



Discussion Categories

Linking Issues, Options, and Approaches for RAC Deliberations

CZCPA RAC Meeting #7
December 11, 2018

DISCUSSION CATEGORIES

	Introduction	Options	Preliminary Recommendations	Review
Description	Initial presentation of topic to the RAC	Presentation of options for RAC consideration	RAC consensus, to the extent possible, on preliminary recommendations	RAC preliminary recommendations sent to DNREC Secretary as FYI; ready for public review
Purpose	Educate the RAC about the topic, issues, and ideas to prepare for deliberations	Learn about and discuss the options per sub-issues within the topic and consider how the options might be packaged together	Deliberate upon, prioritize, and to the extent possible, reach consensus on an overall approach to the topic, or at the least preferred or prioritized options	Put consensus-based decision in writing; forward to DNREC for review at Public Workshops; RAC will have a chance to react to public comments and revise recommendations

CURRENT STATUS

	Introduction	Options	Preliminary Recommendations	Review
Topic			<ul style="list-style-type: none">• Environmental Impact• Offsets• Risk Evaluation & Financial Assurance	<ul style="list-style-type: none">• Bulk Product Transfer• Sea Level Rise & Coastal Storm Impact Planning• Economic Effect



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Environmental Impact Work Group:

Existing vs Previous Use

November 7, 2018

Existing vs Previous Use

Statutory Reference:

§ 7014(c): An application for a conversion permit made under subsection (a) or (b) [which states that an owner, operator or prospective purchaser may submit an application for a permit] must include...the following items to be considered in assessing a conversion permit application:

“(1) The environmental impact and economic effect of the existing or previous use.”

- The statute states that the applicant must include impacts of the existing *OR* previous use.
- Applicant chooses whether to describe existing or previous use.
- The statute says that required items are “... *to be considered in assessing a conversion permit application.*”

“Existing or Previous Use” Options

Options

1. Applicant decides whether to describe the existing or previous use in their application (“Applicant Choice”).
2. DNREC produces baseline of environmental (and economic) conditions and applicant described any changes from baseline in the interim (“Baseline-DNREC burden”).
3. Write regs that say the Secretary will only consider an application if applicant describes both the previous and existing use (“Baseline-Applicant Burden”).
4. Write regs saying that Secretary will only consider the application if the existing use is described under certain circumstances and previous use is described under others (“Active vs Inactive”).

“Existing or Previous Use”

4. The Secretary will consider an application that follows one of the following frameworks:

Option	Active Sites	Inactive Sites
a.	Existing use	Existing use/Current status
b.	Existing use	Previous use

“Existing or Previous Use” Options

RAC Recommendation:

1. DNREC produces baseline report of current use and existing environmental conditions, impacts, and risks (consistent with Section 7015). In their application, Applicant describes their proposed changes from baseline as described above, further elaborating on the DNREC baseline report as they wish to (including any additional information on the environmental history of the site, if necessary, to understand how the existing environmental conditions came about).



Initial Environmental Impacts and Offsets Issues for RAC Consideration

Deliberative Draft

November 7, 2018

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Environmental Impact Definition Options for RAC Consideration

- **Option 1:** Provide CZCPA applicants with the discretion to use “releases” as a proxy for “impacts” as relevant.
 - Pros: Easy to determine, simple to track and document, relatively straightforward to quantify, consistent with current CZA program.
 - Cons: All releases do not necessarily result in environmental harm. To the extent offsets are required for releases that don’t actually result in adverse effects, applicants may choose to not go forward.
- **Option 2:** Require CZCPA applicants to estimate the adverse effects of releases on receptors.
 - Pros: May provide more realistic appraisal of environmental “impacts.”
 - Cons: May not provide a realistic appraisal of impact, depending on availability of data and practicality of obtaining them. Increased complexity and cost/ administrative burden for agency and applicants.

Environmental Impact Definition Options for RAC Consideration

- **Option 1:** Provide CZCPA applicants with the discretion to use “releases” as a proxy for “impacts” as relevant.
 - Pros: Easy to determine, simple to track and document, relatively straightforward to quantify, consistent with current CZA program.
 - Cons: All releases do not necessarily result in environmental harm. To the extent offsets are required for releases that don’t actually result in adverse effects, applicants may choose to not go forward.

Recommendation: The RAC recommends no change to the current approach utilized to characterize environmental impacts, consistent with the existing CZA statutory definition ‘environmental impact’ (Section 7004b(1)).

Offset Issues Introduced for RAC Consideration Today

1. How to operationalize “more than offset”?
2. How to operationalize “directly benefit Delaware”?
3. How to operationalize “annual basis”?
4. How tight should the “nexus” be between environmental impact and associated offset?

“More than Offset” Options for RAC Consideration (1)

- **Option 1:** Allowing the Applicant to make the case that its offset proposal more than offsets anticipated environmental impacts, however it chooses.
 - Pros: Maximizes process flexibility for applicant.
 - Cons: Lack of a “standardized” approach might increase administrative effort and complexity. Regulatory uncertainty for applicant.
- **Option 2:** Base offsets on permit limits, which reflect maximum allowable emissions.
 - Pros: Administrative simplicity. Actual facility emissions typically are well below permit limits. If applicant exceeds permit limits, existing laws and regulations address the issue through penalties, corrective action and/or other mechanisms.
 - Cons: Because permits do not necessarily address all environmental impacts (e.g., noise, aesthetics, some natural resource impacts, etc.), this approach may only be feasible for a subset of impacts identified in a CZCPA permit application.

“More than Offset” Options for RAC Consideration (2)

- **Option 3:** Require offsets to exceed impacts by a standard percentage.
 - Pros: Administrative simplicity and certainty for the applicant.
 - Cons: Applying a single, standard factor to ensure that offsets exceed environmental impacts might be overly rigid, insufficiently reflective of case-specific situations. Developing a defensible basis for use of one or more standard “factors” can be difficult, and might require significant administrative effort by the agency.
- **Option 4:** Allow and prioritize a combination of some or all of the previous options.
 - Pros: Provides an opportunity to tailor regulations in a way that maximizes “pros” and minimizes “cons.” Ensures inclusivity of all environmental impacts, whether permitted or not.
 - Cons: Combining options potentially increases administrative complexity and effort for the agency and applicant, and can increase regulatory uncertainty for applicant.

Community Engagement and Public Workshops

Proposed Plan for Public Workshops

Ian Yue

Delaware DNREC

CZCPA RAC Meeting #7

December 11, 2018

Recap: Community Meetings & Public Workshops

- **Community Meetings**
 - 8 meetings held to date
 - Goal: Inform fenceline communities about the regulatory development process and ways to provide input
- **Public Workshops**
 - 2-3 Workshops around late January to mid-February
 - Goal: Inform the general public about the regulatory development process. Gather feedback on preliminary RAC recommendations and any other questions the RAC poses to the public.

Recap: Goals of Public Workshops

- Engage members of the public who have otherwise been unable to engage during daytime meetings. → *Evening Workshops*
- Inform people about the overall regulatory development process and the role of regulations. → *Overview presentation*
- Interact with people on the issues informing RAC deliberations and, as available, preliminary RAC recommendations.
→ *Information stations with focused feedback forms*



Information stations on issues the RAC is deliberating on and, as available, RAC recommendations.



Feedback forms ask for comments on topic-specific recommendations.



Presentation on CZCPA regulatory development process and role of regulations



Proposed Approach to Information Stations

- Two types of stations: Overview stations and Topical stations
- Overview stations (2 overall)
 - *Background station* – Overview of CZA and regulation development, purpose of regulations, how to engage with topical stations
 - *Map station* – Static and interactive maps of 14 sites
- Topical stations (5 overall)
 - 3 larger *poster-board displays* – Environmental Impact and Offsets, Risk and Financial Assurance, Planning for SLR and Coastal Storms
 - 2 smaller *posters* – Economic Effect, Bulk Product Transfer
- Feedback forms – Focused and topic-specific

Other Public Workshop Considerations

- At least one DNREC staff member will be assigned to each station
- RAC Members strongly encouraged to attend Public Workshops.
 - Will be provided name tags and note pads
 - No specific assignment; may walk around or stay at certain stations
- Workshop Materials and Public Comments
- Pre-Workshop Outreach
 - At least 3-week notice via local newspapers; DNREC website, press release, listserv; passing along information through RAC Members, legislators, and community groups/contacts
 - Other ideas?

Discussion: Thoughts? Questions? Suggestions?

Next RAC Meetings (Tentative Details)

- **Tues, Jan 22, 9:00am – 4:00pm**
Location: Delaware Technical Community College (Wilmington)
- **Tues, Feb 19, 9:00am – 4:00pm**
Location: DNREC Lukens Drive Office (New Castle)
- **Tues, Mar 12, 9:00am – 4:00pm**
Location: Buena Vista Conference Center (New Castle)
- **Tues, Mar 26, 9:00am – 4:00pm** (*only if needed*)
Location: DNREC Lukens Drive Office (New Castle)
- **Tues, Apr 9, 9:00am – 4:00pm**
Location: Buena Vista Conference Center (New Castle)