

**COASTAL ZONE CONVERSION PERMIT ACT REGULATORY ADVISORY COMMITTEE MEETING #7  
DECEMBER 11, 2018**

APPROVED BY THE CZCPA RAC ON JANUARY 22, 2019

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 December 11, 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 November 7 meeting. The RAC refined draft recommendations related to risk evaluation and financial assurance and environmental impact. DNREC staff also presented a brief 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](http://de.gov/czcpa).

**ACTION ITEMS**

Who	What
RAC members	<ul style="list-style-type: none"> <li>• Review materials prior to next RAC Meeting.</li> <li>• Send Ian Yue pictures that DNREC could use on Public Workshop publicity posters.</li> <li>• Send Ian Yue suggestions of questions to pose to the public at the Public Workshops.</li> </ul>
DNREC/DOJ	<ul style="list-style-type: none"> <li>• Post all presentation slides, background materials, and the approved November 7 meeting summary to the CZCPA RAC webpage at <a href="http://de.gov/czcpa">de.gov/czcpa</a>.</li> <li>• Prepare all approved recommendations for transmittal to the Secretary from the Chair.</li> <li>• Refine Public Workshop plan based on RAC feedback.</li> <li>• Develop answers to Frequently Asked Questions for use at the Public Workshops.</li> <li>• Distribute draft December 11 meeting summary to RAC for review (will finalize at January 22 meeting).</li> <li>• With CBI, develop draft agenda for January 22 meeting.</li> </ul>
IEc/DNREC	<ul style="list-style-type: none"> <li>• Develop materials for further RAC discussions on Offsets</li> </ul>
CBI	<ul style="list-style-type: none"> <li>• Prepare draft meeting summary.</li> <li>• Draft agenda for January 22 meeting.</li> </ul>

**UPCOMING MEETINGS AND EVENTS**

Event	Date	Venue
RAC Meeting #8	Tuesday, Jan. 22, 2019	Delaware Technical Community College – Wilmington Campus (Conference Rooms A and B, Southeast Building, 1 <sup>st</sup> Floor), 300 N Orange St, Wilmington, DE 19801
RAC Meeting #9	Tuesday, Feb. 19, 2019	DNREC Lukens Drive Office (Pat Ellis Conference Room and Conference Room B), 391 Lukens Drive, New Castle, DE 19720

RAC Meeting #10	Tuesday, Mar. 12, 2019	Buena Vista Conference Center (Buck Library), 661 S. DuPont Hwy, New Castle, DE 19720
RAC Meeting #11	Tuesday, Apr. 9, 2019	Buena Vista Conference Center (Buck Library), 661 S. DuPont Hwy, New Castle, DE 19720

The most detailed and up-to-date information on upcoming CZCPA meetings and events is posted on the Delaware Public Meeting Calendar at [de.gov/czcpameetings](http://de.gov/czcpameetings).

## DISCUSSION

Below is a summary of key topics discussed during the meeting. All presentation slides are available at [de.gov/czcpa](http://de.gov/czcpa).

### RAC Business

The November 7 meeting summary was approved by the RAC with no changes. Due to a member of the public recording the proceedings of the RAC Meeting, DNREC and the Chair clarified to the RAC that the Procedures for RAC Operations allows video recording, as long as the Chair is notified ahead of time and the camera is kept stationary. The member of the public recording the meeting agreed to follow these procedures.

### Risk Evaluation and Financial Assurance: Recommendation Development Phase

#### Presentation

Mike Donlan (IEc) presented a table summarizing financial assurance options by risk event category (see Appendix B<sup>1</sup>). The table provides information on:

- Event categories of expected financial risk.
- The process used in establishing financial assurances for each risk event.
- The way to determine the amount of financial assurance necessary to meet the requirements of the CZCPA.
- The types of financial assurance instruments being considered.
- Each instrument's ability to both adapt to the time horizon of a risk event and to ensure funds are available in the time and amount necessary.

Mr. Donlan emphasized that financial assurance for conversion permits will not operate in a vacuum; there are existing laws and regulations that already require certain forms of financial assurance that may address certain events on the 14 heavy industry use sites. When it comes to conversion permit-specific financial assurance, the RAC is being asked to consider whether the financial assurance required under existing laws and regulations is sufficient under circumstances of alternate or additional heavy industry use. If the RAC determines this financial assurance is not sufficient, it should identify the additional financial assurance an applicant should be required to provide. For the proposed financial assurance instruments on the summary table, the appropriateness of a certain instrument to a specified risk event category may vary based on (a) how adaptive they are to the time horizon of the risk event and (b) if they provide reasonable assurance of funds availability in the timing and amounts necessary.

#### Discussion

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

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<sup>1</sup> Appendix B reflects the editing suggestions made during the RAC's discussions.

## General comments

- Why doesn't conversion permit financial assurance require the developer to bring the site back to pre-development conditions?
  - IEc Comment: The financial assurance requirements come directly from statute. There may be state or federal statutes that require more cleanup.
  - DNREC Response: Remediation at these sites is not intended to bring sites back to pristine conditions. Rather, the focus is on containing contamination to avoid leaching and similar issues that may affect adjacent lands and waters. Cleanup standards for industrial settings are usually different from residential standards.
  - RAC Member: Sites are generally not cleaned to pristine conditions because (1) it is very expensive to do this and (2) the technology is oftentimes not available. Technologies are still being developed, and it may be awhile before they are at a level where they can be effective. In the meantime, the goal for contaminated sites is to contain the contamination and redevelop the sites with appropriate uses.
- It is critical that economic development not override the health of residents. This has happened in the past and the new conversion permitting process should ensure it does not happen again.
- The RAC should discuss at an upcoming meeting if there will be a permit renewal process and how financial assurance should be incorporated into that process.

## Risk Event Category: Actions to minimize environmental damage, etc.

- The “concept plan” is an opportunity to ensure there is post-site closure monitoring.

## Risk Event Category: Actions to address future incidents resulting in environmental contamination

- DNREC needs to clarify the scope of financial assurance under the CZCPA. Does the statute limit coverage to environmental contamination only? Or can it be interpreted to cover damage to infrastructure, tourism, public health, economic health, etc.? These should also be covered if possible.
  - DNREC/DOJ Response: The RAC can make a recommendation to the Secretary on this topic. DNREC and DOJ would determine what can legally be included in the regulations. The RAC could also address this topic when it discusses the definitions of certain terms in the statute.
- IEc Comment: Financial assurance is rarely used for extraordinary future incidents. It is most commonly used for site closure, site monitoring, and decommissioning of groundwater wells and storage tanks in the case that the responsible party defaults. The RAC should focus on what financial assurance is appropriate for the activities a site is permitted for rather than focus on a potential future “black swan” event. This kind of financial assurance is usually triggered after an incident occurs and is tailored to the activities that will be required to address the specific incident that occurred.
  - Does the statute require applicants to have sufficient financial assurance for a “black swan” event (e.g., upon permit approval or after an event occurs)?
  - IEc Response: These types of incidents mainly have to do with natural resource damages. There are multiple statutes at the federal level that look at damages to natural resources. If a proposed poses a very large risk, DNREC can choose to reject the conversion permit application. In other words, financial assurance is one way to address risk but not the only way.
- The RAC should discuss financial assurance versus financial insurance and how these apply under the CZCPA.

- Applying for a Coastal Zone Permit today is already a difficult undertaking. We need to find common ground to ensure the Conversion Permit process will not deter new businesses from coming to Delaware.

#### **Types of financial assurance instruments**

- IEc Comment: With regards to the range of financial assurance instruments available, the discussion comes down to whether the RAC would like to include all the instruments as part of its recommendations or not (particularly the extent to which self-insurance might be allowed). Generally, third-party insurance options cost more than self-insurance products. It is also important to note that while regulations may allow certain instruments for a specific risk category, DNREC discretion during the application process may also affect whether a certain instrument is deemed appropriate or not.
- Trust funds seem like a good instrument to include in the RAC's recommendations. They would help provide funds if a company abandoned their site and did not have sufficient funds to cover closure.
  - IEc Comment: There are existing trust funds or pools. For example, the federal Oil Pollution Fund is funded by a tax on oil production. If an applicant is already paying into an existing pool, they may not need or want to secure additional forms of financial assurance for their permit.
- The regulations should address whether applicants will be allowed to transition from one package of instruments to another over time. Are there instances in which self-insurance is used initially and then, upon re-evaluation, there is a transition to third-party insurance?
  - IEc Response: Yes, most recently we've seen a trend in state programs beginning to focus on hybrid models, often shifting from self-insurance instruments, at the beginning, to third-party instruments as operations mature (e.g., Letter of Credit after 10 years).
- The RAC should consider the relative administrative burden for the different types of instruments. For example, a review of self-insurance instruments in an application may require additional DNREC or outside expertise. Application fees could be tied to the types of financial assurance an applicant selects.
- The RAC should recommend that self-insurance instruments be considered the least-preferred instruments for actions to minimize environmental damage and stabilize and secure the site upon termination, abandonment, or liquidation of site activities.
- It doesn't make sense to restrict self-insurance, given the variety of situations that may occur under a conversion permit. Moreover, the Secretary always has discretion over whether a specific instrument is appropriate for a given permit.
- The regulations should address if periodic reviews of the amount and form of a permittee's financial assurance package are needed to ensure it is still appropriate and make adjustments for inflation. For example, DNREC could conduct annual overview reviews and a full review every five years.
- The RAC could recommend offering either (1) an expedited or less complex review for applicants who use third-party instruments or (2) a clearly described, stepped process where the applicant has to explain why, how, and what protections are in place should they utilize self-insurance options. DNREC would need to develop the criteria an applicant needs to meet to be allowed to use certain types of more risky financial assurance instruments.

### Decisions and next steps

The RAC approved the summary table with the agreed-upon edits, which are contained in Appendix B, and the following additional recommendations:

- Financial assurances, in general, must be commensurate with the use (and its associated risks) proposed by the conversion permit applicant.
- The form and amount of financial assurances should be reviewed at appropriate periodic intervals, since financial conditions can change once a conversion permit is in place. Such review should occur for the life of that permit.
- The Secretary should define more clearly “environmental damage”, as outlined in the statute. Does such damage include natural resources damages, public health damages, or economic loss associated with natural resource-related activities such as fishing, swimming, boating, and beach-going?
- The RAC supports providing a range of financial assurance instruments, from trust funds to captive insurance, as described in Appendix B. However, self-insurance instruments are not preferred for actions to minimize environmental damage and stabilize and secure the site upon termination, abandonment, or liquidation of site activities, since that time frame is likely many decades out and/or bankruptcy could cause such closure. Thus the RAC recommends the following:
  - The Secretary should consider either offering expedited or less complex review for applicants who use third-party instruments or a clearly described, stepped process where the applicant has to explain why, how, and what protections are in place should they utilize self-insurance options.
  - Like all instruments, self-insurance instruments will need to be reviewed at appropriate periodic intervals.
  - DNREC review of self-insurance options will likely require expertise beyond DNREC’s current staffing and expertise. Thus, the Secretary should ensure that, for any applicant utilizing self-insurance, DNREC is able to cover the additional administrative costs of reviewing and considering such financial instruments and that such costs be taken into account when determining the application fee.
  - The RAC encourages the Secretary to ensure that they have the authority, in the periodic review of self-insurance instruments, to require those who self-insure to carry a blended approach of third-party and self-insurance instruments and/or to move to only third-party instruments, as circumstances merit.

DNREC staff will prepare the approved table and these recommendations for transmittal to the Secretary from the Chair. A discussion of permit renewal options will be added to a future meeting agenda.

### **Environmental Impact: Recommendation Development Phase**

#### Presentation and discussion

Mike Donlan (IEc) presented for the RAC’s consideration two revised recommendations on the topic of environmental impact: (1) a baseline report of existing and previous uses at the 14 heavy industry use sites and (2) how to characterize “environmental impact”. The RAC workshopped the presented language over the course of its discussion. The comments below are from RAC members unless otherwise specified:

### **Baseline report of existing and previous uses at the 14 heavy industry use sites**

- This report would be consistent with the RAC's early recommendation to create an economic baseline report.
- The regulations should allow applicants to add additional information to their permit application to supplement the information contained in the baseline report. This would be particularly important if there is an information gap between the publication date of the baseline report and the date of application.
- Does DNREC have the data and resources to produce this report?
  - DNREC Response: The baseline report will probably be a compilation of reports that have been previously published that take into account the historical uses of the sites. The statute already contains language requiring DNREC to produce a similar report biennially so this task may be within our mandate already. The Delaware Division of Small Business has also offered to help with the economic side of the baseline report.
- The wording in the statute is difficult. The report should focus on the existing environmental condition of the site, informed by existing and previous uses as appropriate.

### **Characterizing "environmental impact"**

- The chosen approach should ensure that impacts that are not true "releases" (e.g., increased truck traffic) are included under the definition of "environmental impact".
- These regulations should be consistent with the way the current Coastal Zone Act (CZA) permit program interprets "environmental impact", which, in turn, is consistent with the statutory definition of "environmental impact". The RAC may not need to re-invent the wheel.
- DNREC Comment: This section of the CZCPA was written to address a sense within DNREC that the current Coastal Zone offsets program warranted some improvements. Industry often has trouble complying with the current program because they struggle to match an offset project to an impact at the correct scale and in the right medium. The RAC could recommend a new approach to characterizing "environmental impact" but it does not have to.

### Decisions and next steps

Based on its discussion, the RAC modified the preliminary recommendation on this topic submitted to the Secretary on November 19 to read:

- DNREC should produce a baseline report of current use and existing environmental conditions, impacts, and risks on the 14 heavy industry use sites (including but not limited to those items described in Section 7015). In their conversion permit application, the applicant may describe any proposed changes from that baseline, further elaborating on the DNREC baseline report as they wish (including providing additional information on the environmental history of the site, if necessary, to explain how the existing environmental conditions came about).
- For CZCPA purposes, environmental impacts should be characterized in the same manner used to characterize environmental impacts under the current CZA permit program, consistent with the existing CZA statutory definition of "environmental impact" (Section 7004(b)(1)).

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

### **Offsets: Recommendation Development Phase**

#### Presentation and discussion

Mike Donlan (IEc) reminded the RAC of the relevant statutory language for offsets. Guided by this language, the Offsets Work Group developed options for the following issues for RAC consideration:

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

Due to time limitations, the RAC’s discussion focused on the first issue: operationalizing “more than offset”. The Work Group developed four options for this issue:

- Option 1: Allow the applicant to make the case that their offset proposal more than offsets anticipated environmental impacts, however they choose. (DNREC’s current approach)
- Option 2: Base offsets on permit limits, which reflect maximum allowable emissions.
- Option 3: Require offsets to exceed impacts by a standard percentage (e.g., a 1.3 ratio). (DNREC’s current approach for air emissions)
- Option 4: Allow and prioritize a combination of some or all of the previous options.

The comments below are from RAC members unless otherwise specified:

- It is hard to use Option 3 (standard percentage) for different types of media that may be difficult to quantify. The 1.3 ratio is best suited to air emissions regulated under the Clean Air Act.
- The CZCPA is an opportunity for DNREC to adopt a new approach. The RAC should consider if it would be appropriate to include a new approach (or multiple approaches) in the new regulations.
- Option 1 is comprehensive while still allowing DNREC the discretion to ask an applicant to resubmit an offset approval, if necessary.
- By setting a specific value/threshold for a permittee to exceed (Option 3), there is the advantage of knowing that the permittee will exceed the impact level.
- Option 3 would be difficult to implement if we do not offset direct (i.e., in-kind) offsets.
- It is important to ensure offsets benefit the local, impacted community.
- The RAC previously discussed the idea to use a sliding scale for Option 3. We should keep this idea on the table because it allows DNREC to target offset projects near where the impact is occurring.
- Option 2 may not be appropriate for an applicant who is emitting slightly less than their permitted limit because it would not meet the criteria of “more than offset”.
- Option 4 would allow applicants the flexibility to tailor offsets to their capacity to complete offset projects. This would be particularly helpful for smaller companies that may have fewer resources to carry out an offset project.
- Does DNREC have a prioritized list of offset project options?
  - DNREC Response: The agency does not have such a list yet. Prioritizing may be difficult if, for example, there is a priority to build or restore a certain amount of wetlands but the impacted media is air. This would require cross-medium offsets, which would require a common “currency” that allows for such cross-medium “trades”. The Offsets Work Group discussed this approach but not at an in-depth level.

#### Decisions and next steps

Due to time limitations, the RAC will continue its discussion of this topic at its January 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 has participated in eight community meetings to-date to inform fenceline communities about the regulatory development process and ways they can provide input. Two to three Public Workshops will be held in February 2019. These Public Workshops are intended to inform and gather feedback from the larger public. The Public Workshops will be held in the evening and will include an overview presentation of the process and information stations staffed by DNREC employees. Information stations will contain information on the overall process and five of the key issues considered by the RAC in 2018: environmental impact and offsets, risk evaluation and financial assurance, planning for sea level rise and coastal storm impacts, economic effect, and bulk product transfer. The public will have the opportunity to provide focused, written feedback that can inform future RAC discussions and recommendations. Feedback gathered during the earlier community meetings will be used to inform the materials and presentations used at the Public Workshops.

RAC members are strongly encouraged to attend the Public Workshops and assist DNREC staff in pre-Public Workshop outreach efforts. RAC members should also send Ian (1) pictures that DNREC could use on publicity posters and (2) suggestions of questions to pose to the public at the Public Workshops. RAC members were supportive of this Public Workshop plan.

### **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 January 22, 2018. At that meeting, the RAC will engage in agreement-seeking on recommendations for the remaining offsets issues, review all of the recommendations submitted to the Secretary to-date, discuss cross-cutting issues, and prepare for the Public Workshops. This RAC meeting, and all upcoming RAC 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):

- In the financial assurance table of Risk Categories<sup>2</sup>, row 2, the RAC should consider re-writing the category title to read "Action to minimize all environmental damage, including stabilizing and securing the site 'upon termination, abandonment or liquidation of site activities'". This change would make the wording more encompassing.
- The DuPont Company built an industrial incinerator to deal with organic and inorganic contamination issues. It is not as costly to deal with contamination as one RAC member noted it to be.
- The RAC needs technically competent members who can speak to risk evaluation issues. I have voiced this concern at past RAC meetings but there has been no change. For example, I spoke with a chemical engineer recently who is knowledgeable about ethylene oxide plants. This type of plant was at the center of the incident at Croda at the end of the Thanksgiving holiday. It is

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<sup>2</sup> See Appendix B.



woefully neglectful of DNREC to allow such equipment to be built, given the danger it could have caused to the Delaware Memorial Bridge.

- Typically, when process engineers decide on design processes, they decide what capacity to design for (usually 125% of expected output). Regarding the offsets discussion of “more than offset”, 130% (the 1.3:1 ratio) seems very high.

Stephanie Hansen (Delaware State Senate):

- The idea of requiring applicants to submit a “concept plan” for financial assurance is something I came up with at the time the General Assembly was drafting the CZCPA. The intent of this “concept plan” provision was for applicants to demonstrate that they have a plan to address any future incidents under all of the statutes they operate under and have the necessary financial assurance and insurance. The bill’s drafters wanted to ensure that the discussion of risks and potential events were addressed early on, at the time of application. Today’s discussion on these topics was in line with the bill drafters’ goals.
- One thing the General Assembly did not discuss was how natural resource damages might factor into conversion permit financial assurance. Concerns about broader environmental damage should be addressed by the Natural Resource Damages Assessment (NRDA) process. NRDA’s are already part of the Hazardous Substances Control Act (HSCA).

Dave Carter (New Castle County Council):

- New Castle County has more planning capacity than it had when the CZA was written, and this reality is being missed in these discussions. Some assumptions may no longer hold true.
- Land use and zoning are key issues for the county to consider with the CZCPA in place. The Council is looking at what zoning and planning reviews can be done for these 14 sites so we can protect the public, particularly environmental justice communities. The RAC has not spoken to the effect these new regulations will have on county planning staff. The new regulations will greatly and disproportionately affect New Castle County. I would be happy to talk to RAC members about the zoning and planning work we are doing at the county level.

Simeon Hahn (National Oceanic and Atmospheric Administration, Office of Response and Restoration):

- The CZCPA provides an opportunity to improve jobs and environmental health in the Coastal Zone, as well as address existing soil and groundwater contamination issues.
- The NRDA approach entails a long series of political and legal battles. This approach is better suited to short-term clean-up and containment efforts rather than mitigating long-term impacts.
- When discussing past impacts and future incidents, the RAC should consider how the new regulations address past releases. For instance, there is a site that has released polychlorinated biphenyls (PCBs) into the Delaware River. There are a lot of environmental damages as a result of this issue. This site was sold to the state and is now open for re-development. How do we address this?
- Regarding trust funds, it is easier to access funds for immediate clean-ups but very difficult to access funds for overall restoration. In my work with NOAA, I have been working to set up working groups with developers to address this.
- When developing regulations related to economic effect, the economic value of the estuary should be factored into the economic analysis.

Sarah Bucic (Community member):

- When House Bill 190 (the CZCPA) was passed, there was discussion about if DNREC could handle this new administrative burden. I am hearing concerns today about DNREC's capacity to implement and oversee all of these new requirements (e.g., the need to contract out some work). DNREC is a state agency that is supposed to protect us. DNREC needs to be able to monitor these sites so the public is protected.
- I would like the RAC to spend more time discussing what should happen in the case of bankruptcy and limited liability company (LLC) dissolution. How will DNREC pursue financial assurance in cases where financial assurance is put under an LLC and the LLC dissolves? How will the regulations prevent the state and taxpayers from being left on the hook for cleanup?

**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)

<b>Name</b>	<b>Affiliation</b>
Jennifer Adkins	Partnership for Delaware Estuary
Brenna Goggin	Delaware Nature Society
Jeffrey Gordon (Designated Alternate for Tim Konkus)	Main Street Delaware City
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
Larry Lambert	Claymont Renaissance Development Corp.
James Maravelias	AFL-CIO
Jerry Medd	Pilots’ Association for the Bay and River Delaware
Mary Peck (Designated Alternate for Brenna Goggin)	Delaware Nature Society
Robert Whetzel	Richards, Layton & Finger
Delores Whildin	Resident of Claymont
Marian Young	BrightFields, Inc.

DNREC staff and other state employees

<b>Name</b>	<b>Affiliation</b>
Sierra Davis	Delaware DNREC
Dirk Durstein	Delaware DOJ
Judy Jordan	Delaware DNREC
Andrea Kreiner	Delaware DNREC
Susan Love	Delaware DNREC
Bob Scarborough	Delaware DNREC
Ian Yue	Delaware DNREC

Facilitation and consulting team

<b>Name</b>	<b>Affiliation</b>
Michael Donlan	Industrial Economics, Inc.
Patrick Field	Consensus Building Institute
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)

<b>Name</b>	<b>Affiliation</b>
Sarah Bucic	Community Member
David Carter	New Castle County Council
Bill Dunn	Civic League for New Castle County
Simeon Hahn	National Oceanic and Atmospheric Administration
Stephanie Hansen	Delaware State Senate
Jakim Mohammed	16th Representative District Resident
Yolanda Mohammed	16th Representative District Resident
Angelique Rodriguez	Delaware LECET
David Swayze	Parkowski, Guerke & Swayze
Mark Wolanski (Designated Alternate for S. Douglas Hokuf, Jr.)	New Castle County

**APPENDIX B: SUMMARY TABLE OF FINANCIAL ASSURANCE BY RISK EVENT CATEGORY**

Risk Event Category	FA Process	FA Amount	Types of FA Instruments								
			Third-Party Instruments			Self-Insurance					
			Trust Fund	Letter of Credit	Insurance Policy	Surety Bond	Corporate Financial Test	Corporate Guarantee	Captive Insurance		
<p>Actions to address existing site contamination.</p> <p>Time Horizon: Short to Medium Term</p>	<p>CZCPA applications should identify actions, and associated FA, to address current site contamination. DNREC conducts application-specific evaluations of the sufficiency of existing FA, coordinating with other state and federal personnel familiar with the site.</p> <p>A "concept plan" of action(s) must be submitted with the conversion permit, along with a proposal for associated FA. Upon DNREC approval of a "final plan", the permit applicant should be required to procure the approved FA and evince such FA to DNREC prior to site operation.</p>	<p>The need for and amount of conversion permit FA should be determined on an application-specific basis. Such determination should be based on the degree to which existing FA at the site is sufficient to meeting existing site needs. Amount of FA should be incremental to all existing site FA.</p> <p>Face value should be equal to the estimated cost of completing the activities in the DNREC-approved plan, including DNREC oversight/administration costs. The face value should be downward adjusted to the degree existing FA covers activities identified in the DNREC-approved plan.</p>	●	●	●	●	●	●	●	●	●
<p>Actions to minimize environmental damage, stabilize and secure the site 'upon termination, abandonment or liquidation of site activities'</p> <p>Time Horizon: Medium to Long Term</p>	<p>Any approved permit should include language stating that FA will be required to address site-specific actions to address environmental contamination incidents if/when they occur. DNREC should be mindful that other existing state/federal requirements may affirmatively require FA for such actions pursuant to other regulatory authorities.</p>	<p>The Secretary should consider a two pronged approach for future possible but unknown incidents. First, the Secretary should evaluate the potential use and availability of insurance or similar mechanisms to ensure availability of some funding in advance of the occurrence of a future triggering event. Second, following an incident, DNREC should ensure that sufficient FA is put in place such that the face value should be equal to the estimated cost of specified actions to minimize environmental damage, including DNREC oversight/administration costs. The face value should be downward adjusted to the degree existing FA covers such actions.</p>	●	●	●	●	●	●	●	●	●
<p>Maintenance or repair of site or infrastructure improvements to address sea level rise or coastal storms</p> <p>Time Horizon: Short to Long Term</p>	<p>CZCPA applications should identify any site or infrastructure improvements that will be undertaken to address sea level rise or coastal storms. DNREC conducts application-specific evaluation of the extent to which FA is needed to ensure sufficient funds to address associated maintenance and/or potential future repair.</p>	<p>Face value should be equal to the estimated cost to maintain and/or repair relevant infrastructure and site improvements, including DNREC oversight/administration costs. The face value should be downward adjusted to the degree existing FA covers such actions.</p>	●	●	●	●	●	●	●	●	●

**KEY:**  
● FA instrument is adaptive to the time horizon of the risk event **and** provides reasonable assurance of funds availability in the timing and amounts necessary assuming the instrument is structured correctly.  
● FA instrument is not easily adapted to the time horizon of the risk event **or** may not provide reasonable assurance of funds availability in the timing and amounts suggested by the risk event category.  
● FA instrument is not easily adapted to the time horizon of the risk event **and** does not provide the regulator with reasonable assurance of funds availability.