

**COASTAL ZONE CONVERSION PERMIT ACT REGULATORY ADVISORY COMMITTEE MEETING #6
NOVEMBER 7, 2018**

APPROVED BY THE CZCPA RAC ON DECEMBER 11, 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 November 7, 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 October 9 meeting. The RAC heard presentations and provided feedback on draft recommendations prepared by DNREC staff related to preparing heavy industry use sites for sea level rise and coastal storm impacts. The RAC discussed refined options prepared by the Economic Effect Work Group and the Risk Evaluation and Financial Assurance Work Group. The RAC heard an overview of two new topics for consideration: environmental impact and offsets. DNREC staff presented an update on community outreach and public engagement efforts. There were two opportunities for the public to comment on the topics being discussed by the RAC and 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.

ACTION ITEMS

Who	What
RAC members	<ul style="list-style-type: none"> • Review materials prior to next RAC Meeting. • Email Ian Yue if you want to provide additional input to DNREC on the Public Workshops design.
DNREC/DOJ	<ul style="list-style-type: none"> • Post all presentation slides, background materials, and the approved October 9 meeting summary to the CZCPA RAC webpage at de.gov/czcpa. • Prepare all approved recommendations for transmittal to the Secretary from the Chair. • Revise Public Workshop plan based on RAC feedback and distribute to RAC via email for additional feedback. • Develop answers to Frequently Asked Questions for use at the Public Workshops. • Distribute draft November 7 meeting summary to RAC for review (will finalize at December 11 meeting). • With CBI, develop draft agenda for December 11 meeting.
IEC/DNREC	<ul style="list-style-type: none"> • Build decision-making matrix for RAC discussion of financial assurance instruments on December 11. • Refine options developed by the Offsets and Risk Evaluation and Financial Assurance Work Groups for further RAC discussion and decision-making on December 11.
CBI	<ul style="list-style-type: none"> • Prepare draft meeting summary. • Draft agenda for December 11 meeting.

UPCOMING MEETINGS AND EVENTS

Event	Date	Venue
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/czcpaparac.

RAC Business

The October 9 meeting summary was approved by the RAC with no changes.

Sea Level Rise and Coastal Storm Impact Planning: Recommendation Development Phase

Presentation

Susan Love (DNREC) presented preliminary recommendations regarding sea level rise and coastal storm impacts (SLRCS) planning for the RAC's consideration. The RAC discussed these same recommendations at its previous meeting and sought to finalize them during this meeting¹. The three recommendations pertain to:

- SLRCS Recommendation 1: Anticipated useful facility life
- SLRCS Recommendation 2: Geographic scope of a plan
- SLRCS Recommendation 3: Risks to be considered in a plan

Discussion

The RAC discussed the recommendations and provided feedback to DNREC. The comments below are from RAC members unless otherwise specified:

SLRCS Recommendation 1

- 60 years as a regulatory baseline is too prescriptive. The regulations should offer more flexibility and the Secretary always has the discretion to ask for a longer planning horizon.
- 60 years is too short; the scope and quality of these facilities merit a longer time frame.
- What was the basis for selecting 60 years?
 - DNREC Response: DNREC staff used planning information from the Delaware Department of Transportation and from industry (including the Delaware City Refinery and Croda) about infrastructure and facility life planning horizons. The lifespan data we received ranged from 50-80 years. We took the minimum plus 10 years (or 20%) as a "buffer" of sorts as the number to present to the RAC.
- How does the language in this recommendation compare to other policies in place in Delaware?
 - DNREC Response: There is currently no other state policy in place for facility-focused sea level rise and coastal storm impacts planning except for the guidance put forth for state projects via Executive Order 41.² This guidance used the term "useful lifespan" to define the planning horizon; there was no specific number given because state projects can vary greatly in scope and size.

¹ The detailed recommendations can be found in the October 9 meeting summary or the November 7 presentation slides, both available at de.gov/czcpaparac.

² This guidance document is available at de.gov/floodavoidance.

- An alternative option is to allow applicants to select their own facility life and justify that decision, while still allowing the Secretary the discretion to request a longer planning horizon. Why specify a specific number for a planning horizon?
 - DNREC Response: DNREC wants to avoid having applicants under-estimate the life span of a proposed project. The agency also wants to lower the risk for long-term facilities that may be developed. Therefore, staff felt that it was important to include a minimum threshold in the regulations.
- Couldn't we assume that if the General Assembly wanted to define a specific number of years for a planning horizon that they would have included that information in the CZCPA?
- This recommendation should have tight language for the anticipated facility life. Business interests and public interests should be balanced. The purpose of the sea level rise language in the statute was to ensure the residents and taxpayers are not unfairly burdened in the case of an accident.
- DNREC should be able to justify the planning horizon it includes in the final recommendation.
- "Anticipated useful life" should be defined in the regulations. This term is used in other parts of the statute (e.g., economic effect, financial assurance) and it should be used consistently across the statute.
- There are synergies between "anticipated useful life" and permit lifespan, if DNREC chooses to include permit lifespan in the new regulations.
- Including a planning horizon in a guidance document – but not in the regulations – will not be enforceable.

SLRCS Recommendation 2

- The term "near shore" should be defined or deleted from the recommendation.
- The RAC should discuss how the term "site" will be interpreted and applied. This issue applies to other parts of the statute as well.
- DOJ Comments: It is our interpretation that the legislature intended for "site" to only refer to the proposed project area, though there are some parts of the conversion permit requirements in which the entire site (or neighboring sites) will need to be taken into consideration, such as for sea level rise and coastal storm impacts planning. Adjacent parcels may also need to be taken into consideration for existing contamination purposes.
- It should be noted that New Castle County development code already takes into account adjacent parcels when it comes to floodplain planning.

SLRCS Recommendation 3

- New Castle County does not regulate the 500-year flood. However, if conversion permits already take into account sea level rise, it does not seem that DNREC also needs to include planning for the 500-year flood in the conversion permit requirements.
 - DNREC Response: In some places the 500-year flood is precipitation-driven, not coastal influence-driven. As such, if DNREC does not include the 500-year flood as part of comprehensive planning, we could miss some flood-prone areas that are not driven by coastal flooding.
- The high sea level rise scenario will need to be more tightly defined (e.g., incorporate references to frequently-updated projections).
- This recommendation is good. DNREC will not be asking developers to avoid flooding entirely; rather, DNREC will be asking developers to avoid creating risks on their sites.

- The RAC may want to consider if a freeboard³ planning requirement should be included in this recommendation. The New Castle County permitting process, however, will address freeboard issues. Redundancy could be confusing or unnecessary.
 - DNREC Response: DNREC considered including freeboard. The RAC can choose to include freeboard in its recommendations if it wishes, but we felt the language noted in this recommendation would be appropriate for planning. Freeboard requirements may be too prescriptive and may be better suited to a guidance document. The goal of this recommendation is to outline the scenarios an applicant should address in their plan.
- Anticipated useful life should be used consistently in SLRCS recommendations 1 and 2.
- To clarify the language, the recommendation should read “as defined by FEMA at the time of the application” for both the 1% and 0.2% chance floods (i.e., 100-year and 500-year floods, respectively).

Additional Comments

- The RAC should outline a process for defining terms that will be used in the regulations.

Decisions and next steps

The RAC approved delaying discussion of SLRCS Recommendation 1 until the term “anticipated useful life” is defined later in the RAC process. The RAC also approved delaying a discussion of the term “site.” The RAC approved SLRCS Recommendations 2 and 3 with the following edits:

- Delete “and near-shore areas” in SLRCS Recommendation 2.
- Clarify SLRCS Recommendation 3 to read “...as defined by FEMA at the time of the application” for both the 1% and 0.2% chance floods.

DNREC staff will prepare the two approved recommendations for transmittal to the Secretary from the Chair. A discussion of the terms “anticipated useful life” and “site” will be added to a future meeting agenda.

Economic Effect: Defining Options Phase

Presentation

Leslie Genova (IEc) presented revised options on the topic of economic effect for the RAC to consider. The Work Group concluded that the economic information required in the statute and provided in a conversion permit application can be useful in allowing an applicant to “tell the story” of why their project would be valuable to Delaware.

Based on feedback during the last RAC meeting, the Economic Effect Work Group streamlined the issues it was addressing and identified the most technically feasible options. In this process, the Work Group felt that it was most straightforward to assume that (1) “existing or previous use” means the same thing as “most recent heavy industry use” and (2) “economic effect” and “net economic improvement” should use the same economic metrics. The refined list of issues for the RAC to consider is:

1. How to report information on the “existing or previous use” for “economic effect” purposes (and the “most recent heavy use” for “net economic improvement” purposes). The Work Group developed seven options, which vary depending on if the site is active or inactive.

³ Per a [factsheet from the Federal Emergency Management Agency \(FEMA\)](#), “[f]reeboard is a term used by FEMA’s National Flood Insurance Program [...] to describe a factor of safety usually expressed in feet above the 1-percent-annual chance flood level.”

2. Defining the geographic scope for economic effect reporting. The Work Group developed three options:
 - I. Heavy industry use site
 - II. Permit area
 - III. Tax parcel(s)
3. Defining the economic metrics used to report both “economic effect” and “net economic improvement”. The statute defines three metrics that must be provided on an annual basis: number of jobs created, income generated by the wages and salaries of these jobs in relation to the amount of land required, and the amount of tax revenues potentially accruing to the state and local government. The Work Group suggests that collecting additional information would allow for better verification of reported metrics and a better understanding of the economic effect of the project. These would include project cost, state and community-level effect, and other costs to the state.
4. Verifying the reported economic metrics. The Work Group developed five options for verification methods with variable resource requirements:
 - I. Back of the envelope calculations
 - II. Applicant-provided case studies
 - III. Ad-hoc review of materials by various state agencies
 - IV. Expert economist reviewer (contractor)
 - V. Standing panel of experts (State employees)

More details about the options developed for each issue are available in the presentation slides available at de.gov/czcpa/rac.

Discussion

The RAC discussed and provided feedback on Issues 1, 3, and 4. Due to the topic of “geographic scope” being an overlapping issue with other parts of the statute, Issue 2 was tabled for a future RAC meeting. The comments below are from RAC members unless otherwise specified:

Issue 1: Reporting information on the “existing or previous use” for “economic effect” purposes

- DOJ Comments: It seems reasonable to assume that “existing or previous use” and most recent heavy industry use” are meant to be the same. Discrepancies in the statute language may be due to the rushed nature of House Bill 190 (H.B. 190). Options 1 and 2 may not be viable. Options 6 and 7 are probably most in keeping with the statute.
- The RAC and DNREC should be cautious not to put too much of a burden on applicants to find historical data about their site.
 - DOJ Response: DOJ will do a regulatory flexibility analysis and prepare a regulatory impact statement. The RAC should consider how the regulations could impact applicants with different levels of resources (i.e., small vs. large businesses).
- DNREC should create a baseline report so that the agency is prepared when conversion permit applications start coming in. The costs of remediation should be included in any report.
 - DNREC Response: DNREC has the funds and is ready to hire a contractor to draft a baseline report of past economic and environmental effects. Therefore, Option 7 may be the most appropriate choice.
- I am not in favor of the state spending a large amount of money to hire a contractor to draft a baseline report that may not be used much. The most relevant data is that on the economic situation today and the economic effect of a proposed project.
- County and city governments should have much of the data needed for the baseline report.

Issue 3: Economic metrics used to report “economic effect” and “net economic improvement”

- Project cost
 - Incoming companies will perform remediation and should be getting credit for that in terms of project costs. I would suggest asking for information about these costs.
- State and community-level effect
 - It would be important to collect information about hiring preferences. Is there a way to include communities in the development of these sites in a definitive way?
 - DOJ Response: The statute allows DNREC to require disclosure of additional economic information, however, the statute does not allow the Secretary to mandate local hiring or purchasing preferences as a permit condition for the conversion permit. The permit application can ask applicants to disclose local hiring and purchasing preferences, so the RAC can recommend to the Secretary that if any such disclosures are made on the permit application that the developer be held to that as part of the permit approval.
 - It makes sense for DNREC to ask for project labor agreements, given that state money would likely be going to these sites. A project labor agreement was made for the Port of Wilmington. Companies may not be willing to make these agreements on their own without such requirements. Not hiring locally is unacceptable.
 - We need language that says local hiring is going to happen. Looking at projects done in the past along the Route 9 corridor, local hiring was discussed but nothing was actually done to hire locally.
 - We should recommend including the strongest language possible on project labor agreements to ensure we find companies who are committed to such agreements. I would also want a commitment from the Secretary to support this.
 - Because economic effect considers tax revenues to both state and local governments, it shows that local-level effects are important to consider.
- Other comments
 - It is unclear where indirect benefits fit into these metrics.

Issue 4: Verifying the reported economic metrics

- The verification method depends on the project; it is not a one size fits all approach. It may be up to DNREC at the time of the application to decide which method is appropriate.
- I do not like back of the envelope calculations (Option 1). Any case studies submitted (Option 2) would have to be very analogous to the proposed project. Options 3-5 are acceptable.
- Option 2 (applicant-provided case studies) could be useful for the Secretary as s/he reviews a permit application. It would be nice to see what other projects have done, and submitting case studies would be a way to validate the claims an applicant makes. I suggest that Option 2 be included in the recommendation package to the Secretary, though I do not think any of the options are mutually exclusive. Maybe integrate Option 2 with the others.
- I like Option 4 (expert economist reviewer), especially for big projects. However, DNREC should select well-qualified contractors who are doing the reviewing. Option 5 (standing panel of economic experts) could also work.
- DNREC Comment: Because there was no fiscal note attached to the CZCPA legislation, the funds required for Option 4 (expert economist reviewer) would need to be generated from application fees. This is a topic for broader discussion. Also, note that no permit decision hinges on the economic information provided by the applicant.

- Should we include in a commentary to the Secretary that economic information be verified or should we recommend specific verification measures?
- Commentary makes sense, though we should also note that the Secretary should leverage existing resources within the state to eliminate duplication of efforts with other agencies that may already have the expertise required to review economic information on conversion permit applications.

Decisions and next steps

The RAC took the following actions:

- Issue 1: Approved Option 7 only.
- Issue 2: Delayed until a future RAC meeting.
- Issue 3: Approved in full, with the addition of a recommendation to the Secretary that local hiring preferences, if disclosed in a permit application, should be part of the permit conditions..
- Issue 4: Approved all the options as reasonable verification measures, with the addition of a recommendation that the Secretary leverage existing resources within the state to eliminate duplication of efforts with other agencies that may already have the expertise required to review economic information on conversion permit applications

DNREC staff will prepare the approved recommendations for transmittal to the Secretary from the Chair.

Environmental Impact: Introduction to Topic Phase

Presentation

Mike Donlan (IEc) presented an overview of the relevant statutory language and options developed by the Environmental Impact Work Group. One of the key topics the Work Group discussed was how to interpret the phrase “existing or previous use”. They developed four options for the RAC to consider on this topic:

1. “Applicant choice”. Applicant decides whether to describe the existing or previous use in their application.
2. “Baseline – DNREC burden”. DNREC produces baseline of environmental (and economic) conditions and applicant describes any changes from baseline in the interim.
3. “Baseline – Applicant burden”. Write regulations that say the Secretary will only consider an application if the applicant describes both the previous and existing uses.
4. “Active versus Inactive”. Write regulations that say the Secretary will only consider the application if the existing use is described under certain circumstances and previous use is described under others, depending on whether the site is active or inactive.

The pros and cons of each option are detailed in the presentation slides.

Discussion

Given the RAC’s earlier discussion about existing versus previous use in evaluating economic effect, the group concluded that the same interpretation should be used for both economic effects and environmental impact. DOJ noted that Option 1 is likely not permitted under the statute. DOJ believes Options 2 and 3 are the most viable.

Decisions and next steps

The RAC approved Options 2 and 3. DNREC staff will prepare the two approved recommendations for transmittal to the Secretary from the Chair.

Offsets and Environmental Impact: Introduction to Topic Phase

Presentation

Mike Donlan (IEc) presented an overview of the relevant statutory language and options developed by the Environmental Impact Work Group and the Offsets Work Group. These Work Groups developed options for the following issues for RAC consideration:

1. Defining “environmental impact”. The Environmental Impact Work Group developed two options:
 - I. Provide CZCPA applicants with the discretion to use “releases” as a proxy for “impacts” as relevant.
 - II. Require CZCPA applicants to estimate the adverse effects of releases on receptors.
2. Operationalizing “more than offset”. The Offsets Work Group developed four options for this issue:
 - I. Allowing the applicant to make the case that their offset proposal more than offsets anticipated environmental impacts, however they choose.
 - II. Base offsets on permit limits, which reflect maximum allowable emissions.
 - III. Require offsets to exceed impacts by a standard percentage.
 - IV. Allow and prioritize a combination of some or all of the previous options.
3. Operationalizing “directly benefit Delaware”. The Offsets Work Group developed two options for this issue:
 - I. Limit where offset projects can take place.
 - II. Provide the applicant with offset project location flexibility, subject to sufficient demonstration that project benefits will accrue to Delaware.
4. Operationalizing “annual basis”. The Offsets Work Group developed four options for this issue:
 - I. Applicant estimates impacts and offset benefits over time; offsets must be sufficient to address anticipated cumulative impacts over the life of the project.
 - II. Require verification/monitoring of actual impacts and offset benefits over time.
 - III. Base offsets on permit limits.
 - IV. Allow and prioritize a combination of some or all of the previous options.
5. How tight should the “nexus” be between environmental impact and the associated offset? The Offsets Work Group developed three options for this issue:
 - I. Offsets address the same substance emitted (for “release-based” impacts) or type of impact (for “receptor-based” effects).
 - II. Allow applicants flexibility to propose and justify offset projects that address other substances with a similar toxicity profile (for “release-based” impacts) or that address a different harm to the same receptors (for “receptor-based” effects).
 - III. “Fee in Lieu”. Applicants provide estimates of the cost required to directly offset the impact identified in the CZCPA application, but instead of undertaking that project make a monetary contribution to a third party or fund used to finance offset projects that reflect local stakeholder priorities with some nexus to CZCPA-related environmental impacts.

More details about the options developed for each issue are available in the presentation slides available at de.gov/czcpa/rac.

Discussion

The RAC discussed and provided feedback on the five issues presented by the Work Groups. The comments below are from RAC members unless otherwise specified:

Issue 1: Defining environmental impact

- How can DNREC measure these impacts when many communities do not have monitoring equipment or properly calibrated monitoring equipment to know what these impacts are?
 - DNREC Response: This discussion only has to do with new environmental impact on redeveloped sites. Other DNREC programs address monitoring issues; the CZA and CZCPA do not have this under their purview.
- The statute tells us to offset impacts, not emissions. Traditionally emissions have been a surrogate for impacts but here we could start from the premise that a permitted emission has no impact to human health.
 - DOJ Response: Option 2 may not be hard to defend legally if we are interpreting impact to imply harm. Impact is generally interpreted more broadly, as in Option 1. This, of course, brings up the question of what impacts need to be offset.
- I would prefer to look at impacts as described in Option 2, as this is what the legislation says an impact is. However, if we use releases as a proxy for impacts, we will need to measure them. We should note that releases cannot always be used as a proxy for certain impacts. Also, could an environmental impact also mean a positive impact?
 - DOJ Response: Yes, it can include positive impacts.
- Option 1 is more practical. It is harder to determine impacts when there are varied opinions from the risk assessors, as Option 2 would have.
- How would applicants address cumulative impacts (e.g., community impacts from multiple facilities)? How can this be captured in a permit application?
 - DNREC Response: This is a good point and merits further RAC discussion.
- DNREC Comment: Three points – 1) Similar to economic effect, any consultant hired to measure environmental impact would require resources that need to be built into application fees; 2) As a clarification, DNREC will treat any release into the air as an impact, as the airshed does not “need” any additional molecules of chemicals; 3) The CZCPA is silent on whether we should change the way environmental impact is considered from how they have been looked at in CZA permits historically. If the RAC wants to recommend a new way of looking at environmental impact, the RAC will need to be clear on why a new approach is needed.

Issue 2: “More than offset”

- Can DNREC clarify its current approach to offsets?
 - DNREC Response: The program has not been very consistent overall. Historically DNREC has primarily focused on in-kind air emission offsets (e.g., NO_x to NO_x) at a 1.3:1 ratio. The agency wants clarity and surety on all sides for this new permit program.
- DOJ Comment: The statute gives the Secretary (and thus the RAC, for discussion purposes) leeway to define offset requirements. One lingering question is whether offsets can be reduced (or otherwise changed) without a new permit.
- IEc Comment: The Offsets Work Group noted how permit duration makes a difference in how these issues are considered and reconciled.
- If the RAC recommends Option 2 (base offsets on permit limits), would DNREC be penalizing people operating well below permit limits?
 - DNREC Response: Yes, some Work Group members like the simplicity of this option.

Issue 3: “Directly benefit Delaware”

- DNREC Comment: Option 2 (provide offset project location flexibility) could allow applicants to address air pollution coming from upwind sources, thus benefiting Delaware.

- Option 2's flexibility could address air pollution but other medias (e.g., soil) may warrant a different approach.
- Could DNREC employ an alternative option such as a sliding scale? For example, 1.3:1 ratio for local projects, 1.5:1 for farther away projects, and 2:1 for out-of-state projects. Applicants could choose which scenario works best for them. There are drawbacks to this approach, however, as it could allow negative effects to fenceline communities.
- We should definitely keep in mind impacts to fenceline communities.
 - DNREC Response: One benefit of meeting with communities is understanding the impacts that affect them. We can take these impacts into account for potential offsets.
- How do we cooperate with neighboring states on offsets? How does this relate to environmental impacts currently at the heavy industry use sites?
 - DNREC Response: No one from Delaware can mandate cooperation with neighboring states; this would have to be done on a voluntary basis. Also, remember these offsets are for new developments. However, because these offset proposals have to more than offset new impacts, this can help to address current impacts.

Issue 4: "Annual basis"

- The RAC may want to consider how the possibility of permit modifications (e.g., a facility installs new equipment to reduce emissions) could affect the proposed options. The option to modify a permit could contribute to applicant certainty.
- This issue raises the recurring theme of whether the regulations should set a permit lifespan.
- The regulations should require monitoring ideally. How could the offsets regulations incentivize monitoring? Monitoring data could help an applicant make the case that their offset should be reduced if their facility reduces its impact through facility improvements.

Issue 5: "Impact-offset nexus"

- Option 1 is the tightest option but its lack of flexibility could be a drawback.
- It could be hard to calculate the fee in Option 3 because offsets are never dollar for dollar.
- Option 2's flexibility would allow offsets to be adjusted as we improve our understanding of public health impacts.

Decisions and next steps

The RAC will determine its recommendations on this topic at its December meeting.

Risk Evaluation and Financial Assurance (REFA): Further Introduction to Topic Phase

Presentation

Mike Donlan and Chiara Trabucchi (IEc) presented additional information about the design of an effective financial assurance program that balances the interests of the state, the public, and the regulated party.

The REFA Work Group developed six initial scope issue papers, which are available in full at de.gov/czcpa:

1. Available financial assurance instruments
2. Reporting existing financial assurance
3. Potential approach for different CZCPA-relevant categories of actions/incidents
4. Concept and final plan
5. Other application-specific financial assurance needs (TBD, if/as necessary)
6. Agency access to third-party verification or other financial assurance expertise

Consistent with its charge, the REFA Work Group focused on key regulatory design issues including:

1. Identifying gaps in existing financial assurance coverage with respect to CZCPA-covered activities (i.e. what should be assured?).
 - a. Actions to address existing site contamination (required by statute)
 - b. Actions to minimize environmental damage, and stabilize and secure the site “upon termination, abandonment or liquidation” of site activities (required by statute)
 - c. Actions to address future incidents resulting in environmental contamination (required by statute)
 - d. Actions associated with third-party liability
 - e. Site/infrastructure improvements to address sea level rise and coastal storms
2. Identifying a suite of allowable financial assurance instruments (i.e., how should it be assured?).
 - a. Trust fund
 - b. Letters of credit
 - c. Insurance policy
 - d. Surety bond (performance or payment)
 - e. Self-insurance (corporate financial test)
 - f. Corporate guarantee
 - g. Captive insurance
3. Establishing a process by which activity-specific financial assurance amounts are identified (i.e., in what amounts should it be assured?).

IEc staff noted that the topic of financial assurance for catastrophic events is not being brought before the RAC. One reason for this is because such assurances are usually made through public-private partnerships, which are not consistent with what is allowed under the CZCPA. IEc staff also re-emphasized the principal that financial assurance is about finding the right balance between protection and cost/burden to an applicant.

IEc staff reviewed seven key insights the Work Group identified that RAC members should consider as they develop recommendations. These insights can be found in the presentation slides available at de.gov/czcparac.

Discussion

The RAC discussed and provided feedback on the first two regulatory design issues outlined above. The comments below are from RAC members unless otherwise specified:

What should be assured?

- How is Option (d) (actions associated with third-party liability) different from general liability insurance a developer may already have?
 - IEc Response: It may not be. Conversion permit financial assurance is simply incremental in nature. Any conversion permit financial assurance for third-party liability would not be duplicative. However, there are some scenarios that may warrant this additional assurance.
- Are there good models here in Delaware and in New Jersey for financial assurance?
 - IEc Response: Yes, there are many models, but they are often site-specific. The options we are presenting to the RAC are specifically designed to address the range of scenarios that could apply to all heavy industry use sites.

- What if a heavy industry use site was deemed protective of public health but then a cancer cluster developed around the site. Would that be considered a future incident covered by conversion permit financial assurance?
 - IEc Response: Financial assurance is based on demonstrating that a developer's action caused an effect. Thus, these health impacts would have to be directly linked to the developer's action.
- I would like the Work Group to consider how each of these options could have helped us with the Metachem abandonment. Which would have been the most useful to have in place?
 - IEc Response: Chapter 92, which contains financial assurances related to Metachem, is now in statute. There are other scenarios, in addition to Metachem that are also important to consider when selecting options. We will take the request about Metachem under advisement.
- Would any of these options cover a scenario that was not environmental contamination (e.g., composting facility impacts surrounding property values due to foul smells)? Reduction of property values is not a traditional "contamination".
 - IEc Response: The reach of environmental incidents covered under financial assurances can be broadly interpreted. Nuisance and smell issues would be covered under (c) future incidents. Smell should definitely be addressed during the permitting process but it may be better addressed by a different part of the statute than financial assurance.
- The regulations should define "environmental contamination."

How should it be assured?

- Does Delaware have a system in place now where new companies pay into a pool of money to help cover costs if a company cannot cover the cost of addressing damages it caused? Who would control this pool?
 - IEc Response: A trust fund (Option (a)) is one option but there are others. We are unsure if the statute allows a pool. There are many other safeguards in place, however, that would ensure the money could be accessed if the owner couldn't or wouldn't address a problem.
- This question of which instruments to select would be better answered by IEC's expertise, if the RAC can identify the activities it wants covered and the desired timeline for those instruments. Some instruments are better suited to serving immediate needs while others serve long-term needs. IEC should consider how to best tee up these options for decision-making at the December meeting.
- One way to do this to have IEC and the Work Group consider and present to the RAC financial assurance instruments for the CZCPA-covered activities listed in Issue 1. I think the RAC should focus on Options (a), (b), (c), and, to a lesser extent (e), in December.

Other comments

- The new regulations should require a permit renewal when a property is transferred.

Decisions and next steps

The RAC approved asking IEC and the Work Group to focus on Options (a), (b), (c), and (e) for Issue 1. The RAC will determine its recommendations on the REFA topic at its December meeting.

Community Outreach and Public Engagement Update

Presentation

Ian Yue (DNREC) provided an update on DNREC's community engagement activities for the conversion permit regulatory development process. DNREC staff have been actively meeting with community leaders and members in the five areas with fenceline communities: Claymont, Edgemoor, South Wilmington/New Castle, Delaware City, and Little Creek/Dover. Further meetings with fenceline communities are forthcoming or being scheduled. Initial feedback from fenceline communities has focused on environmental impacts, cumulative impacts, and community benefits. More details on this feedback are available in the presentation slides posted at de.gov/czcpa/rac.

DNREC staff has started planning Public Workshops to be held in early 2019. These Public Workshops are intended to inform and gather feedback from the larger public. The process is more structured and feedback-driven than the community meetings. The three goals of the Public Workshops are:

- Engage members of the public who have otherwise been unable to engage during daytime meetings.
- Inform people about the overall regulatory development process and the role of regulations.
- Interact with people on the issues informing RAC deliberations and, as relevant, preliminary RAC recommendations.

To achieve these goals, DNREC's initial workshop design includes holding the Public Workshops in the evening, presenting an overview of the CZCPA regulatory development process and role of regulations, and setting up information stations with focused feedback forms at each station. DNREC staff will present a more comprehensive Public Workshop design at the December RAC meeting.

Discussion

DNREC asked the RAC for feedback on the following questions. The comments below are from RAC members unless otherwise specified:

How many Public Workshops should be held and where should they be held?

- DNREC should hold one meeting north of Wilmington and one south of Wilmington. Perhaps Claymont and Delaware City, respectively.
- There should be two Public Workshops so people have a better chance of making at least one workshop.
- The City of Wilmington would like to host a third Public Workshop. Our government building is easily accessible.
- DNREC should check that bus times will match up with the timing of the Public Workshops. Bus schedules may change seasonally.

What topics should be presented at informational stations?

- Clear background materials in non-technical terms are critical. Maps of the Coastal Zone and the sites would be especially useful.
- It would be good to give the public information that would allow them to advocate for their interests more strongly.
- DNREC should be cautious about presenting too rosy of a picture of potential new jobs created by redevelopment on these sites. It will be hard to hold companies to local hiring without Project Labor Agreements (PLAs) or Community Benefit Agreements (CBAs).
- This is a difficult question because the RAC is still working through issues. It will be difficult to give firm answers about what these regulations will mean for the public.

- It will be critical to have clear answers to frequently asked questions or else DNREC and the RAC will risk their credibility being questioned (e.g., if two people assisting with the Workshop give different answers to the same question).

What feedback from the public would most help the RAC's work?

- Questions should focus on assessing whether the public thinks the RAC is generally on the right track with our recommendations.
- It could be useful to ask for general comments from the public, in addition to feedback on specific topics.
- It would be useful to get a sense for what impacts the public is most concerned about. This information could help inform the offsets discussion.

How can DNREC best actively engage RAC members at the Public Workshops?

- If the Workshops involve small group discussions, each group could be led by a DNREC staff member and a RAC member.
- RAC members could become targets of influence or blame if they attend the meeting. Some members may not be prepared to answer questions on these topics.
 - DNREC Response: RAC member attendance at the Public Workshops is completely voluntary, though it would be helpful to have members present.

Other comments about the design

- The Public Workshops held before the RAC was formed were well designed. I liked the small group discussion with a DNREC staff member. Could we do something similar at these workshops, like having small, topic-focused discussions with a DNREC staff member and a RAC member assigned to each group? People could rotate between tables to discuss each topic. Another idea is to have white boards at each station where people can write interactively and build on each other's ideas. This approach seems more collaborative, interactive, and productive than a purely informational meeting.

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 December 11, 2018. At that meeting, the RAC will engage in agreement-seeking on recommendations for the following topics:

- Environmental Impact and Offsets
- Risk Evaluation and Financial Assurance

The four Work Groups will pause on meeting until or if they receive additional instructions from the RAC. 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, IEC, 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 two public comment sessions.

Bill Dunn (Civic League for New Castle County):

- It is irrelevant to look at the current tax base of a site. The economic effect should be based on the past maximum utilization of that property (that is, the maximum value that property brought to the state and local government) within the site's history. These records are available. The economic impact of a site should be based on the broadest interpretation of what could be utilized on a site.

- The CZCPA provided an opportunity to redevelop these 14 sites for new jobs and environmental clean up but DNREC needs to move away from its old permitting process. These properties should use off-the-shelf monitoring and control technologies to protect Delaware citizens. These sites need the best technology.
- I disagree with the claim that many of Delaware's air quality issues are due to emissions in upwind states. All of the issues in New Castle County are our own problem.

Martin Willis (Citizen, member of the Offsets Work Group):

- I support the suggestion to hold Public Workshops that include opportunities for small group discussions and interactive stations. The workshops held in October 2017 were good. DNREC could invite the authors of H.B. 190 to the Public Workshops to explain their rationale for introducing it.
- DNREC and the RAC need to work efficiently to meet the statute deadline of October 1, 2019 for promulgating regulations.
- On November 20 at 6pm, there will be a hearing/information session for an air permit application at a cement plant. That meeting could be a good opportunity for RAC members to hear how an application outside the Coastal Zone is being presented to the community.
- I am on the Offsets Work Group. We considered Option 1 where the applicant makes the offset. The only change I see in H.B. 190 from previous offsets is that the offset needs to be annual. I have a problem with the offset project that was mentioned earlier. In that situation, there was a pound of VOCs being released per day, and yet the offset was trading out the company's gas-based car with a hybrid car. I am also not in favor of allowing companies to buy emissions credits. A recent coastal zone offset project purchased emissions credits from the Delaware Economic Development Office to help with tourism in Rehoboth Beach. Yet, the impact is in Claymont. The offsets need to help the people a facility impacts. If the facility is in the Claymont, the offset should be in Claymont. One offset project that I did like was one that offset emissions from trucks that were running overnight. The developer found a way for the trucks to be plugged into an electrical source instead of running all night. The regulations should require the applicant to identify an offset with community involvement and the public should be allowed to comment on the proposed offset.

Adjournment

The RAC Chair, Justice Randy J. Holland, adjourned the RAC at approximately 4:00pm.

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
Hon. Randy J. Holland	Chair, CZCPA RAC
Ronald Handy, Sr.	Boys & Girls Club of Delaware
S. Douglas Hokuf, Jr.	New Castle County
Tim Konkus	Delaware City Marina and Main Street Delaware City, Inc.
Larry Lambert	Claymont Renaissance Development Corp.
Tim Lucas (Designated Alternate for Herb Inden)	City of Wilmington
James Maravelias	AFL-CIO
Jerry Medd	Pilots' Association for the Bay and River Delaware
Jeffrey Richardson	Imani Energy
Robert Whetzel	Richards, Layton & Finger
Delores Whildin	Resident of Claymont
Marian Young	BrightFields, Inc.

DNREC staff and other state employees

Name	Affiliation
James Brunswick	Delaware DNREC
Sierra Davis	Delaware DNREC
Dirk Durstein	Delaware DOJ
Judy Jordan	Delaware DNREC
Andrea Kreiner	Delaware DNREC
Susan Love	Delaware DNREC
Bob Scarborough	Delaware DNREC
Jameson Tweedie	Delaware DOJ
Jennifer Walls	Delaware DNREC

Ian Yue	Delaware DNREC
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Facilitation and consulting team

Name	Affiliation
Michael Donlan	Industrial Economics, Inc.
Patrick Field	Consensus Building Institute
Leslie Genova	Industrial Economics, Inc.
Rebecca Gilbert	Consensus Building Institute
Chiara Trabucchi (by phone)	Industrial Economics, Inc.

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

Name	Affiliation
Matt Brill	Self
Bill Dunn	Civic League for New Castle County
Tom Godlewski	Delaware City Refinery
Mary Peck (Designated Alternate for Brenna Goggin)	Delaware Nature Society
Bryon Short	Delaware Contractors Association
David Swayze	Parkowski, Guerke & Swayze
Frances West (Designated Alternate for Larry Lambert)	Council of Civic Organizations of Brandywine Hundred, Inc.
Martin C. Willis	Self