

Cross-Cutting Issues

Revised Proposals for Regulatory Approaches

For RAC Discussion and Consideration
February 19, 2019

Definition of “Project Site”

“Project Site” means the physical location at which a permitted facility operates, or the location where a proposed project that is the subject of a conversion permit application will operate. A project site may comprise an entire tax parcel or parcels, or part(s) of any tax parcel(s), however, its preliminary boundary shall be defined prior to the issuance of a permit, in the application for a permit, and its final boundary after a permit is granted by the Secretary, in the permit. For nonconforming uses, if a project site’s boundary is not defined in a permit, the boundary is the footprint in Appendix B of these regulations.

Permit Duration, Renewal, and Revocation

Duration: 3 options to consider:

1. Permit duration of 15 or 20 years.
2. Permit duration equal to the “Useful Life” as defined last meeting.
3. Permit duration at the discretion of the Secretary, with parameters (e.g., “not less than five years nor more than twenty years”).

Considerations:

- In contrast with the past CZA permits, which had no termination date or allowance for potentially ongoing impacts, the CZCPA explicitly calls for offsets on an annual basis. Given the complexity of these facilities and their impacts, it is likely to be more difficult to predict and address some to many impacts beyond a reasonably predictable window, say ten years. Beyond such planning horizons, numerous uncertainties may affect the efficacy of various permit provisions. Examples of the uncertainties include new technologies, unanticipated cumulative impacts, changes in ownership and operator organizations, surrounding land uses and climate change.
- Very few permits granted by DNREC are “one and done.” Air and water permits all have limited durations, even for facilities that may have a useful life of decades. The renewal of the permit provides all parties a chance to review past data, the current situation, and future changes to prepare a new permit.
- As seen below, Site Plans for Sea Level Rise and Coastal Storm Impacts will be required to be updated every 10 years.

Renewal: Allowed (contingent on duration above). Application needs to be submitted no fewer than 150 days prior to expiration.

Revocation: 3 options to consider

1. The Secretary could revoke a permit fully at his discretion.
2. The Secretary may revoke a permit for non-compliance with terms or conditions, or due to permit violations.
3. The Secretary may revoke a permit for egregious violations, such as:
 - a. a lapse in financial assurance,
 - b. failure to complete or maintain an offset,
 - c. denial of access by the Department to the permitted site or records related to or required to be kept by a permittee,
 - d. making any false statement, representation or certification in an application, record, report, plan or other document filed or required to be maintained by the permit, or
 - e. other

Permit Monitoring and Reporting Post-Approval

Offsets

Applicant will need to provide a monitoring schedule that describes a process for 3rd party verification of offset project operation and completion.

Financial Assurance

A conversion permittee shall annually, within ten (10) days of the anniversary date of issuance of its permit, submit to the Department evidence that the financial assurance required by the permit is in effect in the amount required by the permit and that the permittee has taken all necessary measures to ensure that the financial assurance will remain in effect throughout the duration of the permit.

Bulk Product Transfer

Permittee submits annual report (as previously recommended by RAC)

Site Inspections

Access allowed to the site at reasonable times.

Site Plan for Sea Level Rise and Coastal Storm Impacts

At least every 10 years, the permittee should update their Sea Level Rise and Coastal Storm Plan for the project site.

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Permit Duration, Renewal, and Revocation

Duration: 3 options to consider:

- 1. Permit duration of 20 years.**
2. Permit duration of 15
3. Permit duration equal to the “Useful Life” as defined last meeting.
4. Permit duration at the discretion of the Secretary, with parameters (e.g., “not less than five years nor more than twenty years”).

Considerations:

- In contrast with the past CZA permits, which had no termination date or allowance for potentially ongoing impacts, the CZCPA explicitly calls for offsets on an annual basis. Given the complexity of these facilities and their impacts, it is likely to be more difficult to predict and address some to many impacts beyond a reasonably predictable window, say ten years. Beyond such planning horizons, numerous uncertainties may affect the efficacy of various permit provisions. Examples of the uncertainties include new technologies, unanticipated cumulative impacts, changes in ownership and operator organizations, surrounding land uses and climate change.
- Very few permits granted by DNREC are “one and done.” Air and water permits all have limited durations, even for facilities that may have a useful life of decades. The renewal of the permit provides all parties a chance to review past data, the current situation, and future changes to prepare a new permit.
- As seen below, Site Plans for Sea Level Rise and Coastal Storm Impacts will be required to be updated every 10 years.

Renewal: Allowed (contingent on duration above). Application needs to be submitted no fewer than **180** days prior to expiration. **So long as there is a timely renewal application, the permit should continue until the renewal application is acted upon by the Department.**

The renewal process should be streamlined as compared to the original application, and focused on offsets, financial assurance and sea level rise/coastal storm planning and take into account the applicant's compliance record. The RAC recommends that, all things being equal, there is the presumption that the permit would be renewed.

Revocation: 3 options to consider

1. The Secretary could revoke a permit fully at his discretion.
2. The Secretary may revoke a permit for non-compliance with terms or conditions, or due to permit violations.
3. The Secretary may revoke a permit for **significant or repeated** violations, such as:
 - a. a lapse in financial assurance,
 - b. failure to complete or maintain an offset,
 - c. denial of access by the Department to the permitted site or records related to or required to be kept by a permittee,
 - d. making any false statement, representation or certification in an application, record, report, plan or other document filed or required to be maintained by the permit, or
 - e. other

Permit Monitoring and Reporting Post-Approval

Offsets

Applicant will need to provide a monitoring schedule that describes a process for 3rd party verification of offset project operation and completion.

Financial Assurance

A conversion permittee shall annually, within ten (10) days of the anniversary date of issuance of its permit, submit to the Department evidence that the financial assurance required by the permit is in effect in the amount required by the permit and that the permittee has taken all necessary measures to ensure that the financial assurance will remain in effect throughout the duration of the permit.

Bulk Product Transfer

Permittee submits annual report (as previously recommended by RAC)

Site Inspections

Access allowed to the site at reasonable times **and on a regular basis, with reasonable times generally meaning operating hours.**

Site Plan for Sea Level Rise and Coastal Storm Impacts

At least every 10 years, the permittee should update their Sea Level Rise and Coastal Storm Plan for the project site.