is otherwise extended by the BRT.

WG will discuss potential options for compliance provisions relevant in the CZCPA context.

Enforcement Compliance Provisions (2 of 2)

- Consequences of drawing on the FA instrument:

2. No sooner than 30 days from the date the sponsor receives notice under Subparagraph 1.a of this Subsection above, CPRA may, at its discretion, complete the NRD restoration bank by drawing on the funds available in the financial assurance instrument(s).

3. In the event CPRA draws on the funds available in the financial assurance instrument(s) and accomplishes the objectives and performance criteria of the NRD restoration bank, the BRT may award restoration credits for sale, use, or transfer by the sponsor in a quantity that reflects the objectives and performance criteria achieved as a result of BRT intervention, net of administrative expenses incurred by the BRT to complete the NRD restoration bank.

Considerations in Crafting an FA Regulatory Program

- There exist several state and federal financial assurance programs that could inform the RAC. In our view, the LA regulations offer an effective structure that best aligns with the CZCPA objectives.
- The FA options (and associated pros/cons) crafted by the Risk Evaluation and Financial Assurance Work Group reflect its charge and key regulatory design issues, including how to address:
 - Potential gaps in existing FA coverage related to CZCPA activities;
 - Process by which activity-specific FA amounts are identified;
 - Menu of acceptable FA instruments and key conditions for each;
 - Process for updating FA face value amounts, requiring additional FA, and releasing FA; and
 - Compliance considerations.

Next Steps

- Unless otherwise directed by the RAC, the RE&FA Work Group is proceeding as summarized in this presentation and consistent with the Initial Scope of Work provided to the RAC.
- We have provided the RAC with example FA regulatory language used in the LA NRD Banking program, and could provide other DE and/or Federal examples of regulatory language if interested.
- To date the WG has developed options (with associated pros and cons) for three specific issues relevant to RE&FA regulatory program design.
- We anticipate developing several more RE&FA issues options papers at our next two WG meetings and providing them to the RAC prior to its November meeting.
- At that point the WG likely will be looking for guidance from the RAC with respect to if/what additional information would be helpful.



IEC

INDUSTRIAL ECONOMICS, INCORPORATED

FLOODING AND SEA LEVEL RISE

Draft Recommendations for Sea Level Rise and Coastal Storm Impact Planning



Recommendation SLCS1: Anticipated Useful Facility Life

The required plan for sea level rise and coastal storms over the “anticipated useful life of the facility and infrastructure” should have a planning horizon of no less than 60 years. The plan can include a longer planning horizon depending on the particular facility.

Recommendation SLCS2: Geographic Scope of Plan

The plan should detail risk, likely impacts, and mitigation measures for the following geographic areas:

- A. The site's shoreline and near-shore areas
- B. Docks, piers, and offshore pipelines
- C. All remediation areas on-site
 - Includes completed remediation areas and those in progress
- D. All structures on-site
- E. Ingress/egress routes

The plan should also include a discussion of any potential negative impacts to adjacent parcels resulting from development and flood mitigation activities.

Recommendation SLCS3:

Risks to be Considered in Plan

The plan should address the following hazards over the anticipated useful facility life:

A. Flooding

- 1% chance flood (100-year floodplain as defined by FEMA)
- 0.2% chance flood (500-year floodplain as defined by FEMA)
- High sea level rise scenario (as defined by the DE SLR Technical Committee)
- Combined effect of sea level rise and 1% chance flood

B. Shoreline Erosion

C. Wind speeds up to 95 mph, sustained (Category 1 hurricane)

Questions in progress

- How does air quality permitting incorporate storm events and how are facilities monitored during storm events?
- How do facility emergency management plans incorporate storm preparation and what is the role of the Local Emergency Planning Committees?
- How to incorporate changes to 3rd party guidance and criteria (new SLR scenarios, FEMA construction guidance, etc.)

Next RAC Meetings (Tentative Details)

- **Wed, Nov 7, 9:00am – 1:00pm**

Location: DNREC Lukens Drive Office (New Castle)

- **Tues, Dec 11, 9:00am – 4:00pm**

Location: Bellevue Community Center (Wilmington)