

23 January 2019

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 the Department's 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 January 22, 2019 meeting.

These recommendations are presented below by topic.

Recommendations regarding Offsets to Environmental Impacts

1. Note that under 7 Del. C. §7014 all offsets shall directly benefit Delaware.
2. The offset proposal must more than offset all environmental impacts (including but not limited to one-time impacts and annual environmental impacts over the duration of the permit (life of the facility?)).
3. An offset project should be located as close as possible to the site and, to the greatest extent possible be consistent with the negative impact in medium, duration, timing and pollutant.
 - a. For example, if adverse impact is the emission of 10 lb of NO_x annually over the useful life of the plant, the most suitable offset is to reduce another source of NO_x on the site by more than the new emission over the useful life of the plant.
 - b. Or if a new process will emit 90 decibels of noise 12 hours a day over some specified time period, the offset could focus on reducing other sources of noise in the community (e.g., building structures to reduce noise for a nearby highway or facilitating a change in truck routes to reduce truck-related noise in the local community).
4. If the applicant is unable to identify an offset for the same pollutant in the same medium on or close to the site, then they should offset a similar pollutant or environmental impact. "Similar" means a pollutant that has the same type of effect on the environment when it is released (e.g., offset a benzene (VOC) emission that would affect ozone with a different VOC (xylene)).

5. If it is not possible to offset a particular environmental impact on or near the site, then the applicant should identify an offset project for the pollutant in the same medium somewhere else in the Coastal Zone, but as close as possible to the site.
6. If it is not possible to offset the same pollutant or impact somewhere else in the Coastal Zone, then the applicant should search for another location in Delaware, with preference given to potential projects closer to the Coastal Zone.
7. If the applicant is not able to identify an appropriate offset project through the previous steps, they should consider:
 - a. the environmental effect and attempt to identify an offset as close to the site as possible that will counter that negative effect (e.g., if the project could negatively affect waterfowl habitat that can't be restored or protected, make a donation to a bird rescue and rehabilitation organization); or
 - b. an offset for the same pollutant in a different medium as close to the site as possible (e.g., if the environmental impact is a NO_x emission to the air, then a potential offset project may be to reduce nutrients from stormwater in the watershed that is home to the project).
8. If the applicant is not able to identify an appropriate offset project through the previous steps, applicant may propose an alternative environment improvement project of commensurate value to Delaware's coastal resources, as close to the site as possible.
9. Related considerations and recommendations:
 - a. To the extent feasible the offset process should encourage concurrent permitting or consultation to provide administrative efficiencies and facilitate coordination among the applicant and regulators.
 - b. With respect to the location of offset projects, local impacts should be offset locally.
 - c. Minimizing environmental impacts is a priority in the CZCPA process. The offset process is intended to address environmental impacts that cannot be avoided or further minimized.
 - d. The existence of an offset process does not in any way limit DNREC's authority to reject conversion permit applications with environmental impacts determined to be too severe or for which potential offset projects have insufficient nexus.
 - e. The Secretary should provide greater clarity on the process and procedures for demonstrating offset consistency with these rules and priorities.

Definition of Useful Life of a Facility

“Useful life” means the period of time that an applicant or permittee expects to operate a facility that requires a coastal zone conversion permit. The useful life equals thirty (30) years unless the Secretary allows an application for, or issue a permit for, a different time period. *This definition is potentially pertinent to sea level rise planning, financial assurances, permit duration, and offsets.*

Definition of Permit Modification

Modifications to an existing permit would be allowed. If the Secretary grants a request for a modification, only the conditions subject to modification are reopened. The remainder of the permit remains as is. Modifications would occur in two forms: minor and major.

Minor modifications would be: for administrative changes and would not require a public notice. Administrative changes included but are not limited to corrections of spelling or grammatical errors, a change in only the name of the owner or operator of a permittee or other administrative matters that do not affect the substantive requirements prescribed by the permit.

Major modifications would be: changes that affect the substantive requirements of the permit and would require public notice and review. A modification of the ownership or operating entity in a permit shall be granted only in the event that the prospective permittee satisfies all the applicable requirements under these regulations.

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 February meeting, I expect the RAC will finalize most if not all of their recommendations for additional issues as the definitions of "site," permit amendments and duration, and the need and approach for monitoring post-permit approval. Once the RAC receives public feedback in workshops in three locations (Claymont, Wilmington, and Delaware City), the RAC will reconvene in March to consider public comment and work to consider its draft recommendations in total.

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

Sincerely,



Randy J. Holland
CZCPA RAC Chair