

26 February 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 the set of preliminary recommendations developed by the CZCPA Regulatory Advisory Committee (RAC) at its February 19, 2019 meeting.

These recommendations are presented below by topic.

Recommendation regarding 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, shall be defined 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 the Regulations Governing Delaware's Coastal Zone.

Recommendation regarding Conversion Permit Duration

Conversion permit duration (both for the initial permit and any renewed permit) should be 20 years.

Recommendation regarding Conversion Permit Renewal

Conversion permit renewal should be allowed. The application for permit renewal should 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 DNREC.

The renewal process should be streamlined, as compared to the original application, and focused on offsets, financial assurance, and sea level rise and coastal storm planning and should 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.

Recommendation regarding Conversion Permit Revocation

The Secretary may revoke a permit for significant or repeated violations, such as:

- a lapse in financial assurance;
- failure to complete or maintain an offset;
- denial of DNREC access to the permitted site or to records related to (or required to be kept by) a permittee;
- 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
- other

Recommendations regarding Conversion Permit Monitoring and Reporting Post-Approval

For Offsets: Applicant should provide a monitoring schedule that describes a process for 3rd party verification of offset project operation and completion.

For Financial Assurance: A conversion permittee should annually, within ten (10) days of the anniversary date of issuance of its permit, submit to DNREC 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.

For Bulk Product Transfer: The permittee should submit an annual report (as previously recommended by RAC)

For Site Inspections: DNREC access should be allowed to the site at reasonable times and on a regular basis, with reasonable times generally meaning operating hours.


For Site Plans 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.

Please note that all of the above preliminary recommendations are subject to change based on the feedback received at this week's CZCPA Open Houses.

At our March meeting, I look forward to the RAC taking into account the public input received at the Open Houses and considering this feedback in refining its recommendations as a whole.

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

Wilson Sonsini Goodrich & Rosati
PROFESSIONAL CORPORATION

Sincerely,


Randy J. Holland
CZCPA RAC Chair