

**Coastal Zone Conversion Permit Act
Risk Evaluation and Financial Assurance Work Group**

Initial Scope of Work

Goal: Arrive at a common understanding of the principles of financial assurance, balancing the polluter pays' principle, the need to minimize the potential for orphaned/abandoned facilities, and incentivizing sound operational behavior that minimizes risks from facility releases. Synthesize information regarding financial assurance that informs the RAC, and that is necessary for the RAC to consider as it crafts recommendations for CZCPA regulations.

Orienting Assumptions:

- 1) Coastal Zone conversion permit financial assurance should be integrated with existing financial assurances applicable to the site (both state and federal), addressing Delaware's financial assurance needs where existing coverage is absent or insufficient in some manner.
- 2) Coastal Zone conversion permit financial assurance should be cognizant of other federal, state and local statutes and regulations that come into play if particular types of events occur (e.g., Oil Pollution Act of 1990 for oil spills).
- 3) The WG should ensure that sufficient funding is available in an appropriate instrument to undertake key actions to protect the environment and human health in the event of non-performance by the applicant.
- 4) The WG may decide there is a need to interface and integrate options with other issues, such as environmental impacts, sea level rise, and offsets.

Suggested Items for WG to Address in Upcoming Meetings:

- 1) Provide the RAC with a concise description of standard financial assurance instruments used in an environmental / regulatory context, including pros and cons (e.g., opportunity cost for Applicant, risk to the regulator, direct/indirect access to funds, time period of activities, etc.). This task is aimed at providing the RAC with a fundamental level of understanding on

the topic of FA so that options presented to the RAC can be deliberated in an informed manner.

- 2) Provide the RAC with options for identifying existing financial assurance at the site (if any), and minimizing the need for a conversion permit applicant to provide financial assurance that is duplicative in form or effect.

Related WG Charge Questions:

- a. If a conversion permit applicant established financial assurances through other programs (e.g., Resource Conservation and Recovery Act [RCRA], programs through DNREC), can they be given due credit in conversion permit applications? If so, how?
- 3) Provide the RAC with options for addressing the type and amount of FA for key site activities, taking into account applicant bankruptcy, site abandonment, the risk profile of the site, etc. Such options may contemplate relaxing the need for such assurances if existing financial assurance sufficiently satisfies the risk exposure at the site.

Related WG Charge Questions:

- a. What types of securities will be acceptable in providing evidence of financial assurances?
- b. What are the variables DNREC can consider when evaluating evidence of financial assurances?
- c. How can conversion permit applicants demonstrate that they have sufficient resources to cover all costs of compliance with HSCA and other relevant state and federal statutes?
- d. How can risk (and, correspondingly, cost) be appropriately estimated and evaluated for corrective action incidents?
- e. How can risk (and, correspondingly, cost) be appropriately estimated and evaluated for closure/post-closure scenarios?
- f. Are there incidents of such low probability in which financial assurance may not be required?
- g. Is there an upper limit/threshold for which applicants can be expected to acquire a security?

- 4) Provide the RAC with options for how best to address the statutory requirement for a draft (i.e., concept) and final “plan” to address potential future site contamination incidents and closure/abandonment of facility.
- 5) Provide the RAC with options for addressing any other application-specific FA needs.
- 6) Provide the RAC with options for ensuring DNREC is able to access financial assurance expertise and/or integrate third party verification.