

14 December 2018

The Honorable Shawn M. Garvin  
Secretary of the Department of Natural Resources and Environmental Control  
Office of the Secretary  
89 Kings Highway  
Dover, Delaware 19901

Dear Mr. Secretary:

In order to provide you with the greatest time to draft regulations for Coastal Zone Conversion Permits, as directed by the Delaware General Assembly under the Coastal Zone Conversion Permit Act (CZCPA), I am writing to share with you our second set of preliminary recommendations developed by the CZCPA Regulatory Advisory Committee (RAC) at its December 11 meeting.

These recommendations are presented below by topic.

*Recommendations regarding Ensuring Economic Benefit to Delaware*

From the previous meeting, I wanted to forward a general recommendation of the RAC that I did not include in the first letter. The RAC emphasizes that local, robust hiring is an intent and goal of the CZCPA. Thus, the RAC recommends that the Secretary, to the degree his or her role and authorities allow, seek to encourage and ensure such local hiring preferences and actions.

*Recommendations for Reporting Environmental Impact and Net Environmental Improvement on Conversion Permits (7 Del. C. 2017, § 7014(c)(1-3))*

Please note the following is a modification to the preliminary recommendation on this topic forwarded to you on 19 November 2018:

- 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 his or her 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)).

*Recommendations for Evidence of Financial Assurances (7 Del. C. 2017, § 7014(c)(8))*

Attached to this letter is a table of recommendations per financial assurances. This table provides information on: (1) event categories of expected financial risk, (2) the process used in establishing financial assurances for each risk event, (3) the way to determine the amount of financial assurances necessary to meet the requirements of the Act, (4) the types of financial assurance instruments available, and (5) 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.

In addition to this table, the RAC offered the following 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 the table below. 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 he or she has 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.

Please note that all of the above preliminary recommendations are subject to change based on the feedback received at forthcoming CZCPA Public Workshops.

In the coming meetings in early 2019, I expect the RAC will delineate recommendations for an approach to offsetting net negative environmental impacts and addressing such cross-cutting issues as the definitions of “site” and “anticipated useful life of the facility and infrastructure in connection with the applied-for use.” I also foresee the RAC discussing the topics of permit amendments and duration and the need for (and approach to) environmental monitoring, post-permit approval.









Should you have any questions or need for clarification, please feel free to reach out to me.

Sincerely,






Randy J. Holland  
CZCPA RAC Chair



<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>							 <p>Short Term</p>  <p>Medium to Long Term</p>
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**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.