

Final

Coastal Zone Conversion Permit Act

Process Recommendations Report

Prepared for the
Delaware Department of Natural Resources and Environmental
Control

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Executive Summary

Background

Delaware House Bill 190, the Coastal Zone Conversion Permit Act (CZCPA), amended the state's Coastal Zone Act (CZA) to allow heavy industrial redevelopment and limited bulk product transfer at 14 heavy industry sites¹ in the Coastal Zone. CZCPA requires that the Delaware Department of Natural Resources and Environmental Control (DNREC) develop regulations for Conversion Permits by October 1, 2019. Consistent with this requirement, DNREC will set up and serve as the lead agency for a Regulatory Advisory Committee (RAC) that will support its development of new regulations.

Process

DNREC took the first steps in this process by seeking public input about the RAC prior to identifying committee members. In October 2017, DNREC retained the Consensus Building Institute (CBI) to assist the agency with assessing stakeholder concerns and opinions about establishing the RAC and drafting regulations. CBI conducted stakeholder interviews in-person and by phone in October and November 2017 to gather some initial thoughts on how DNREC could establish a collaborative and effective process. DNREC hosted two public workshops, facilitated by CBI, to provide opportunities for more stakeholders to participate in this initial phase of the process, help ensure greater inclusion and transparency, and obtain further input on establishing the process for collaboratively developing regulations. DNREC released the draft Coastal Zone Conversion Permit Act Process Recommendations Report, authored by CBI, on December 22, 2017 and solicited public comments on the draft through January 19, 2018. CBI reviewed all comments heard during the initial assessment interviews, the two public workshops, and all written public comments in the drafting of the final Coastal Zone Conversion Permit Act Process Recommendations Report (Report) for DNREC.

¹ The Coastal Zone Act refers to such sites as “nonconforming use sites”. The Coastal Zone Conversion Permit Act refers to them as “heavy industry sites”. This Report will use the CZCPA terminology.

DNREC will identify a path forward after reviewing what its staff heard at the public workshops, reviewing the public comments, and reviewing the final Report.

General findings

In its assessment, CBI heard a wide range of opinions and concerns about the following topics:

1. The CZCPA legislative process
2. The main provisions of the CZCPA legislation
3. The DNREC process for establishing regulations to implement the CZCPA (including the CBI initial assessment interviews to generate input on the development of the RAC)
4. Main factors for DNREC and others to consider in developing the CZCPA regulations
5. Other issues and comments

Recommendations

CBI developed 13 draft recommendations for DNREC to consider as it convenes a RAC to help the agency develop regulations to implement the CZCPA. They are:

Scope

Recommendation #1: The RAC should focus solely on changes to existing regulations or the creation of additional regulations necessary to implement the CZCPA. The RAC should not be charged with amending or revising the regulations already in place for issuing permits under the Coastal Zone Act.

Stakeholder Groups

Recommendation #2: The Secretary should provide for representation by three broad stakeholder categories and one “other” category for those who may not fit clearly in one of those three categories: 1) environment, environmental justice, and public health; 2) community; 3) industry, business, and labor; and 4) other. The Secretary should

specifically seek to ensure participation from affected fenceline communities. The Secretary should not select state-level elected officials to serve on the RAC.

Committee Size and Balance

Recommendation #3: The Secretary should target a RAC of 15-21 members and allow for the following: 1) five to six members (5 to 6) from each of the three categories noted above, in equal balance of numbers for each of the three main stakeholder categories; 2) one to three (1 to 3) additional seats for those who do not fit within those three categories; 3) one (1) full member seat for DNREC; and 4) alternates nominated by each member.

Criteria for Membership

Recommendation #4: The Secretary should establish and publish clear criteria for membership and require that all nominees to the RAC complete a nomination and disclosure form that is made publicly available.

Membership Selection

Recommendation #5: The Secretary should establish a transparent nomination process. Interested parties would nominate individuals (self-nominations would be accepted as well) to the RAC during a period of time in early 2018. Nominations would identify the appropriate stakeholder category for the nominee. The Secretary would review the nominations and select members from the pool of nominees within a committee structure decided by the Secretary, as informed by the Report. After selection, each RAC member would identify an alternate if possible, which the Secretary would then accept or reject.

Workgroups and Technical Expertise

Recommendation #6: The Secretary should allow for the formation of RAC workgroups that can undertake detailed analysis and discussion of specific topics. These may include non-member technical experts. Workgroups would be for deliberation, exploration, and option generation but any and all decisions should rest solely with the full RAC. Workgroup meetings should adhere to Delaware's Open Meetings Law.

Community Outreach

Recommendation #7: The Secretary and the RAC should make a concerted effort to reach out to, communicate with, and build working relationships with marginalized and potentially-impacted communities, neighborhoods, and groups. This could be done by placing such individuals on the RAC itself, inviting community-based technical advisors to serve on the workgroup and/or the RAC, outreach, attending neighborhood meetings, and/or forming a workgroup.

Committee Transparency

Recommendation #8: The Secretary should ensure RAC transparency by considering the time, place, and form of its meetings and any associated public outreach and engagement to provide for public access, participation, and comment. At least some meetings and workgroups should be held in fence-line communities.

Committee Product

Recommendation #9: The Secretary should instruct the RAC to write prescriptive guidance (as defined in this Report) that DNREC will utilize to draft regulatory language. The RAC should also review regulatory language drafted by DNREC. This would allow for the RAC to draft detailed, prescriptive guidance to provide DNREC with the conceptual approach and many details for drafting actual regulations. The RAC should have the opportunity to review and comment on specific draft regulatory language to the greatest extent possible as it is developed by DNREC during the process.

Membership Expectations

Recommendation #10: The Secretary should establish draft expectations for RAC participation and include them among the nomination forms. At their first meeting, RAC members should review, revise as needed, and adopt such expectations as formal groundrules for participation.

Committee Decision Rule

Recommendation #11: The RAC should utilize a “consensus” approach (as defined in this Report) that seeks to identify a final package of recommendations that all or almost all RAC members can “live with.” The RAC would issue a final report with consensus as

defined generally above to the greatest extent possible within the time and resources allocated to the RAC.

Role of DNREC on the RAC

Recommendation #12: A DNREC representative should serve as a full member of the RAC. Other DNREC staff should actively support and participate in the RAC deliberations, and the DNREC counsel from the DOJ should provide legal assistance, including drafting, and advice to the RAC. The full member from DNREC could serve as the Chair of the RAC or as the Chair with co-chairs from each of the three major stakeholder groups. If resources allow, a non-partisan facilitator could facilitate meetings and support the RAC and the Chair(s) throughout the process.

Issues to Cover in the Deliberations

Recommendation #13: DNREC should develop a draft work plan and timeline for the RAC's work and the RAC should review, revise as needed, and adopt the work plan and timeline at one of its first meetings.

Appendices

Appendix A lists the individuals CBI interviewed during the first phase of its assessment. Appendices B and C are a summary of the two public workshops and the list of workshop participants, respectively. Appendix D is a compilation of all written comments that were submitted to DNREC by December 7, 2017 in response to the workshops. Appendix E is a draft nomination form. Appendix F is a draft disclosure form. Appendix G is a list of possible resources for the RAC. Appendix H is a compilation of all written comments that were submitted to DNREC by January 19, 2018 in response to the draft Report.

Further information

Further information and all materials from the public workshops are available at de.gov/conversionpermits.

Background

Delaware House Bill 190, the Coastal Zone Conversion Permit Act (CZCPA), amended the state's Coastal Zone Act (CZA) to allow heavy industrial redevelopment and limited bulk product transfer at 14 heavy industry sites² in the Coastal Zone. CZCPA requires that the Delaware Department of Natural Resources and Environmental Control (DNREC) develop regulations for Conversion Permits by October 1, 2019. The Coastal Zone Act was a landmark piece of legislation when it was passed in 1971 and it has profoundly shaped Delaware's culture, communities, economy and environment. DNREC recognizes that there are many conflicting points of view about industrial development in the Coastal Zone and that effective regulations can be written only by using the opinions and expertise of a wide range of stakeholders.

To be responsive to the revised statute and the diversity of interests in the Coastal Zone, DNREC decided to convene a Regulatory Advisory Committee (RAC) to advise the agency in developing revised regulations. RACs are commonly utilized by state and federal agencies to gather input during the development of regulations. There is, however, no singular standard for who can serve on a RAC, how members are selected, or what role the RAC plays in the development of regulations.

DNREC has taken the first steps in this process by seeking public input about the RAC prior to identifying committee members and the scope of its work. To obtain this feedback:

1. DNREC retained the Consensus Building Institute (CBI), a nonprofit and non-partisan organization that provides mediation and facilitation services, to conduct a series of initial assessment interviews, facilitate two public workshops, and develop process recommendations.
2. CBI conducted 31 initial assessment interviews with individuals and groups who have a stake in the Coastal Zone or could be affected by the new regulations

² The Coastal Zone Act refers to such sites as "nonconforming use sites". The Coastal Zone Conversion Permit Act refers to them as "heavy industry sites". This Report will use the CZCPA terminology.

(see Appendix A for a list of interviewees).

3. DNREC held two public workshops, facilitated by CBI, to hear further public comment and receive input on the RAC process on November 29 and 30, 2017 (see Appendix B for a summary of the workshops and Appendix C for the list of participants).
4. CBI produced a draft Coastal Zone Conversion Permit Act Process Recommendations Report (draft Report).
5. DNREC and CBI accepted public comments on the draft Report from December 22, 2017 through January 19, 2018.
6. CBI produced this final Coastal Zone Conversion Permit Act Process Recommendations Report (Report) for DNREC to consider as it convenes the RAC.

General Findings

During the assessment process, CBI conducted 31 initial assessment interviews, facilitated two public workshops, reviewed 14 written public comments received at or after the public workshops, and reviewed 28 written public comments submitted in response to the draft Report. The final list of process participants included representatives and members of environmental organizations, communities, elected bodies, municipalities, businesses, consulting firms, trade associations, civic associations, as well as private citizens. Input heard during this process covered individual and organizations' views on the changes to the Coastal Zone Act, suggestions for convening the RAC, and thoughts on the contents of the forthcoming regulations. The following table summarizes common themes and specific concerns expressed by participants:

| Theme | Specific concerns |
|--|---|
| The CZCPA legislative process | <ul style="list-style-type: none">• Anger over the lack of public participation and transparency during the development and passage of HB 190. |
| The main provisions of the CZCPA legislation | <ul style="list-style-type: none">• Concern about increased risk of oil and chemical spills due to the bulk product transfer (BPT) provision.• Support for the legislative intent to bring jobs to Delaware.• Support for a law that “modernizes” the state’s current permitting approach while balancing economics with the environment.• Concern about the best way to balance economic development while maintaining appropriate environmental safeguards and remediating polluted sites. |

| | |
|---|--|
| | <ul style="list-style-type: none"> • Concern that the law is too vague. |
| DNREC's process for establishing regulations to implement the CZCPA (including the CBI initial assessment interviews to generate input on the development of the RAC) | <ul style="list-style-type: none"> • Concern that this process has been flawed from the beginning and the work to-date was designed to limit the scope of discussion and steer the outcome as much as possible. • Interest in ensuring the RAC can work efficiently to meet the CZCPA's October 1, 2019 deadline, if not an earlier deadline. • Concern about DNREC's engagement with affected communities to-date and the agency's past responses to community concerns. • The need for sufficient technical resources to support community representatives on the RAC. • The need for community representation on the RAC. • Concern about biased selection of RAC members by the Secretary. • The need to ensure process transparency and sufficient notification. • Ensuring RAC members are credible. • Concern about any power and education differential between stakeholder groups. • The need for criteria for RAC membership. • How to address conflicts of interest on the RAC. • The need to follow public meeting best practices and ensure accessibility by holding meetings at convenient times in convenient places. |
| Main factors for DNREC and others to consider in developing the CZCPA | <ul style="list-style-type: none"> • Cumulative health impacts and disparities in communities near the 14 sites. • Safety and noise along major transportation |

| | |
|---------------------------|---|
| regulations | <p>corridors (including areas outside the coastal zone).</p> <ul style="list-style-type: none"> • The need for comprehensive baseline (i.e. current) data. • Options for clarifying and/or streamlining the sequence of permits required. • Conversion Permit application requirements. • Clarity for prospective new investors and companies on the permitting timeline. • Belief that the legislation is prescriptive and descriptive of what the regulations should contain. • The need for offset language to be clarified. • The need to clearly define HB 190 terms and definitions. • The need to consider all aspects of potentially-impacted communities, including employment and health. |
| Other issues and comments | <ul style="list-style-type: none"> • Concern about DNREC underfunding and understaffing contributing to past oversight and enforcement failures. • Concern about DNREC's capacity to monitor and enforce new and existing activities on the 14 sites. • Concern about the failure to implement the Environmental Goals and Indicators program included in the previous 1990s negotiated agreement for Coastal Zone regulations. • Prioritizing cleanup in legacy communities and sites before redeveloping the 14 sites. • Concern about by some, but also support for by others, for DNREC approving a conversion permit |

| | |
|--|--|
| | <p>before the new regulations are finalized.</p> <ul style="list-style-type: none"> • Support for a long-term, independent body composed of stakeholders that DNREC may consult with regarding implementation, permits, enforcement, public concerns, etc. • The appropriate role of the Coastal Zone Industrial Control Board in the RAC's formation and deliberations and DNREC's promulgation process. • Concern about the use of taxpayer money to offset economic incentives for new businesses in the Coastal Zone. |
|--|--|

Recommendations

CBI developed 13 draft recommendations for DNREC to consider as it convenes a RAC to help the agency develop regulations to implement the CZCPA. The following recommendations synthesize input heard during the initial assessment interviews, the two public workshops, and both rounds of public comment. CBI sought to reflect both what its staff heard during these discussions and what staff read as they reviewed comments. In this final Report, CBI staff acknowledged concerns and areas of disagreement, and revised their recommendations based on their best professional judgment and the comments they received.

Scope

The Secretary should develop a charter and scope for the RAC.

Most commenters expressed a strong preference for the RAC's deliberations to focus solely on developing regulations pertinent to the changes in the Coastal Zone Act made by the legislature in 2017 and did not wish to reopen or revisit other sections of the regulations. A few commenters suggested addressing a limited number of additional issues like *de minimis* permits for small businesses, permit application fees, and reconsidering the overall approach to offsets for all permits. Many commenters also emphasized that the RAC should focus on the regulatory changes needed and avoid revisiting the decisions reached by the General Assembly.

Given these comments, we recommend the general scope of the RAC be to deliberate upon and advise the Secretary of DNREC on the development of new regulations pertinent to the CZCPA. The RAC would focus solely on changes to existing regulations or the creation of additional regulations necessary to implement the 2017 changes. The RAC would not be charged with addressing the regulations already in place for Coastal Zone Act permits. This narrow scope of work would enable the RAC to complete its work in a timely fashion.

Recommendation #1: The RAC should focus solely on changes to existing regulations or the creation of additional regulations necessary to implement the CZCPA. The RAC should not be charged with amending or revising the regulations already in place for issuing permits under the Coastal Zone Act.

Stakeholder Groups

From the input received, we identified four broad categories of stakeholder groups.

These four possible groups are:

- Environment, Environmental Justice, and Public Health: This could include environmental, environmental justice, and public health groups and coalitions, as well as public health agencies and environmental science and law experts. This could include both long-established environmental groups in Delaware and newer organizations who may represent different or emerging views.
- Community. This could include fenceline neighborhoods, municipalities, counties, county planning and emergency management organizations, local elected officials, and others who represent communities with a stake in the Coastal Zone or communities that could be affected by the redevelopment of the 14 sites. This could include communities concerned about impacts directly related to but outside of the Coastal Zone, such as transportation of hazardous materials to or from the Coastal Zone.
- Industry, Business, and Labor. This could include statewide business groups or trade associations, individual companies with a stake in one of the 14 sites, labor groups, individual companies or industry representatives of new industries interested in siting in the Coastal Zone (e.g. “green” industries), consultants such as lawyers, engineers or others who do business with one or more of the 14 sites (see “Criteria for Membership” for further commentary on this topic), companies who do business in or near the Coastal Zone more generally, and economic

development agencies (e.g. Delaware Division of Small Business, Development and Tourism).

- Other. This could include those interests not clearly represented in the categories above such as the commercial fishing industry, tourism industry, recreational users, and churches or religious groups who represent a community.

Most commenters emphasized that the RAC should not include members of the General Assembly or state-level elected officials. CBI recommends that DNREC not accept nominations of individuals who meet these criteria. Several commenters felt that the categories were too broad and should be broken down further. One commenter expressed concern that local government and community representatives should be distinct and separate.

Recommendation #2: The Secretary should provide for representation by three broad stakeholder categories and one “other” category for those who may not fit clearly in one of those three categories: 1) environment, environmental justice, and public health; 2) community; 3) industry, business, and labor; and 4) other. The Secretary should specifically seek to ensure participation from affected fenceline communities. The Secretary should not select state-level elected officials to serve on the RAC.

Committee Size and Balance

Any committee or group must balance inclusion and efficiency in its size. Smaller groups are typically more efficient and reaching agreement can be easier because there are fewer participants. Larger groups are typically more inclusive and allow for a broader range of interests and subsets of interests. Small groups, however, can lack inclusivity while large groups can lack efficiency. Commenters generally suggested that a group size of 15 to no more than 21 would probably best balance inclusion and efficiency. While there is no “right” answer to the size of a committee, given CBI’s past experience and the range of interests in this issue, we recommend a 15-21 member

RAC with five to six (5 to 6) members from each of the three categories noted above, in equal balance of numbers for each of the three main stakeholder categories. DNREC should reserve one to three (1 to 3) additional seats should individuals or organizations outside the three main stakeholder groups make a compelling case for membership. One (1) seat could be reserved for a representative of DNREC (see “Role of DNREC on the RAC” for further commentary on this topic).

After selection, each RAC member should identify an alternate in order to increase participation, provide for absences, and allow for redundancy given potential changes in jobs, positions, and life circumstances over time. The Secretary would then accept or reject the member-nominated alternate. Some RAC members may find it difficult to identify an alternate so a member should not be removed from the committee because they cannot identify an alternate. All alternates would be required to complete the nomination and disclosure forms and these would be made publically available. Alternates would have full access to meetings and all materials provided to members.

Whatever the exact size of the group, the Secretary should seek to balance the RAC carefully across interests and stakeholders. For instance, if DNREC decides to add an additional seat in one category, it should strive to do so to the greatest extent possible in the other categories. Depending on the committee decision rule (see “Committee Decision Rule”), an exact numeric balance may not be necessary, but commenters noted that actual and perceived balance for membership is extremely important.

DNREC should also consider RAC membership balance for gender, race, ethnicity, and geography. Some commenters also noted that potential members coming from under-resourced communities and organizations may need some form of support to participate fully.

Recommendation #3: The Secretary should target a RAC of 15-21 members and allow for the following: 1) five to six members (5 to 6) from each of the three categories noted above, in equal balance of numbers for each of the three main stakeholder categories; 2) one to three (1 to 3) additional seats for those who do not fit within those three categories; 3) one (1) full member seat for DNREC; and 4) alternates nominated by each member.

Criteria for Membership

From the input received, we have identified the following suggested criteria for membership, though this is not necessarily an exhaustive list. In general, members and alternate nominees should:

- Be an individual, not an entity. If an entity submits a nomination, it should identify the individual who would serve on the RAC.
- Have a stake in the Coastal Zone regarding potential redevelopment of the 14 sites, potential impacts of that development, and/or bring a particular expertise needed.
- Select the one stakeholder category where they best fit, recognizing that a nominee may have multiple affiliations or issues they work on.
- Not represent a subsidiary of a company or organization that has already submitted a nomination.
- Complete a disclosure form disclosing any financial interests, existing litigation, and affiliations related to the issues for full public disclosure.
- Credibly represent an entity with a constituency (e.g. civic association, business association) and commit to coordinate and communicate with that constituency about the RAC.
- Have a particular expertise (e.g. health, legal, community, economic, brownfields).

- Be willing and able to participate actively in an intensive process with substantial time commitments that may require evening or weekend work.
- Be willing and able to work constructively with others with whom they may disagree.
- Be willing and able to work within the scope of the effort.

Several commenters expressed a desire for an additional membership criterion: members and alternates should be residents of Delaware. To this point, we recommend that DNREC seek to appoint Delaware residents when possible, with the recognition that it is possible for desired technical expertise and relevant organizations or individuals to be located outside of Delaware (e.g. regional or national environmental or public health organizations).

Many commenters raised concerns about potential conflicts of interest among RAC members. Several argued that any person with a financial conflict of interest should be excluded from the RAC or at least recused from certain RAC deliberations and decisions. This is an important issue commenters raised.

CBI's understanding is that committees such as RACs are intentionally made up of stakeholders and are therefore intended to directly involve members with a direct or indirect interest in the issues. Stakeholders with a range of stakes can best articulate their own interests and concerns, raise issues of implementation and regulatory design, and often have extensive technical, local, or other knowledge. RACs as typically designed are not independent review bodies nor technical panels. Rather, by design, these committees include members who have clear, direct stakes in the issues. Such groups have been convened by local, state, and federal agencies for many decades. However, as addressed in a number of these recommendations, such stakeholder groups must be designed to ensure balance, inclusion, fairness, and transparency. It is vitally important that such interests be fully and publicly disclosed.

To address concerns about qualifications and conflicts of interest, CBI has developed a draft "nomination form" and a draft "disclosure form" for nominees to complete (see Appendices E and F), based on nomination and disclosure forms from similar committees in Delaware and elsewhere. The purpose of these forms is to foster

transparency of a public process and is not necessarily an effort to preclude someone from serving. All forms completed by nominees, including alternates, would be made publically available. Personal information such as email addresses and home addresses would be removed before posting.

Recommendation #4: The Secretary should establish and publish clear criteria for membership and require that all nominees to the RAC complete a nomination and disclosure form that is made publicly available.

Membership Selection

Membership selection should include a transparent, clear, and structured process that allows any and all interested parties to be considered for participation. From our commenters, we identified at least three primary approaches to selecting RAC members:

- Option 1: DNREC Selects Members – Under each stakeholder category, the Secretary identifies and appoints members and alternates to the RAC.
- Option 2: Nomination process and DNREC selection – The Secretary establishes a nomination process for each stakeholder category. Interested parties would nominate potential representatives (self-nominations would be accepted as well) to the RAC. The Secretary would review the nominations and select members and alternates from the pool of nominees within a committee structure decided by the Secretary as informed by the final Report.
- Option 3: Stakeholder group self-selection – The Secretary would decide upon an overall structure including the categories of stakeholder group, numbers of members, and criteria for membership based on the Report. Then each stakeholder group (environmental, environmental justice, and public health; community; industry, business, and labor) would organize among themselves to

select their members and alternates and put forward their “slate” within a set time frame. DNREC would appoint these nominees to the RAC.

Additional approaches suggested by commenters included:

- A. Each legislator from the Coastal Zone and the City of Newark could nominate RAC members.
- B. Ask the General Assembly to pass a new law outlining how RAC members should be appointed (e.g. by the Governor, county leaders or mayors)
- C. The public could consider a broad field of candidates and select members by voting online or endorsements.
- D. Use an approach modeled after the Underground Storage Tank regulatory process: a large formal group (around 50 people) is convened and the public is allowed to comment and participate to the extent of their interest.
- E. Interested parties are nominated within stakeholder groups and a lottery determines the final candidate.
- F. Each stakeholder category offers a set number of nominees to DNREC and the Secretary chooses a certain percentage of them to appoint to the RAC.

Option #1 does not provide a chance for any interested group to note their candidacy. This option would likely lead to a group that is not as inclusive nor diverse as would be possible under recommended Option #2. Option #3, while giving substantial autonomy and decision-making to stakeholder groups, would pose problems for at least some stakeholder groups since they are diverse and diffuse categories, would likely take substantial time and resources to implement, and might create unnecessary conflict and divisiveness within stakeholder groups. Additional Approach B is probably not feasible; the General Assembly chose not to express its preference for membership selection in the CZCPA. Additional Approach D could produce a RAC with uneven stakeholder interests and one that could be too large to build agreement effectively and efficiently given legislative deadlines.

Given comments received on these options and other approaches, we recommend Option #2. DNREC should provide a general framework for the committee structure,

define stakeholder groups, identify key criteria for membership selection, and establish a nomination process. Since the development of regulations is DNREC's obligation and responsibility, and as DNREC is the implementer of the CZA regulations, the Secretary would have the responsibility for selecting final membership. Any and all interested parties ought to have an opportunity to nominate themselves or others so that the Secretary has a full sense of who is interested in participating and can provide a process for new, emerging or different interests to potentially participate in addition to those with express, long-standing interest in the issues. The nomination process should be transparent: the process should be clearly explained, criteria put forth (including how potential conflicts of interest will be evaluated), nominees posted on the DNREC website, and the final RAC members and alternates names and affiliations made publicly available (without personal contact information). Some commenters requested that the proposed list of members and alternates be available for public comment before being finalized. Other commenters requested the Secretary assemble a selection committee of well-respected Delawareans who would help select the slate of nominees from which the Secretary would make their final selection.

Recommendation #5: The Secretary should establish a transparent nomination process. Interested parties would nominate individuals (self-nominations would be accepted as well) to the RAC during a period of time in early 2018. Nominations would identify the appropriate stakeholder category for the nominee. The Secretary would review the nominations and select members from the pool of nominees within a committee structure decided by the Secretary, as informed by the Report. After selection, each RAC member would identify an alternate if possible, which the Secretary would then accept or reject.

Workgroups and Technical Expertise

The RAC will likely need to establish a few workgroups and avail itself of technical expertise from members and outside resources.

In order to carry out their responsibilities, all RAC members and alternates should have access to technical expertise and resources to support their understanding of the topics under discussion.

Typically, workgroups can be established to support the work of the full committee under the following rules:

- Workgroups are for deliberation, exploration, and option generation but they are not and should not be decision-making bodies – decisions should rest solely with the full committee deliberating together.
- Workgroups can include participants outside of committee membership. Such participants may be required to also complete a disclosure form.
- The scope and charge of the workgroup should be set by the full committee.
- Workgroup meetings would adhere to Delaware’s Open Meetings Law.
- Workgroup meeting notices, agendas, and meeting summaries should be posted promptly on the RAC website.

Any number of topics could require or benefit from a workgroup, but given the changes to the statutes, likely areas for this include the following:

- Economic impact analysis, particularly since this topic is not an expertise of DNREC, potentially with expertise in sustainable development, “triple bottom line” analysis.
- Financial assurances, given the complexity of that issue and importance in both the statute and to stakeholders.
- Offset programs, since the scale of potential redevelopment and the associated increased complexity of offsets will need particular exploration.
- Environmental risk analysis, especially regarding coastal areas and heavy industry.
- Inclusion and community outreach (see “Inclusion and Community Outreach”).
- Bulk product transfer and freight traffic, given the concerns raised about this change to the Act.

Commenters mentioned that the following areas of expertise may be needed to complete the RAC’s work. This expertise might be found in universities, research

institutions, agencies, communities, community groups, consulting firms, businesses, and non-governmental organizations. RAC members or alternates themselves may provide some, but likely not all, of this kind of expertise.

- Remediation and brownfields
- Environmental impact assessment
- Economic impact assessment
- Financial assurances
- Permitting processes and policy
- Community engagement
- Environmental law
- Environmental justice
- Climate adaptation and sea level rise
- Coastal wetlands and wildlife
- Emergency response
- Air quality
- Water quality
- Public health
- Economic development and industrial development

Recommendation #6: The Secretary should allow for the formation of RAC workgroups that can undertake detailed analysis and discussion of specific topics. These may include non-member technical experts. Workgroups would be for deliberation, exploration, and option generation but any and all decisions should rest solely with the full RAC. Workgroup meetings should adhere to Delaware's Open Meetings Law.

Inclusion and Community Outreach

Many commenters voiced frustration with a lack of public consultation and outreach during the legislative process for HB 190. Commenters felt that the general public was given little opportunity to comment on the bill before it passed and their comments were made in vain because the decision to revise the CZA had already been made.

Many commenters expressed deep concern that in its process to-date, DNREC has not adequately consulted and involved affected communities. Some commenters cited the locations and short notice for the two public workshops as examples of areas where DNREC needs to strengthen its public outreach. Fenceline communities as well as communities along major transportation routes may be directly affected by any redevelopment and operation of the 14 sites. Many of these communities have legacy pollution, cumulative health impacts, and other disparities. Commenters stated that DNREC should prioritize cleanup activities on the 14 sites and in legacy communities. Commenters want to see a transparent and inclusive process going forward but are concerned that DNREC will not run such a process based on past experiences with the agency.

Some commenters emphasized the need for DNREC to make meaningful connections in affected communities. One commenter recommended that any workgroup formed to address this topic should be facilitated and/or chaired by someone who is respected and identified by communities near the 14 sites and along major transportation routes. Other commenters, however, felt that this outreach is outside of the RAC's scope and should be the sole responsibility of DNREC.

Recommendation #7: The Secretary and the RAC should make a concerted effort to reach out to, communicate with, and build working relationships with marginalized and potentially-impacted communities, neighborhoods, and groups. This could be done by placing such individuals on the RAC itself, inviting community-based technical advisors to serve on the workgroup and/or the RAC, outreach, attending neighborhood meetings, and/or forming a workgroup.

Committee Transparency

Given the interest in the coastal zone, the iconic nature of this statute in Delaware, and the potential range of economic and environmental impacts that might occur, commenters felt strongly that the regulation drafting process must be inclusive and transparent. The following recommended actions are to be considered in total, not as a menu, and other actions may also be necessary and desirable:

- All meetings of the full RAC should be regularly scheduled and publicly posted with sufficient notice.
- Meetings should be open to the public and provide opportunity for public comment.
- Meeting arrangements should follow Delaware's Freedom of Information Act, the Administrative Procedures Act, and the Americans with Disabilities Act.
- The process should have a dedicated website to post agendas, meeting summaries, and meeting materials.
- The public should be able to provide written comments during the process that in turn should be distributed to RAC members for consideration.
- The RAC should consider holding its meetings at different and accessible locations and times in or near the Coastal Zone (partially restrained by venue options) in order to allow members and the public with different work schedules and other responsibilities to participate. This would enable those individuals and entities potentially most affected by the CZCPA changes (e.g. living near the 14 sites, living near or working on waterways) to participate in this process. Special effort may be needed to elicit these preferences from fenceline community members. At least some meetings and workgroups should be held in fenceline communities.
- The RAC should host public meetings or workshops at appropriate times during the deliberations. This might include early "listening sessions" for the RAC to hear any issues, concerns, and ideas from the public. This might also include

public meetings or workshops once options and specific ideas for regulations have been developed to allow the public to weigh in and comment before the RAC completes its deliberations.

Several commenters strongly encouraged the RAC to hold its meetings only in the Coastal Zone or only in fenceline communities. Many stressed the importance of holding meetings in locations that are readily accessible by public transportation.

Recommendation #8: The Secretary should ensure RAC transparency by considering the time, place, and form of its meetings and any associated public outreach and engagement to provide for public access, participation, and comment. At least some meetings and workgroups should be held in fenceline communities.

Committee Product

Given the general charge to the RAC, the group could produce at least one of four kinds of product or outcome for DNREC to discharge its regulatory responsibilities. These four options for a final product are:

- Option 1: Regulations – The RAC could seek to draft the regulations themselves. This would require deliberating on and arriving at agreement on the general concepts and details of what a regulation should include, as well as drafting the regulatory language. The advantage to this approach is that the group maintains full influence over the actual wording and details of regulation. The disadvantages include that drafting precise regulatory language by a large group is time consuming and often exhausting. It would likely be difficult to meet the deadlines in the Act under this approach.
- Option 2: Prescriptive Guidance – The RAC could seek to draft detailed, prescriptive guidance to provide DNREC with the conceptual approach and many details to guide the drafting of actual regulations. Prescriptive guidance could

include overall principles for guiding regulations, a framework and overall structure for how to organize the regulations, specific approaches to regulations on the core topics outlined in the statute, and other guidance the group felt necessary for DNREC to draft clear, effective, and meaningful regulations. Prescriptive guidance usually provides detailed direction or advice for how to draft regulations and though short of the regulatory language itself, provides clear and specific direction. The advantages to this approach are that the RAC would focus on the regulatory approach and intent, leaving detailed drafting to DNREC and the Attorney General (AG); that reaching agreement on concepts and direction is likely easier than reaching agreement on exact regulatory language; and that prescriptive guidance, if agreed to by the RAC, provides DNREC clear and specific direction. The disadvantages include that this kind of deliberation will also take extensive time and that there is always the possibility that the RAC will not be satisfied that the later written regulations fully meet the intent and purpose of the RAC's guidance.

- Option 3: Broad Principles and Options – The RAC could seek to draft broad principles to guide DNREC in its regulatory development, as well as explore a range of options for addressing particular issues in future regulations (say, financial assurances, offsets, definitions, and other topics). The advantage of this approach is that the RAC could complete these tasks more easily, with less negotiation, and likely less time. The disadvantages include that it does not provide more specific guidance to DNREC, allows DNREC to pick and choose among the options, and may not result in regulations that are broadly supported by, or at least accepted by, many or most.
- Option 4: Review of Regulatory Language drafted by DNREC – Any of the above options might also include an opportunity for the RAC to review specific draft regulatory language as it is developed by DNREC after being informed by committee deliberations and advice.

Commenter input on this issue was highly varied with no clear preference on the best approach. Many commenters suggested a phased or blended approach of these

options. Most commenters suggested that while Option #1 might be ideal in that all parties will have a say in and be able to see the exact and full regulatory language to be formally reviewed and promulgated, the time, labor, and “pain” to develop actual regulations by committee seemed daunting. Most commenters felt that Option #3 would not provide enough detailed guidance, would not encourage the in-depth analysis, robust deliberations, and serious negotiations needed among stakeholders, and would provide DNREC too much “leeway” to pick and choose advice. Almost all commenters thought that some form of Option #4 should be folded into the process. Lastly, some commenters expressed concern that implementation of any agreement could be problematic based on the fact that some parts of the late 1990’s CZA regulatory negotiated agreement were not fully implemented (e.g. the environmental indicators program).

The actual drafting of the Committee’s written product should be done in a fair, transparent, and as non-partisan fashion as possible. The RAC will determine the detailed approach in their deliberations, but options include utilizing co-chairs, a drafting committee, a trusted “super-editor” selected from the group, and/or the facilitator of the group, should there be one.

The RAC will need to further refine the outlines of this final committee product in its early deliberations. Regardless of the approach it selects, the RAC should seek to balance efficiency and thoroughness in preparing its work products.

It should be noted that once the RAC’s work is complete, the regulations will be promulgated following the Administrative Procedures Act and will be reviewed and ultimately approved by the Coastal Zone Industrial Control Board.

Recommendation #9: The Secretary should instruct the RAC to write prescriptive guidance (as defined in this Report) that DNREC will utilize to draft regulatory language. The RAC should also review regulatory language drafted by DNREC. This would allow for the RAC to draft detailed, prescriptive guidance to provide DNREC with the conceptual approach and many details for drafting actual regulations. The RAC should have the opportunity to review and comment on specific draft regulatory language to the greatest extent possible as it is developed by DNREC during the process.

Membership Expectations

Effective committees have a clear scope, charge, and set expectations for members and the public. A number of the above topics, as decided upon, would be described in the RAC charter or scope. In addition, DNREC should establish expectations for participation. The following are possible expectations, norms or groundrules, drawn from other committee efforts as well as the particulars of the subject matter at hand. For example, participants might be expected to:

- Attend all meetings or have their alternate be present.
- Prepare for meetings ahead of time by reviewing materials, issues, and items to be discussed.
- Participate in associated public meetings and outreach.
- Work in a constructive manner.
- Be respectful of other participants, even those with whom they disagree.
- Listen as well as speak.
- Avoid personal attacks, name-calling, and attributing motivations to others.
- Speak for themselves and their organization or constituents but not for the RAC as a whole.
- Communicate with and seek feedback from their constituency about the RAC's activities.

- Hold the right to disagree and the responsibility to clearly articulate why they disagree and offer alternatives that might meet their and others' interests.
- Negotiate in good faith.

In the first meeting or meetings of the RAC, RAC members should review, revise as needed, and adopt such expectations as formal groundrules for participation. DNREC and the RAC should determine at the beginning of the process what the protocol would be if any RAC member who is a property or business owner eligible for a Conversion Permit applies for one prior to completion of the RAC's work.

Recommendation #10: The Secretary should establish draft expectations for RAC participation and include them among the nomination forms. At their first meeting, RAC members should review, revise as needed, and adopt such expectations as formal groundrules for participation.

Committee Decision Rule

In addition to such expectations, the RAC will need a decision rule for how it goes about reaching agreement or specific recommendations. The decision rule is often correlated to the makeup and balance of the committee. For example, if the decision rule is majority vote, then stakeholders and the public may be concerned about the exact number and make up of the committee. If the decision rule is more consensus-based, the exact number of various members on the RAC becomes less important since agreement will require most committee members' consent.

We recommend a form of consensus-based approach to ensure active participation, broad support, inclusion, voice, and influence for a range of interests. Generally, while the RAC must make interim decisions on process and substance to keep deliberations moving, final consensus is sought only on the final package of recommendations since members may make careful tradeoffs between issues and topics, and while remaining dissatisfied with individual recommendations, be able to consent to an overall package

because their most important interests are met in other parts of the package recommendations.

Options for a consensus approach include:

- *Full Consensus*. Every member of the RAC must consent, that is, to acknowledge they can “live with” the final recommendations. The advantage is that every member has equal power and the ability to hold up the decision-making until their interests are sufficiently met. The significant disadvantage is that any one member can hold up the progress and work of the RAC.
- *Consensus*. Consensus by the RAC can also be defined as the consent of most, or almost all, committee members in its final recommendations. No one member can stop the final deliberations and recommendations of the RAC, but in turn, almost all members of the RAC must consent for the recommendations to be considered consensus-based. While some committees set a specific number, usually well above even a supermajority (2/3rds), others prefer to leave this somewhat vague and determine final “maximum” consensus at the end when they “see it.”

We recommend a “consensus” approach that seeks to identify a final package of recommendations all or almost all RAC members can “live with”. The RAC would issue a final report with consensus as defined generally above to the greatest extent possible within the time and resources allocated to the RAC. Should the RAC not be able to reach consensus on some but not all issues, for those remaining areas of disagreement, the RAC would: 1) clearly delineate and explain the remaining differences of opinion; 2) narrow the options for that issue to the fewest degree and number possible; 3) delineate the pros and cons of each remaining options; 4) explain, as needed, how decisions on this or these outstanding items may or might affect areas of agreement elsewhere in the final report; (5) make public any dissenting votes and reasoning.

Some commenters were concerned the above recommendation is too vague. Some suggested utilizing a clear voting threshold (e.g. 75% or higher in favor) while others

suggested a full consensus. Ultimately, the RAC itself will need to deliberate on and decide the committee decision rule when it develops its process protocols.

Recommendation #11: The RAC should utilize a “consensus” approach (as defined in this Report) that seeks to identify a final package of recommendations that all or almost all RAC members can “live with.” The RAC would issue a final report with consensus as defined generally above to the greatest extent possible within the time and resources allocated to the RAC.

Role of DNREC on the RAC

Commenters noted that it is important to delineate the role of DNREC in this decision-making process. CBI recommends that a DNREC representative serve as a full member of the RAC. In addition, DNREC staff should actively support and participate in the RAC deliberations, and DNREC counsel from the DOJ would provide legal assistance, including drafting, and advice to the RAC. The DNREC Secretary, who is ultimately responsible for promulgating Conversion Permit regulations, should participate in the work of the RAC, as should those members of their staff with responsibility for reviewing permit applications.

Some commenters felt that DNREC should not serve as a full member of the RAC because it could be perceived as a procedural conflict of interest. CBI acknowledges this concern though believes that it would be important for DNREC staff and the Secretary to clearly express any disagreement, explain why, be open to influence and negotiations, and to provide, like any other member, an alternative approach to meet the interests and concerns expressed. DNREC retains decision-making authority within Delaware’s administrative procedures – subject to approval by the Coastal Zone Industrial Control Board – and will have to submit draft regulations for formal public comment. DNREC should, to the extent possible, advance the recommendations of the RAC.

We also recommend that the full member from DNREC either serve as the Chair of the RAC or serve as the Chair with co-chairs from each of the three major stakeholder groups. Co-chairs would help develop agendas, resolve disputes, speak on behalf of the RAC as a whole, and serve other functions.

If resources allow, a non-partisan facilitator should facilitate meetings and support the RAC and the Chair(s) throughout the process. Many commenters stressed the importance of having a neutral party facilitate this process.

Recommendation #12: A DNREC representative should serve as a full member of the RAC. Other DNREC staff should actively support and participate in the RAC deliberations, and the DNREC counsel from the DOJ should provide legal assistance, including drafting, and advice to the RAC. The full member from DNREC could serve as the Chair of the RAC or as the Chair with co-chairs from each of the three major stakeholder groups. If resources allow, a non-partisan facilitator could facilitate meetings and support the RAC and the Chair(s) throughout the process.

Issues to Cover in the Deliberations

Commenters identified a number of issues that the RAC would need to take up based on their reading of the changes to the Coastal Zone Act and their understanding of the issues. This is not necessarily a complete list of all the issues that the RAC might need to cover, but a starting point for DNREC and the RAC to build a work plan. CBI recommends that DNREC develop and publish a draft work plan based on the issues identified in the assessment that the RAC – at its first meeting – would then review, receive public comment on, revise as needed, and adopt. The issues identified included:

- Definitions and clarification of the prohibited uses as outlined in the CZCPA (such as liquefied natural gas terminal)

- Strategies to ensure the protection of public health; ecosystem health; and water, soil, and air quality in the new regulations.
- The provision that bulk product transfer will be allowed (with permit) for products to be used within the Coastal Zone, or produced in the Coastal Zone
 - What are the definitions and limitations to this bulk transfer provision?
 - What are the appropriate spill prevention exercises and plans that the regulations should require?
- Detailing the net environmental improvement or economic improvement of the proposal
 - To what extent, detail, and scope must environmental and economic impact be reviewed?
 - Does environmental include public health and major public safety risks?
 - Amidst numerous issues, media, contaminants, and benefits on dollars, jobs, and environment, how would “net” actually be determined?
 - How will fenceline and directly affected communities’ impacts fit into this calculus?
- Establishing criteria to calculate and review offset proposals
 - Can clearer direction and criteria for offsets under the changes be established for these 14 sites and Conversion Permits?
 - What is the role of Emission Reduction Credits (ERCs) going forward?
 - How to ensure localized benefit to the extent possible for those in and near the Coastal Zone?
 - What is the baseline to which offsets will be determined, especially for sites with no current operational activity?
- Establishing criteria for ensuring financial assurance for environmental cleanup
 - What tools are available and achievable, not only for completing remediation during cleanup, but more importantly, in the long term for when a facility decades from now closes, for emergency response and spills, and for catastrophic events?
- Determining adequate preparation of the site for sea level rise and coastal storms

- Establishing criteria for formulating formal evacuation procedures in the event of an accident at one of the 14 sites or on the Delaware River.
- Establishing decision criteria for DNREC and the general process of decision-making
 - How can the process be as efficient and predictable as possible and lead to a timely decision without extensive delay?
 - How can the process be thorough and deliberate within the timelines set in statute given that there will likely be few of these permits, but they will involve substantial changes and impacts to the Coastal Zone?
- Monitoring and Enforcement
 - Given DNREC's constrained resources, how will it both review and consider permits adequately as well as meaningfully enforce provisions of any Conversion Permit once granted?
 - Who will monitor and enforce upon DNREC itself as to the commitments the agency makes in the RAC process and final agreement, should one be reached?
 - What legal steps may parties take to provide redress in cases where regulations are not enforced?
- What is the appropriate role of the RAC's deliberations related to any requests for a permit that come before the Secretary prior to promulgation of final regulations?
- Strategies to reach out to, communicate with, and build working relationships with marginalized and affected communities, neighborhoods, and groups during the RAC's work.

Recommendation #13: DNREC should develop a draft work plan and timeline for the RAC's work and the RAC should review, revise as needed, and adopt the work plan and timeline at one of its first meetings.

Appendices

Appendix A: Initial Assessment Interview Participants

| Name | Affiliation |
|---------------------|--|
| Danene Birtell | Tri-State Bird Rescue and Research |
| Cerron Cade | Division of Small Business, Development, and Tourism - State of Delaware |
| Beth Chajes | University of Delaware, Delaware Environmental Institute |
| Yu Chin | University of Delaware |
| Thomas Coleman | City of Newark, DE |
| Sarah Cooksey | The Nature Conservancy |
| Jay Cooperson | Sierra Club - Delaware Chapter |
| Jospeh Corrado, Sr. | Delaware Contractors Association |
| James DeChene | Delaware State Chamber of Commerce |
| John Deemer | Delaware City Refining Co, LLC |
| Keith Delaney | D2 Organization |
| Rysheema Dixon | Wilmington City Council |
| Bill Dunn | Civic League for New Castle County |
| Dick Fleming | Delaware Nature Society |
| Lorraine Fleming | Delaware Nature Society |
| Bill Freeborn | Delaware Contractors Association |
| Tim Gibbs | Delaware Academy of Medicine/Delaware Public Health Association |
| Thomas Godlewski | Delaware City Refining Co, LLC |
| Brenna Goggin | Delaware Nature Society |
| Nicole Goldsboro | American Lung Association of the Mid-Atlantic |
| Rich Hall | New Castle County |
| Stephanie Hansen | Delaware General Assembly |
| Debra Heffernan | Delaware General Assembly |
| Rich Heffron | Delaware State Chamber of Commerce |
| Stephanie Herron | Sierra Club - Delaware Chapter |
| Richie Jones | The Nature Conservancy |
| Ken Kristl | Widener University |
| Susan Mack | Sierra Club - Delaware Chapter |

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|------------------|--|
| James Maravelias | Delaware AFL-CIO |
| Guy Marcozzi | Duffield Associates, Inc. |
| Eugene McCoy | Council of Civic Organizations of Brandywine Hundred |
| Kent Messer | University of Delaware |
| Holly Michael | University of Delaware, Delaware Environmental Institute |
| Jeanette Miller | University of Delaware, Delaware Environmental Institute |
| Paul Morrill | The Committee of 100 |
| Edward Osienski | Delaware General Assembly |
| Tom Powers | University of Delaware |
| Jennifer Prince | The Committee of 100 |
| Jordyn Pusey | Civic League for New Castle County |
| Matthew Sarvar | Delmarva Ornithological Society |
| Peggy Schultz | League of Women Voters of Delaware |
| Albert Shields | Delaware General Assembly |
| Victor Singer | Private Citizen |
| Lisa Smith | Tri-State Bird Rescue and Research |
| Don Sparks | University of Delaware, Delaware Environmental Institute |
| Kevin Stewart | American Lung Association of the Mid-Atlantic |
| Bob Whetzel | Richards, Layton, and Finger |
| Martin Willis | Private Citizen |
| Marian Young | Brightfields, Inc. |

Appendix B: Public Workshops Summary

Coastal Zone Conversion Permit Act Public Workshops

DRAFT Workshops Summary

Workshops held November 29 & 30, 2017 in Wilmington and Delaware City, DE

Prepared by the Consensus Building Institute

WORKSHOPS IN BRIEF

The Delaware Department of Natural Resources and Environmental Control (DNREC) held two public workshops in November 2017 to obtain feedback on the statutory changes to the Coastal Zone Act (CZA) and the convening process for the regulation drafting. The workshops were held in Wilmington, DE on November 29, 2017 and Delaware City, DE on November 30, 2017. Approximately 50 individuals attended the Wilmington workshop, and approximately 30 individuals attended the Delaware City workshop.

Consistent with the Coastal Zone Conversion Permit Act (CZCPA), DNREC will set up and serve as the lead agency for a Regulatory Advisory Committee (RAC) that will support its development of the new regulations required by the passage of House Bill 190.

These workshops were intended to give the public an opportunity to provide input to DNREC on designing a collaborative process to develop regulations and, specifically, on the design and membership of the RAC. During the first part of each workshop, participants heard an overview of the statutory changes to the Coastal Zone Act, regulatory implications, and the convening process to date and had an opportunity to deliver public comments to the Secretary and staff of DNREC. Comments addressed these topics:

- The CZCPA legislative process

- The main provisions of the CZCPA legislation
- The DNREC process for establishing regulations to implement the CZCPA (including the CBI stakeholder consultations to generate input on the development of the RAC)
- Main factors for DNREC and others to consider in developing the CZCPA regulations
- Other issues and comments

During the second part of each workshop, participants divided into small groups and provided feedback to DNREC on three key questions about convening the RAC:

- What stakeholder groups should be represented on the RAC?
- How should RAC members be selected?
- What role should the RAC play in the development of the regulations?

A list of workshop participants can be found at the end of this summary. All presentation slides and materials from the workshops can be found at de.gov/conversionpermits.

DISCUSSION – KEY THEMES

Below is a summary of public comments and key themes discussed at the workshops. This summary is not intended to be a transcript. Rather, it focuses on the main points covered during the discussions.

Remarks by DNREC Secretary Shawn M. Garvin

At the beginning of each workshop, DNREC Secretary Shawn M. Garvin offered welcoming remarks. He thanked participants for coming to the workshop and participating in this process. These workshops are one of the ways DNREC is seeking public feedback on what the regulation development process should look like. DNREC is particularly interested in hearing suggestions for how the agency can increase community engagement and inclusion during this process. The Secretary emphasized that he wants to run a transparent, inclusive, and focused process to meet the October 1, 2019 deadline for final regulations set in the CZCPA.

Overview of Statutory Changes, Regulatory Implications, and Convening Process To Date

Susan Love (DNREC) and David Fairman (Consensus Building Institute) presented an overview of the CZA statutory changes, regulatory implications, and the convening process to date. The presentation slides and supporting materials are available at de.gov/conversionpermits.

The CZA and regulatory implications of the Coastal Zone Conversion Permit Act

The Coastal Zone Act

The CZA was passed in 1971 under Governor Russell Peterson in response to significant industrial development pressure in Delaware Bay. The CZA established the boundaries of the Coastal Zone and prohibited new bulk product transfer (BPT) and new heavy industry in the Coastal Zone. It allowed heavy industry uses to continue and expand operations with a permit and allowed manufacturing with permits. The CZA

directed DNREC to issue permits for these activities but required DNREC to consider environmental and economic impact, aesthetic effects, supporting facilities, and the effect on neighboring land uses and county plans in making its decisions. Four key terms used in the CZA are relevant to the upcoming regulation development process:

- Bulk product transfer facility – Any port or dock facility for transfer of bulk quantities of any substance from vessel to shore, shore to vessel, or vessel to vessel. It includes unincorporated, loose materials such as liquids, sand, gravel, and grain. BPT does not include containers or palletized items.
- Heavy industrial use – Heavy industrial use sites are characterized by property that is greater than 20 acres; contains smokestacks, tanks, distillation columns, scrubbing towers, etc.; and has the potential to pollute. Examples include oil refineries, steel manufacturing, petrochemical complexes, and paper mills.
- Manufacturing use – Manufacturing use sites are characterized by operations that include mechanical or chemical transformation into new products or assembling component parts. Examples include warehouses, garment factories, and auto assembly factories.
- Coastal Zone – The Coastal Zone is a region designated in the CZA that extends from Claymont to Fenwick, DE and includes the C&D Canal and inland bays. The CZA did not place any restrictions on commercial or residential development in the Coastal Zone.

The Coastal Zone Conversion Permit Act

The CZCPA was signed into law in August 2017 after passing the Delaware House and Senate by large margins. The law allows expanded uses on 14 existing heavy industry use sites; 13 of these sites are located in New Castle County and one site is located in Kent County. The CZCPA requires developers to obtain a “conversion permit” from DNREC for new or modified uses and requires DNREC to develop the appropriate regulations by October 1, 2019. The CZCPA allows the following expanded uses on the 14 designated sites: conversion of a site to an alternative heavy industry use, addition to a site of a heavy industry use, and operation of a new BPT facility. It maintains prohibitions against certain types of heavy industry (e.g. oil refinery, cellulosic pulp

paper mill, incinerator, steel manufacturing plant) and adds liquefied natural gas terminals to its list of prohibited uses. New BPT is allowed with a Conversion Permit under limited circumstances:

- Must be on one of the 14 sites
- Must have had a docking facility in 1971
- Bulk products must be fully used at a facility in the Coastal Zone or must be produced in the Coastal Zone.

One exception is grain, which can be transferred without regard to use in the Coastal Zone. Currently, seven of the 14 facilities have docks and a total of nine would be allowed to support BPT under the new law.

Coastal Zone permits will still be issued for expansion of existing heavy industry and manufacturing. A Conversion Permit will be required for the new uses described above and will have eight additional requirements for applicants to meet, including:

- Demonstrate net environmental benefit
- Explain the effect of the new use on neighboring land uses
- Must offset increased emissions annually
- Must prepare for sea level rise and storms
- Must provide financial assurance
- Shall agree to pay for cost of compliance for cleanup

Regulations governing Delaware's Coastal Zone

Although the CZA was passed in 1971, the first regulations to guide implementation and enforcement of the law were written in 1999. The regulations provide additional definitions; clarify prohibited uses, allowable uses, and uses requiring permits; and outline permitting procedures such as application contents, review process and permit fees, and public notice and hearing requirements. The CZCPA directed DNREC to promulgate regulations for Conversion Permits by October 1, 2019. The current regulations governing Delaware's Coastal Zone will be amended to incorporate Conversion Permits. This will require amending certain sections and drafting new sections but DNREC has made clear that only sections pertinent to Conversion Permits

will be amended or added. Developers may submit applications for Conversion permits prior to the promulgation of regulations.

Next steps

DNREC has committed to the following next steps in this process:

- Establish a Regulatory Advisory Committee (RAC) to assist and provide feedback to DNREC during development of the new regulations.
- Ensure the RAC meets routinely and all meetings are open to the public.
- Hold additional public workshops in various locations throughout the state and including affected communities.
- Publish initial draft regulations in the Delaware Register, followed by public hearings.
- Follow the Administrative Procedures Act.

Convening process to date

Mr. Fairman (CBI) reviewed DNREC's convening process to date and clarified how feedback from the initial assessment interviews, two public workshops, and written public comments will be used to inform CBI's recommendations report to DNREC on convening the RAC. In October, DNREC retained CBI to assist the agency with assessing stakeholder concerns and opinions about setting up a RAC. CBI is a non-profit collaborative services organization based in Cambridge, MA. CBI staff supported DNREC and the advisory committee that developed the original framework for CZA regulations in the late 1990s.

CBI conducted interviews in-person and by phone in October and November 2017 to gather initial advice on how DNREC could establish the process for collaboratively developing regulations for Conversion Permits. DNREC invited a number of stakeholder groups to participate in interviews as a preliminary step in the process. The initial list of interviewees was developed by reviewing the organizations who gave testimony to the General Assembly and the membership of the late 1990s committee. CBI and DNREC

attempted to select a representative mix of stakeholders for this first set of interviews. In their interviews, CBI asked interviewees to suggest additional individuals or groups they should speak with. Additional interviewees also self-identified or were identified by researching particular stakeholder groups online. Some of those invited to interview with CBI chose to decline. The final list of interviewees included representatives of environmental organizations, elected bodies, municipalities, businesses, consulting firms, trade associations, civic associations, and private citizens. CBI conducted 31 interviews, some with individuals and some in small groups of individuals from the same or similar stakeholder groups. Interviews were conducted on a non-attribution basis, meaning CBI will not quote any individual or organization in its report.

Two public workshops were designed to provide opportunities for more stakeholders to participate in this initial phase of the process, help ensure greater inclusion and transparency, and obtain further input on establishing the process for collaboratively developing regulations. The input-gathering opportunities will consist of a public comment session and small, facilitated discussion groups at each workshop.

CBI will consider all comments heard during the initial assessment interviews, the two public workshops, and any written public comments as it drafts its recommendations report for DNREC. DNREC will then take all that they have heard and CBI's final report into account as they identify the path forward. DNREC has laid out the following timeline for this process:

- **December 7, 2017:** Deadline for public input to CBI's draft recommendations report
- **December 22, 2017:** CBI releases its draft recommendations report
- **January 19, 2018:** Deadline for DNREC and public comment on CBI's draft recommendations report. (This was revised from January 8, 2018 after DNREC heard feedback at the first public workshop on the need for a longer comment period.)
- **February 2, 2018:** CBI releases its final recommendations report to DNREC and the public.

- **February 2018:** *DNREC reviews CBI final report and begins to establish the RAC.*

Public Comment and Listening by DNREC

Public comment overview

Workshop participants delivered the following public comments to the Secretary and staff of DNREC. The comments covered individual and organizations' views on the changes to the Act, thoughts on the contents of the new regulations, and suggestions for convening the RAC. The following table summarizes common themes expressed by participants:

| Theme | Specific issues |
|---|--|
| The CZCPA legislative process | <ul style="list-style-type: none"> • Anger over the lack of public participation and transparency during the development and passage of H.B. 190. |
| The main provisions of the CZCPA legislation | <ul style="list-style-type: none"> • Concerns about increased risk of oil and chemical spills due to the bulk product transfer (BPT) provision. • The opportunity to bring jobs to Delaware while maintaining appropriate environmental safeguards and remediating polluted sites. |
| DNREC's process for establishing regulations to implement the CZCPA | <ul style="list-style-type: none"> • Concerns about DNREC's engagement with affected |

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| <p>(including the CBI initial assessment interviews to generate input on the development of the RAC)</p> | <p>communities to-date and the agency's past responses to community concerns.</p> <ul style="list-style-type: none"> • The need for sufficient technical resources to support community representatives on the RAC. • The need for community representation on the RAC. • Process transparency and sufficient notification. • Ensuring RAC members are credible. • Concerns about the power and education differential between stakeholder groups. • Developing criteria for RAC membership (e.g. strong public health and scientific backgrounds). • Addressing conflicts of interest on the RAC. • The need to follow public meeting best practices by holding meetings at convenient times in convenient places. |
| <p>Main factors for DNREC and others to consider in developing the CZCPA regulations</p> | <ul style="list-style-type: none"> • Cumulative health impacts and disparities in communities near the 14 sites. • Safety and noise along major transportation corridors (e.g. train traffic in Newark). |

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| | <ul style="list-style-type: none"> • The need for comprehensive baseline data. • Conversion Permit application requirements. • The need to consider all aspects of potentially-impacted communities, including employment and health. |
| Other issues and comments | <ul style="list-style-type: none"> • Concerns about DNREC's capacity to monitor and enforce new and existing activities on the 14 sites. • Prioritizing cleanup in legacy communities and sites before redeveloping the 14 sites. • Concerns about DNREC approving a conversion permit before the new regulations are finalized. |

Public comments

The notes below attempt to capture the concerns and opinions expressed by each individual or organization but they are not intended to be a transcript. Comments by individuals who attended both workshops are combined into one statement.

Speaker 1

- The regulations will need to clarify which bulk product transfer clauses, if any, apply to the Port of Wilmington.
- Question 1 (stakeholder groups): Public health representatives and members with strong scientific backgrounds should be included in the RAC.

- Question 3 (the RAC's role): The RAC's role should be a combination of all four options. Some areas may be best handled through developing broad principles. The RAC should also review regulation drafts as DNREC develops them.

Speaker 2

- Our community is located between a large number of industries and has been actively involved in cleanup and redevelopment efforts. For example, our community brought to the attention of DNREC the illegal hauling of contamination and other illegal products from former radioactive sites and from New Jersey.
- We have entered into litigation and won when some of these companies have not followed good practices. In those cases and in the ongoing cleanup of Hamilton Park, we have received scientific and technical support from DNREC, the EPA and research institutions like the University of Maryland, Johns Hopkins University, and Princeton University. We currently maintain scientific records to support ongoing remediation projects.
- I am concerned about DNREC's ability to perform monitoring and maintenance under the revised Act. They have never been a real part of monitoring and maintenance in the past. We have had to do this ourselves and bring in experts sometimes. What will be DNREC's role and the role of communities going forward?

Speaker 3

- Audience poll:
 - Who here lives in the Route 9 corridor? 2.
 - Who here is DNREC staff? 6.
 - Who here lives in this community? 1.
- This process is deeply flawed. We are challenging DNREC on the way you include communities. This process is a failure because you have not had impacted communities involved in this process from the start. I am asking you to pump the brake and reach out to the communities so those most impacted can be here to speak.

- Public health concerns: Our biggest challenge is cleaning up the 14 sites and legacy communities; there needs to be a plan to clean up these sites and communities now. We need to prioritize these legacy communities and help them bring in healthy and holistic businesses. We recently released a report called “Environmental Justice for Delaware: Mitigating Toxic Pollution in New Castle County Communities”.³ We got push back from Delaware Health and Social Services (DHSS). They said we should just exercise and eat better but that is not what we are saying. These chemicals are carcinogens. There are 14 grandfathered sites in areas with high health and mortality disparities.
 - We have partnered with the Union of Concerned Scientists. We have also gotten help from a number of schools and research groups. We have requested and are still waiting for a meeting with Secretary Garvin and DHSS. We request a day-long meeting.
- Monitoring: It is good that people are monitoring their own communities and making the causal connections but DNREC should be leading this. What is the ongoing monitoring plan for these communities?
- The current reporting process to DNREC and their enforcement response is a challenge for us. If people are not being responded to when they call and report issues (e.g. sickness), if you have not answered in the past, they are not going to return your call for engagement in this process.
- We support protecting birds but we also need to consider the workers and residents.
- We know people need jobs but we want healthy jobs. We need to prioritize renewable energy, safer chemicals, and safer processes.
- The Act says industries “must prepare for sea level rise” – what must they do?
- What is DNREC’s plan for these sites if there is a disaster like a hurricane or an earthquake? Do community members have evacuation plans?
- Is there legacy clean up at the Diamond Salvage site? We need to mitigate the legacy pollution.

³ <https://www.ucsusa.org/our-work/center-science-and-democracy/connecting-scientists-and-communities/environmental-justice-for-delaware>.

- Is there a plan to make the Port of Wilmington green (but not whitewashed green)? We need processes and funding in place to clean up this site. I am concerned about respiratory issues, health disparities, and blight disparity near this site.
- Question 1: Impacted community members and fishermen should be on the RAC. They will need technical resources to support them and these cannot just be given to them by DNREC. These folks cannot just be at the table; they need to know what is being discussed.

Speaker 4

- Each conversion permit application should specify a company, a proposed use, and a parcel of land. DNREC should take this information to a public hearing before it approves or disapproves the application. Any necessary remediation should be disclosed in the permitting process. Any change in the company, the proposed use, or footprint should require a new permit. There should not be a waiver for the whole site to let industry do whatever they want.
- If the applying company does not act on an approved permit for longer than a year, they should be required to resubmit their application.

Speaker 5

- CZA has played a major role in the region's health. It was visionary piece of legislation.
- PDE wants to be a part of these conversations going forward. As a National Estuary Program, our core values include stakeholder input and we want to help foster this. We usually do not take stances on issues but would like to contribute our expertise.
- DNREC should think about where there are opportunities to use natural infrastructure.

Speaker 6

- I want to make sure I'm not sailing with oil tankers and chemical transfer boats.

- Oil spills have affected our river and killed all our fish. We have had oil on the bottom of our boats.
- Much of New Castle County is based on artesian wells. Many of these have been contaminated. I have maps and data with me today. These are the facts. It shows the wells that were contaminated and where they are related to landfills. They had to close some of these wells by Route 9 and pumped in water from another area. How much more can we allow?
- We have one of the highest cancer rates in the nation. I think they put extra contamination into the air on cloudy days. My mom died of COPD. She walked in the park by the landfill. She never smoked.
- What is the total number of DNREC staff conducting smokestack monitoring? How many stacks do they monitor? How many groundwater monitoring stations are there and where are they? How many staff members produce the groundwater monitoring program reports? Where are these pieces in relation to the 14 sites?
- I do not trust this nonsense. I hope we can stop some of what is about to happen.

Speaker 7

- It was a shame there were no public workshops before H.B. 190 was passed. But the horse is out of the barn now. They did not consult neighboring communities before passing the bill – this was inexcusable. There was very little public input and opportunity to comment.
- I encourage DNREC to have a broad range of people included on RAC. It should have residents of neighborhoods, tourism, health organizations, and recreational fishing. It should not consist of just the businesses that want to locate there.
- I encourage Sec. Garvin, within his discretion, not to approve conversion permits before the new regulations are in place.
- The RAC needs solid technical and scientific support to do their work.

Speaker 8

- I am worried about transparency. People were skipped and communities were not involved during the development of H.B. 190. These workshops are happening after the November 1 deadline. We have been given 2 weeks notice for this meeting. You want to finish this process by Christmas. We need 30 days notice for meetings. This does not look good to us. In the earlier interviews, it was just business and environmental folks, not community members. I am worried the regulations process will be the same. How do we know the rules of the RAC will be followed?
- On the RAC, we need to have the same number of community members as business members.
- Any communication needs to go out to the communities in layman's terms.
- We need health monitoring and reports. There are people who live here who do not know about these cumulative impact and other concerns. People need to be responded to when they ask DNREC for information.
- Is this the future? How many jobs will these conversion permits really bring? Are these worth the health issues? We are not going back to building ships on the river. I do not think this approach is the solution for the future.

Speaker 9

- I am a union boilermaker by trade and I cannot go to work in DE unless the revised Act goes forward. I have been asking the government to change these regulations for years. The regulations prevented industry from coming back to the state of DE. I was ecstatic when the bill was passed. It will bring economic development with environmental safeguards. These are not just jobs; they are careers.
- This permitting process is going to be one of the most stringent in the Northeast. This is the gold standard for permits in the U.S. Now we have even more safeguards. I think this Act the best way forward.
- In response to others' concerns about community input, that's why we elect representatives to go to Dover. 52 of 60 voted for this bill.
- I want the Port of Wilmington to remain exempted.

- The footprints of the 14 sites need to be updated; they are not accurate and they will need to be for us to move forward.
- I want to remind everyone that the Delaware River has been a working river for centuries. No one is getting their drinking water from the river.
- I felt like I had sufficient notice for these workshops.
- I have been hearing about a lack of transparency in this process. Look at DNREC's chart which has information on the 14 sites. It tells you what is happening on these sites, what chemicals were on the sites. This is transparency.
- Only two of these sites have applied for permits in the last five years.

Speaker 10

- I second previous speakers.
- Question 1: Communities, particularly those next to the 14 sites and along the rail lines, are the number one stakeholder. They will be directly impacted by ambient pollution, accidents, etc. They must be adequately and directly represented on the RAC and provided with the resources to understand the technical work. Recreation and tourism is a big economic driver here. Recreation is also specifically protected in the CZA. Fishermen should be represented too. Where would these go? Do they go under business? The three categories are great but broad and vague.
- Question 2: I support Option #2. It is key that the nomination process be fully transparent and inclusive. All nominations should be made public and people should be allowed to comment on them before the final selection is made. DNREC should avoid appointing members with conflicts of interest (e.g. owner or operator of one of the 14 sites). We cannot avoid all conflicts of interest but if they can't be avoided, they need to be explicit and relevant members may need to recuse themselves from some decisions.
- Question 3: I like a combination of the four options like Jay Cooperson said but the RAC should be deeply involved in broad principles and options. DNREC should hold RAC meetings at good times (e.g. evenings) and locations for all

members. Meetings should be accessible by public transportation. Enforceability is key and DNREC must be accountable to the RAC for following through on their recommendations.

Speaker 11

- I am concerned about BPT provision and the pollution it could cause if a spill occurred.
- I live in Newark very close to the train tracks. There is the possibility of accidents for students and my neighbors with heavier train traffic.
- We need good baseline data about pollution at the beginning of this process. Let's slow down to collect this.
- We need more meetings and community involvement. This process has been flawed. I testified in front of the Senate but it was already a done deal. It was done behind closed doors. This does not feel transparent or inclusive.

Speaker 12

- We should think about the economy and the environment. We should think about the families trying to survive here and look at the big picture. We should think about all aspects of this community. I am glad something is being done. Cleaning up some of these areas and bringing jobs back to the state is crucial. I support the environment but it has been polluted for years. How can we develop these sites and provide a boost to the economy? We should monitor communities and make sure DNREC is protecting the environment but maybe we can improve our communities so they are more usable. We should not leave dirty sites, there's no benefit to that, but our economy is suffering here in DE. I am looking forward to the next steps.
- Communities, labor, and environmental groups should be represented on the RAC.

Speaker 13

- DNREC should revisit the report comment timeline: CBI and DNREC have 26 days to put together the report but the public has 2 weeks (essentially 5 business days) to offer public comment on the report. I know the legislation puts forward an ambitious timeline. This is setting a dangerous precedent for the RAC process. I strongly recommend you revisit this timeline.

Speaker 14

- The people in the Route 9 corridor do not know what is happening in terms of the environment and the Act. What have DNREC, businesses, and others done to reach out to these communities? Were there community surveys? How did you invite them to this meeting? This is a problem: we are speaking for people who can speak for themselves. We just have to reach out.
- Jobs are important but I do not want to die for them. We can clean up the environment and develop clean jobs. Let's work together and find a solution.

Speaker 15

- Star Enterprises started operating a few years ago and overnight the noise and diesel fumes increased. My niece lives close to the railyard. When the oil cars started moving around in the railyard it got really noisy for her. This law will continue to increase the noise in the railyard which is disruptive for the citizens. We also have safety concerns but it has been years since there was a serious accident on the rail line.

Speaker 16

- *I want to echo previous speakers about the importance transparency and public involvement.*
- *Thank you for holding this workshop but it was not close enough to where I live.*

Speaker 17

- I testified about H.B. 190 in Dover. From Day 1 the bill was focused on jobs.

- What is the definition of “environmental groups” for CBI and DNREC? Mothers, workers, etc all count under this definition. There is a long list of chemicals at these sites to remediate so we need community and public health involvement on the RAC.
- Jobs versus the environment is a false choice.
- We were promised transparency after the bill passed.

Speaker 18

- I am glad to see DNREC is starting to engage communities. We need a process we can be proud of: open, transparent, and accountable. Not one with “confidential interviews” and “small group discussions” where voices are edited or summarized.
- I am not sure a RAC is the appropriate format for this charge. The committee in the 1990s did not achieve the outcomes that were actually developed. Why should we expect things to be different now?
- If we do have RAC, it must include:
 - Fenceline communities near the 14 sites as well as communities along rail lines, storage, and transit lines. They will be impacted even though they are technically outside the Coastal Zone.
 - A balance of stakeholders.
 - Representatives from the health community with expertise in fenceline emissions and legacy pollution.
 - Representatives of coastal zone users (e.g. recreational users). Their interests are protected under the CZA.
- To avoid conflicts of interest, the RAC should not include:
 - Individuals who would benefit financially or whose employer would benefit financially from the regulations. DNREC should exclude anyone representing the 14 sites
 - Representatives from organizations who accept state funds for their programs. There is too much conflict between access to program resources and the need to have hard discussions at the table.

- RAC meetings should:
 - Be held in affected communities, not Dover.
 - Be held at convenient times.
 - Accept public comment at each meeting,
 - Not include small group discussions where we cannot hear everything.
 - Be recorded and posted online.

Speaker 19

- The original CZA regulations were developed in the 1990s. They needed consensus and CBI helped them get there. Industry got the flexibility they sought but the environmental members wanted data (i.e. an environmental indicator program) to track improvement in the CZ. This was in the original MOU and regulations but the program was never implemented. So now we cannot tell how the CZ is changing. We are uneasy based on the 1990s process and DE's current financial situation.
- A lot of weight is given to offsets but I am not sure these are working.

Speaker 20

- Under H.B. 190, the Port of Wilmington BPT status appears to have legal discrepancies. HB190 added a definition that was "heavy industry use site" and defined the 14 sites. It provided for BPT activity on the sites subject to permitting requirements as long as transfer requirements are met. The Port of Wilmington is one of these sites. Originally it was exempted from the CZA but H.B. 190 includes new language for this site. Based on the new language, I believe any BPT activity at the port has been illegal since August 2, 2017. When will the Secretary enforce this language?

Speaker 21

- I echo many others here tonight. I am very impressed with knowledge and awareness of this group and hope DNREC takes advantage of the offerings they are making tonight.

Speaker 22

- DNREC needs to do more and better public engagement. The public was not given a chance to give input on H.B. 190 and the list of interviewees. Two weeks notice for these workshops was not enough. We need four public hearings in impacted areas and allow for written submissions. DNREC can fit this into its timeline. I have a petition signed by 128 individuals who feel this process has been inadequate. This is not what transparency or inclusiveness looks like.

Speaker 23

- Why do we need this process? We have a CZA. If DNREC was doing its job properly, we would not have pollution issues. The CZA was supposed to protect our quality of life but we do not have that because past pollution has not been taking care of. DNREC has issued miniscule fines for violations in the past and is not doing its jobs.
- I concerned about the vague language in H.B. 190.
- Developers are allowed to submit conversion permit applications before the regulations are written – what will happen if they do?
- The Delaware Way is getting in our way as citizens.

Speaker 24

- DNREC and CBI were handed a bad bill and process. I worked on the regulations in the 1990s. We failed then because of the process that was set up. We did not have technical ability on the committee and the agreement was finalized with compromises that would not work (e.g. we found out later that the environmental indicators were not feasible). That was a deliberate deception by DNREC to get the new regulations passed.

- The detailed General Assembly transcript and any commitments made during that process should be made public. Concerns voiced during that process should be addressed.
- DNREC should develop meaningful and effective criteria for membership. Community and environmental justice expertise was lacking in the 1990s. Do not focus on who needs to be on the RAC – think about the functional process for the RAC.
- We need a more robust and perhaps parallel community outreach process. What is our definition of “meaningful” involvement? It is often difficult to get community members to attend meetings. We may also have literacy issues. DNREC must do much more than it is currently doing; they should consider hiring a full time environmental/environmental justice advocate for these communities. It takes a high level of expertise to work on these topics so communities end up being manipulated by government employees or industrial representatives who have lawyers and engineers to advise them. There is an imbalance so DNREC has to do more.
- What is the role of the Coastal Zone Industrial Control Board in this process?
- We should debate the criteria for RAC membership rather than moving straight into identifying members. DNREC needs to develop meaningful and effective criteria for membership on the RAC before identifying candidates. There is a high knowledge prerequisite for participation in this process. I have identified several questions to start this discussion:
 - What are the ethical requirements and potential conflicts of interest? (Where can we find unbiased experts? Who can address the community health concerns?)
 - No industry or developer that stands to profit should be a voting member.
 - No environmental organization that receives public funds from a state or federal program should be a voting member.
 - What are the types of expertise required (e.g. industrial process, community health)

- What credentials are required?
- What is the selection process to ensure this is not a political process?

Speaker 25

- A likely shortcoming of this process is that very few of the people who are actively involved in environmental, civic, and community organizations have the technical background specific to these sites (e.g. dioxins). It is not fair when other stakeholders have this technical background. Communities need significant technical representation. I am concerned about the potential for less stringent and less structured changes to current regulations if we do not have technical representation from community, environment, and civic groups.
- Current clean up plans for these sites are inadequate.

Facilitated Small Group Discussion on the Regulatory Advisory Committee

Workshop participants divided themselves into small groups to provide feedback on three key questions DNREC must answer as it sets up the RAC. Their feedback is summarized below by question.

Question #1: What stakeholder groups should be represented on the RAC?

Workshop participants were asked to consider three proposed categories of stakeholder sectors from which RAC members could be selected:

- **Community** (e.g. counties, municipalities, civic associations, neighborhoods)
- **Environment, environmental justice, and public health**
- **Business and industry** (e.g. statewide groups or trade associations, individual businesses, labor unions, small businesses, and/or their consultants)

To start the discussion, participants were first asked to consider their answer to the following sub-question: *“If you are here tonight representing an organization or group of stakeholders, does your group fit within one of these categories?”* In small groups, participants were then asked to provide their feedback on the following two sub-questions:

- *“Is there a key stakeholder category that is not covered under the three above?”*
- *“Are there key organizations or stakeholders that you think need to be involved in some way in the Committee, especially newer or lesser known groups? If so, please name them specifically.”*

Workshop participants gave the following feedback, grouped by theme:

- Categories – Participants generally felt that the categories were broad enough that all stakeholders could be covered by one of the categories. Additional or expanded categories may be necessary to cover representatives of the tourism, agriculture, research/technical, educational, and fishing sectors.
- RAC facilitation – Participants emphasized the need for a neutral third party to facilitate the process.
- Community representation – There was strong agreement that communities should be represented on the RAC. The number of community representatives should equal or exceed the number of industry representatives.
- Need for a RAC – One comment was that a RAC is not necessary. DNREC’s drafting and the required public comment periods for new regulations should be sufficient.
- Key stakeholder groups to be represented on the RAC -
 - Communities near the 14 sites and along major transportation routes (e.g. Newark rail line).
 - Environmental justice
 - Public health with experience in environmental justice and health
 - Fishing (commercial and recreational)
 - Tourism and eco-tourism

- Businesses with interests in the 14 sites (Some participants agreed with this while other strongly disagreed. One possibility is to have these businesses represented by an appropriate umbrella organization.)
- Kent and Sussex Counties (Some participants disagreed with this given that all but one of the 14 sites are located in New Castle County.)
- Civic associations, particularly umbrella civic organizations
- Recreational and non-extractive Coastal Zone users (e.g. boating)
- Environmental advocacy, conservation, and restoration (e.g. wildlife protection)
- Private citizens
- Public advocates
- Scientific advisors/technical experts (not DNREC staff)
- Environmental remediation experts
- Legal experts (e.g. redevelopment, contaminated sites, environmental justice, public health) *Advisory capacity*
- Financial experts (e.g. financial assurances) *Advisory capacity*
- First responders and emergency planning
- Navigation safety (e.g. Coast Guard)
- Academic and research institutions (e.g. University of Delaware)
- Labor
- The Port of Wilmington
- Trade associations
- Land use planning experts
- Churches and religious groups
- DE Department of Justice
- Local officials (e.g. county and city)
- New industries (e.g. solar, wind, clean technology)
- Stakeholders not to include on the RAC –
 - General Assembly members
 - State-level elected officials

Participants also wrote down the names of specific organizations, groups, or neighborhoods they thought should serve on or be represented on the RAC:

- Delaware Coalition for Open Government
- League of Women Voters of Delaware
- Council of Civic Organizations of Brandywine 100 (CCOBH)
- Civic League of New Castle County
- Greater Hockessin Civic League
- Rose Hill Community Center
- Claymont Renaissance Organization
- Claymont
- Citizen Advisory Committee (did not clarify which one)
- Delaware City residents
- American Institute of Architects: Delaware Chapter (AIA Delaware)
- American Council of Engineering Companies of Delaware (ACEC/DE)
- Associated Builders and Contractors
- Artesian Resources
- Claymont Dust Study Team
- Delaware City Environmental Coalition
- Sierra Club: Delaware Chapter
- Delaware Riverkeeper Network
- Ocean Conservancy
- Delaware Audubon Society
- Delaware Coalition for Environmental Justice
- New Castle Sailing Club
- University of Delaware College of Marine Studies
- Delaware State University
- Delaware Water Resources Center at the University of Delaware

Question #2: How should RAC members be selected?

The RAC members should be selected in a manner that ensures a group with diverse interests and a manageable number of members. DNREC and CBI have identified three possible options:

- **Option 1 – DNREC selects members:** Under each stakeholder category, the DNREC Secretary identifies and appoints members and alternates to the Committee.
- **Option 2 – Nomination process, then DNREC selects members:** The DNREC Secretary will establish a nomination process for each stakeholder category. Interested parties can nominate potential representatives (self-nominations would be accepted as well) to the Committee during a period of time in early 2018. The DNREC Secretary will review the nominations and select members and alternates from the pool of nominees.
- **Option 3 – Another approach?**

In small groups, participants were then asked to provide their feedback on three sub-questions. Participant feedback is compiled and summarized below each question:

“What do you see as the merits, pros, and cons of each option?”

| Option | Pros | Cons |
|--|--|--|
| Option 1: DNREC selects members | <ul style="list-style-type: none"> • Quick process • Process used for the RAC in the 1990s | <ul style="list-style-type: none"> • Lose transparency • “Usual suspects”/loudest voices will be on the RAC • Not objective • Approach may be unpopular and decrease trust in DNREC • Choices may be unpopular • Could jeopardize credibility of the process |

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| | | <ul style="list-style-type: none"> • Risk of too many insiders |
| Option 2: Nominations process, then DNREC selects members | <ul style="list-style-type: none"> • Quick process • More transparent • Stakeholders may be able to provide input on the candidates • The public may “feel” represented • Gives the public a voice • Promotes diversity • Greater stakeholder involvement | <ul style="list-style-type: none"> • Potential for DNREC to disregard the nominations • Final list may include the “usual suspects” • Risk of too many insiders • Nomination process may feel disingenuous • Too much discretion for DNREC • Nomination process may not result in the right balance • Would require significant outreach efforts |
| Option 3E (see below): DNREC/organizations select members | <ul style="list-style-type: none"> • DNREC could ensure the right balance of stakeholder groups | |

“Is there another approach DNREC should consider?”

- A. Each legislator from the Coastal Zone and Newark could nominate RAC members.
- B. Ask the General Assembly to pass a new law outlining how RAC members should be appointed (e.g. by the Governor, county leaders or mayors)
- C. The public could consider a broad field of candidates and select members by voting online or endorsements.

- D. Use an approach modeled after the Underground Storage Tank regulatory process: a large formal group (around 50 people) is convened and the public is allowed to comment and participate to the extent of their interest.
- E. DNREC selects organizations and communities and they designate their representative on the RAC.
- F. Interested parties are nominated within stakeholder groups and a lottery determines the final candidate.

“Which option do you prefer for selecting representatives and why?”

Participants overwhelmingly favored Option 2 over Option 1. There was limited discussion of the alternative approaches (Options 3A-3G). Three groups felt strongly that Option 2 should include opportunities for the public to comment on the list of candidates and final selections. DNREC should consider public input before making final selections and publish a rationale for its decisions.

Additional feedback on the nomination and selection process

- Self nomination – DNREC should allow self-nominations.
- Notification of call for nominations– Participants urged DNREC to widely publicize the call for nominations and not rely only on press releases and the CZA website. DNREC should reach out to affected communities to solicit nominations.
- DNREC’s role in the selection process – One group of participants felt that DNREC’s role should be minimized during the selection process due to general skepticism about this process and the agency itself. This group preferred Option 3C which allows the public to take the lead in nominating and selecting RAC members.
- Nomination/disclosure of conflicts of interest form – DNREC should develop a standard nomination/disclosure form that all nominees must fill out. Completed forms should be made public. The nomination portion should include information about relevant experience and credentials for representing an organization or stakeholder group. DNREC should require candidates to disclose any potential

conflicts of interest. These could include any relevant background, business interests, political connections, ties to the 14 sites, funding from DNREC and other state agencies, and community connections.

- RAC size – DNREC should be flexible about the number of RAC members to allow for the inclusion of new stakeholders or the need to have an odd number of members. Participants generally felt that 15-20 members was the right amount.
- RAC composition – Many participants emphasized the importance of strong representation from affected communities and striking the right balance of interests. One group felt that a balanced RAC is more important than the specific selection process chosen.
- RAC membership criteria – DNREC should develop clear criteria for RAC membership before the nomination process opens:
 - Members should be committed to the process and expectations for their participation (e.g. time commitment) should be clearly spelled out.
 - Members should have the proper credentials to represent their organization or stakeholder group.
 - The RAC should include representation from the entire state but should be weighted towards those representing New Castle County. There was some disagreement about including anyone from Sussex County.
 - Members should represent a variety of generations.
 - Members should have an alternate.

Question #3: What role should the RAC play in the development of regulations?

DNREC and CBI have identified at least four possible roles for the RAC to play in the development of new regulations:

- **Option 1 – Develop draft regulations:** Develop draft suggested regulations and provide them to DNREC to finalize.
- **Option 2 – Specific guidance:** Provide specific guidance on regulation content and goals.

- **Option 3 – Broad principles and options:** Provide broad principles and options for DNREC to consider in drafting regulations.
- **Option 4 – Feedback to DNREC drafts:** Provide reactions and feedback to DNREC drafts and process throughout regulatory process. This strategy may be combined with any other option(s).
- **Option 5 – Another approach?**

In small groups, participants were then asked to provide their feedback on three sub-questions. Participant feedback is compiled and summarized below each question:

“What do you see as the merits, pros, and cons of each option?”

| Option | Pros | Cons |
|--|--|--|
| Option 1: Draft regulations | <ul style="list-style-type: none"> • RAC has control of all substance • Maximum public input • All voices will be heard • Could fully utilize the expertise of all members | <ul style="list-style-type: none"> • RAC may lack the necessary expertise • May not be feasible • Consensus may be difficult to achieve • Time-consuming • Task is too detailed for a large group • Risk of getting bogged down in the weeds |
| Option 2: Specific guidance | <ul style="list-style-type: none"> • Retain influence over regulations • Maximum feasible public input • Prioritizes would be addressed • Could fully utilize the expertise of all members | <ul style="list-style-type: none"> • Guidance may be ignored • RAC may lack the necessary expertise • Consensus may be difficult to achieve • Risk of getting bogged down in the weeds |

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|---|---|---|
| | | <ul style="list-style-type: none"> • Lack of control for the RAC |
| Option 3: Broad principles and options | <ul style="list-style-type: none"> • DNREC has the expertise to lead drafting • Sets the tone and forces DNREC to focus on key factors from the outset | <ul style="list-style-type: none"> • Virtually no RAC control over regulations • Too broad • Time-consuming to discuss theoretical arguments that may never affect the actual regulations • May promote discord at the expense of progress. |
| Option 4: Feedback to DNREC drafts | <ul style="list-style-type: none"> • RAC retains ability to influence the regulations • DNREC has the expertise to lead drafting • May be easier to reach consensus • How many other committees operate • Creates a role for the RAC in fine-tune (or rejecting) draft regulations before they are finalized | <ul style="list-style-type: none"> • DNREC could ignore feedback • Members and the public may feel like they did not have input • DNREC leads drafting which could put the RAC on a weaker footing |
| Option 5A (see below): Phased approach (first option 3, then 2, then 4, then 1) | <ul style="list-style-type: none"> • Move from broad to specific • RAC writes the final regulations | <ul style="list-style-type: none"> • Time-consuming • Likely would not fit in DNREC's required timeframe |

“Is there another approach DNREC should consider?”

- A. Phased approach from Option 3, to Option 2, to Option 4. Utilize Option 1 if necessary.
- B. Option 2 using Option 4 throughout. RAC develops guidance document and seeks public input on it. Then DNREC provides its comments and it goes back to RAC for review and further refinement. Community engagement should be included throughout.
- C. Phased approach from Option 2 to Option 4. The RAC would supply more direction to the regulation contents at the beginning of the process. As DNREC develops draft regulations, the RAC would ensure their directions are being followed and would have a final say on the regulations. This approach may be determined by the makeup of and expertise on the RAC.
- D. DNREC takes the first cut to incorporate the Act into existing regulations. RAC then decides to either use this draft as their starting point or write a standalone regulation.
- E. Combine Option 2 or 3 with Option 4.

“Which option do you prefer for the RAC’s role, and why?”

Participant input on this question was highly varied with no clear consensus on the best approach. Most groups agreed that Option 4 should be utilized in any scenario, as DNREC has the knowledge and skills to draft regulatory language. Some groups preferred Options 1 and 2 to retain control of the regulatory language while others were firmly against this option because it was likely time-consuming and not feasible. One group strongly disliked Option 3 because the RAC would not retain enough control over the regulations. Another group disliked DNREC serving as the lead drafter in Option 4. A small number of participants preferred only Option 4.

Additional feedback on the RAC’s role

- Early clarity on RAC's role – Participants felt that the RAC's role should be decided and communicated before it begins its work and preferably before the nomination process begins.
- Resources – Participants felt that the RAC would need legal and technical support from outside sources on particular questions.
- Ongoing role for the RAC – One group felt that the RAC should have a continuing role in implementation and enforcement of the regulations, though this is arguably the role that the Coastal Zone Industrial Control Board should play.

Final Thoughts

Secretary Garvin closed both workshops by offering a few final thoughts. He heard clearly the concerns about legacy pollution in communities in the coastal zone and the need to continue remediation of the 14 sites. He was encouraged by the spirited debate amongst workshop participants on the three questions DNREC must answer about convening the RAC. He emphasized that DNREC will continue to seek advice and solutions for engaging communities during the regulation drafting process and bringing them to the table.

Based on concerns about the public comment timeline for CBI's draft recommendations report, DNREC extended the deadline to January 19, 2018.

Appendix C: Public Workshops Participants

Please note: This list may be incomplete – some interviewees brought additional members, staff, colleagues or others with them to in-person or phone interviews.

Facilitation team and DNREC staff

| Name | Affiliation |
|-------------------|------------------------------|
| Kimberly Cole | DNREC |
| Kevin Coyle | DNREC |
| Dirk Durstein | DNREC |
| David Fairman | Consensus Building Institute |
| Caren Fitzgerald | DNREC |
| Sec. Shawn Garvin | DNREC |
| Rebecca Gilbert | Consensus Building Institute |
| Kathleen Harris | DNREC |
| Michelle Jacobs | DNREC |
| Susan Love | DNREC |
| Bob Scarborough | DNREC |
| Devera Scott | DNREC |
| Sofia Soto Reyes | Consensus Building Institute |
| Emily St. Clair | DNREC |

Members of the public

| Name | Affiliation |
|------------------|--|
| Jen Adkins | Partnership for the Delaware Estuary (PDE) |
| Onesimus Al-Amin | New Jim Crow Coalition |
| Rick Armitage | Newark |
| David Athey | Partnership for the Delaware Estuary (PDE) |
| Lynsey Baer | DSWA |
| Karen Barker | School teacher & citizen |
| Lois Barth | Self |

| | |
|-----------------------|----------------------------------|
| Danene Birtell | Tri-State Bird Rescue & Research |
| Jean Bonner | DE City resident |
| Suzanne Brandt | Resident of DE City |
| Sascha Bretzger | Coalition for the Coastal Zone |
| Sarah Bucic | None |
| David Carter | Citizen |
| Chris Castagno | None |
| Jeff Coleman | None |
| Heather Connell | Sierra Club |
| Jay Cooperson | Self |
| Brian Crevasse | None |
| Garrison Davis | CFC2 |
| David DeCaro | Chesapeake Utility |
| John Deemer | DCRC |
| Mah DePizzo | None |
| Jennifer DiJoseph | Advanced Geoservices |
| Penny Dryden | DCR4EJ |
| Kenny Dryden | DCR4EJ |
| Bill Dunn | VP-CLNCC |
| Doug Eitelman | V&L |
| Barbara Finnan | Citizen |
| Beverly Flannigan | None |
| Lorraine Fleming | DNS |
| Bill Freeborn | DCA |
| Andrew Galvin | Network DE |
| Jill Gaumer | Self |
| Tom Godlewski | DCRC |
| Brenna Goggin | DNS |
| Annie Gould | DE State Senate |
| Debbie Hall | None |
| Sen. Stephanie Hansen | DE State Senate |
| Angela Harris | None |

| | |
|-------------------------|---------------------------------------|
| Debbie Heaton | DE Sierra Club |
| Stephanie Herron | DE Sierra Club |
| Jason Hoover | Self |
| Tim Houseal | Young Conaway Stargatt & Taylor |
| Doug Janiec | State resident |
| Stephen Johns | V&L |
| Pete Kearney | NCC |
| Ellen Kohler | DNS |
| Tim Konkus | None |
| Andrew Larkin | NOAA |
| Gwen Lawless | None |
| Ellen Lebowitz | None |
| Susan Mack | Self |
| Mark Martell | None |
| Lisa Matthews | NCSC |
| Eugene McCoy | CCOBH |
| Pastor Louis McDuffy | Eden/Hamilton Park |
| Jennifer Merrill | None |
| Paul Morrill | Committee of 100 |
| Tony Mullen | None |
| Mary Peck | DNS |
| Coralie Pryde | Sierra Club |
| Jordyn Pusey | CLNCC |
| Michele Roberts | Environmental Justice Health Alliance |
| Amy Roe | Resident |
| Alan Rogers | Self |
| Robert Sadot | None |
| Jeanne Sadot | Self |
| Matthew Sarver | DOS |
| Peggy Schultz | LWVDE |
| James Seif | DNS |
| Victor Singer | Self |

| | |
|----------------|----------------------------------|
| Lisa Smith | Tri-State Bird Rescue & Research |
| Deirdre Smith | Committee of 100 |
| Kevin Stewart | American Lung Association |
| Nancy Willing | CLNCC |
| Martin Willis | Self |
| Mark Wolanski | New Castle County |
| Nick Wosileski | Newark, DE |
| Marian Young | BrightFields |

Appendix D: Written Public Comments Received by December 7, 2017

The following stakeholders submitted written public comments. Their comments without attribution are included below.

| Name | Affiliation |
|---|--|
| American Lung Association of the Mid-Atlantic c/o Kevin Stewart | American Lung Association of the Mid-Atlantic |
| Karen Barker | Citizen |
| Council of Civic Organizations of Brandywine Hundred c/o Gene McCoy | Council of Civic Organizations of Brandywine Hundred |
| Delmarva Ornithological Society c/o Matthew Sarver | Delmarva Ornithological Society |
| Michele Greene | Citizen |
| Richard Fleming | Citizen |
| John Martin | Citizen |
| Neil Quinlan, Sr. | Citizen |
| Anonymous commenters | N/A |

COMMENT 1

What initial input do you have about developing regulations for the Conversion Permits?

Ground water monitoring

Pre-planning for accidents

Smoke stack monitoring

Proper staff ratios for the air and water testing

Maps of where monitors will be regarding the sites

“More planning for the worst”

Testing of soil

Testing of mud in the Delaware River

Testing of dead fish in the Delaware River
Proper and prompt assurance of safety notifications

What stakeholder groups should be represented in the RAC?

State reps
Recreational – sports groups
County reps
Civic groups
School boards of local area
Community groups
Delaware Coalition for Open Government
New Castle Sailing Club
Friend of the State Parks
Civic League of New Castle County
Citizens Advisory Oversight Committee rep
EPA, scientists, engineers

How should RAC members be identified and selected?

Ratios from representatives of all the groups including civic and neighborhoods
They – DNREC – need to determine how many of each category of people. For example: 3 engineers, 2 business people, 3 civic-neighborhood people, etc...
Not too many or any advance to one group
Equal ratios

What role should the RAC play in the development of regulations?

#1 and #2 combined but the committee doesn't draft everything; rather they should give input and specific guidance on the regulations.

Do you have additional thoughts and suggestions you would like to share?

The Committee should have equal power over the final draft as to what becomes regulation. Power should be 50/50 split between DNREC and Committee.

COMMENT 2

What initial input do you have about developing regulations for the Conversion Permits?

The initial input that I have is that the RAC should go over the current regulations line by line and see what they think should be updated, amended, or voided all together. I also think the “footprints of conforming use” for all the 14 locations should be given a second look by the DNREC history of CZA the boundary stream from 1993 and the name of the sites are also outdated. The new regulations have the reflect economic development with a balance of environmental safe grounds.

What stakeholder groups should be represented in the RAC?

One person from the state’s academic environmental research

One person from the state’s agricultural interest

One person from the state’s economic development office

One person from DE’s Coastal Watermen Association

One person from southern DE’s environmental advisory group

One person from the EPA

Two people from industry in the CZA

One person from industry outside the CZA

One person from labor

One person from the DE Attorney General’s office

Two people from local government

One person from the Port of Wilmington

Two people who are private citizens

Do you have additional thoughts and suggestions you would like to share?

Involve community – hold meetings at Longshoreman Hall

COMMENT 3

How should RAC members be identified and selected?

Must include effective outreach to identify and recruit groups in the EJ communities.
Find ways to facilitate and ensure their participation to the maximum extent they are able.

Process should allow for self-nomination.

Process should be clear in descriptions of expectations including time and travel commitments, work product scope and deliverables

Identify size and structure before beginning nomination process

Entirely open listing of nominees with qualifications, conflicts, etc.

Be sure to ask CBI what their experience shows with respect to nomination and selection processes that have worked in other settings

What role should the RAC play in the development of regulations?

Option 3 & 2 -> option 4 of the four options given was our general sense

Do you have additional thoughts and suggestions you would like to share?

DNREC should make allowances for the RAC to have expert presentations made to it to support the committee's work.

DNREC should ensure that (after promulgation of the final regulation) there is continuing independent group that is informed about and whose recommendations are sought about permits, implementation, enforcement, monitoring, and concerns from affected parties, etc.

COMMENT 4

What initial input do you have about developing regulations for the Conversion Permits?

"Indicators" proposed by initial CZ reg and MOU that lead to it need to be defined and quantified

What requirements apply to normal operation conditions and what requirements apply to occasions of mechanical or other failure?

What safety provisions are to apply in the event of default or dissolution of the organizational entity operating on one of the 14 sites?

What stakeholder groups should be represented in the RAC?

In addition to industrial interests, a broad spectrum of groups whose concerns are not connected to their wallets must be represented.

How should RAC members be identified and selected?

Identified according to extent that they are affected through their wallets.

Characterized as willing to see their expressed views exposed to the public. Ideas propagated by those ashamed of public exposure need to be so identified.

What role should the RAC play in the development of regulations?

DNREC staff must prepare an initial draft. All comments on what's included and what ought to be included need to be public distributed (or made available). The RAC needs to be the initial source of review comments. Starting point = existing CZ regulations.

Do you have additional thoughts and suggestions you would like to share?

The Port of Wilmington is included in the fourteen sites where bulk product transfers are allowed under HB190 if the material transferred is fully manufactured for utilized in the CZ. Yet under the original CZA the Port of Wilmington is specifically exempted. The HB190 measurement has been law since 8/2/2017. When will the DNREC enforce it, as the Secretary is under oath to do?

COMMENT 5

What initial input do you have about developing regulations for the Conversion Permits?

Permits should be representative of the typical CZA processes and should not terminate a site from use in the future.

Offsets should be established around the typical land use and federal state permits

Annual demonstration of offset success should be required, but no new annual offsets should be required

The regulations should be balanced and allow for the regulation of old and new facilities. New and expanded sites should be allowed.

What stakeholder groups should be represented in the RAC?

DE Estuary program

Nature Conservancy

Audubon Society

Country Land use and Conservations districts

Delmarva Power / Chesapeake utilities/ PBF Energy

Dover AFB

Federal/state agencies

Small business associations

Chamber of Commerce

Reps of communities within coastal zone borders and directly adjacent to facilities/sites

How should RAC members be identified and selected?

Experienced regulation and environmental professionals and recognized subject matter experts. They should be nominated by groups, agencies, business, and selected by secretary or a governor appointed committee.

What role should the RAC play in the development of regulations?

The committee should draft the regulations in coordination with the DNREC in order to expedite the process.

Do you have additional thoughts and suggestions you would like to share?

The conversion permits should not limit the uses of transferred of manufactured product only in the CZA.

Conversion permits should be allowed prior to final regulation issuance. These should include new uses not previous allowed by the former regulations.

COMMENT 6

Petition: We Demand a Voice in Coastal Zone Redevelopments

Petition signatures are attached.

Ever since the Coastal Zone Conversion Permit Act (HB 190) was introduced in May, the most-affected communities – those within the Coastal Zone – have been left out of the discussion.

This new law, which was rapidly whisked through the legislature and signed by Governor Carney in early August despite zero public outreach, would allow the redevelopment of former industrial sites along the Delaware River and could bring new heavy industry to the area.

Meanwhile, the fenceline communities – those sharing a boundary with the redevelopment sites – have been left in the dark about a law that could bring untold pollution, noise and traffic to their neighborhoods, as well as the higher rates of cancer and respiratory illnesses that fenceline communities typically face.

Department of Natural Resources and Environmental Control (DNREC) Secretary Shawn M. Garvin promised public participation throughout the process of forming regulations under the law, yet no members of fenceline communities have been designated as stakeholders.

Two “public workshops” on short notice are insufficient. Public workshops are not public hearings. They are not necessarily part of any formal record. Giving two weeks notice of workshops held the week after Thanksgiving does not truly allow for the public to engage in a meaningful way about regulations that can potentially impact their lives in very serious ways.

DNREC should hold at least four formal public hearings, in Claymont, Southbridge, the Route 9 Corridor, and Delaware City.

Community members should be able to state their concerns, comments, and feedback on all aspects of this proposal, not just the process of forming the Regulatory Advisory Committee (RAC). Members of fenceline communities should serve on the RAC.

COMMENT 7

Dear CBI and DNREC,

I live in Newark, Delaware. My first concern is similar to those expressed by a great number of people at the hearing in Wilmington last week, namely the lack of transparency of the process to this point. I drove to Dover this summer to speak to the Senate about HB190 and clearly this was a waste of my gas, time and breath, because it was very clear that this deal had been made ahead of time, behind closed doors. CBI, DNREC and Governor Carney and the state senators and representatives are going to need to work very hard to gain the trust of the people of Delaware after this behavior.

Secondly, many people spoke about the need for more effective inclusion of communities that will be directly affected by CZA regulation changes. The obvious communities are those right next to the coastal zone and the 14 sites of greatest concern and they absolutely need to be included and their voices heard. BUT, I want to make the point that ANY CITIZEN who lives near the railroad tracks that will be transporting a much higher volume of potentially dangerous substances to the bulk transfer sites along the coast will also be negatively impacted. The increased train traffic and noise are upsetting and disruptive to the neighborhood. Some nights it is hard to sleep when the trains idle at the station, causing pictures on my walls to rattle, or blow their horns and they race through the station. The potential danger of explosions, derailments and other accidents puts MANY PEOPLE AT RISK. This includes me and my family, neighbors and friends in Newark who live within less than a block from the railroad tracks.

This means that the outreach going forward needs to be much more widespread and accessible to many Delawareans.

COMMENT 8

Twenty percent of any capital investment proposed or approved shall be set aside for remediation and restoration of wetlands in the Coastal Zone. Industry has systemically escaped accountability for pollution that was reasonably foreseeable. The bankruptcy process has been abused and companies should not be permitted to walk away from their bad behaviors. Impacts to fish have been especially damaging and the Delaware River estuary needs to be protected from bad industrial practices that value profit over people.

COMMENT 9

These comments on environmental goals and indicators are intended to provide background and perspective to DNREC, the Consensus Building Institute and the Regulatory Advisory Committee as they begin to consider changes to Coastal Zone Act regulations.

Development of and reporting on Goals & Indicators was a critical element of Governor Carper's Coastal Zone Regulatory Advisory Committee's 1998 agreement leading to successful adoption of the current Coastal Zone Regulations. Industry representatives accepted regulatory inclusion of the G&I requirement as necessary to achieve their goals of increased flexibility regarding permitting.

As it has turned out, industry got the flexibility they desired – but those interested in environmental protection did not get the monitoring and reporting they had been promised, even though it was required by regulation.

For almost 20 years, and under four Secretaries, DNREC has simply declined to do that which 1999 regulations (which the Department wrote) require them to do. [*Coastal*

Zone environmental goals and indicators shall be developed by the Department after promulgation of these regulations and used for assessing applications and determining the long-term quality of the Coastal Zone.”] I believe this is because previous Secretaries focused on “*assessing applications*” while, in my view, the primary value is in “*determining the long term health of the Coastal Zone*”.

I believe this inaction resulted from an overly narrow view, by DNREC, of the value of environmental indicators. Consider two views:

DNREC view In my one-on-one discussions with Phil Cherry, the Department’s former lead on this issue, he stated the following:

1. Indicators will not help DNREC make decisions regarding the need for and suitability of offsets included as part of individual Coastal Zone permit applications. For example, consider an industry which wants to expand a Coastal Zone facility -- and the expansion would increase NOX emissions. There already is so much NOX in the air coming from various sources, including upwind out-of-state sources, that if the expansion application was approved (without offsets) there would not be a noticeable increase in NOX levels in the Coastal Zone.
2. Nevertheless environmental indicators can be very valuable. If necessary DNREC resources were available, the Department would love to develop and use them to improve environmental management decisions covering all of Delaware.

My view

1. Environmental Indicators, whether statewide or CZ-specific, can be very valuable. They are an indispensable tool needed to understand and monitor environmental health and long term trends – and this monitoring is needed in

order to improve environmental management decisions at the federal, state and local level.

2. Indicators will help Delaware's elected officials and business executives as they make broad strategic decisions regarding areas and issues of environmental concern and appropriate governmental and business response. They can influence the Department's action in a variety of situations – including decisions on individual Coastal Zone permit applications.

Long term scientific evaluation of environmental trends can provide insight on whether or not current environmentally-protective measures, regulatory and/or voluntary, are working. The results of this evaluation can influence, improve, and sometimes provide a rationale to strengthen – or ease – regulatory initiatives established with the goal of environmental improvement. Results also can mobilize and focus public and business support for needed changes.

Comparison of views

The two views outlined above actually are quite compatible. There should be little disagreement with the view that the result of most individual permitting decisions can be expected to have immeasurably small effects on local environmental indicators.

However there also should be agreement that measuring indicator trends over time will provide information valuable in setting strategic environmental goals for the state and Coastal Zone, determining changes or initiatives needed to reach those goals, reallocating resources to support those initiatives, monitoring progress toward those goals ... and providing a clear and defensible rationale for changing programs when trendline data says current programs will not achieve the goals that are set.

Path forward

There is merit in starting small. A set of reasonable environmental goals for Delaware's

Coastal Zone already has been broadly defined and accepted by the Department. For each goal it would be valuable, as a beginning, to select a few indicators for which there already is a wealth of historical data and begin by assembling the information, correlating it, reporting trends and assessing implications.

The information generated might not assist specific individual permitting decisions, but it is reasonable to predict that it will help DNREC prioritize and assign Departmental resources more efficiently. And it potentially can lead to modified regulations, faster permitting on applications and greater public support for Departmental programs and funding requests. Following indicator trends over time will lead to a general sense of progress and generate additional public and legislative support. And to the extent that the data covers the Coastal Zone it can help protect and preserve what the Act calls *“the most critical areas for the future of the State in terms of the quality of life in the State.”*

Assigning a DNREC intern to initiate the effort was a welcome beginning. It also is true that the scope of potential benefits is such that a more aggressive Departmental effort is well justified, even if it were not legally required.

COMMENT 10

- The RAC size should be between 15 and 20 to adequately represent the breadth and balance of perspectives.
- Appointment to the RAC should be at the discretion of the Secretary following an open public nomination process that is widely advertised to stakeholder groups and the public.
- The full breadth of scientific and environmental interests should be represented by at least 5 RAC members with special expertise in the following environmental areas: 1) air quality, 2) water quality and estuarine health 3) wildlife and wildlife impacts 4) environmental justice, and 5) environmental law and policy.
- Business interests represented on the RAC should include ecotourism and other

recreational stakeholders.

- The RAC should provide specific and detailed guidance to DNREC on the formation of the regulations along with iterative review of draft regulations.

COMMENT 11

What initial input do you have about developing regulations for the Conversion Permits?

That the regulations will be developed without enough input from citizens and will be slanted to favor industry and their partners.

What stakeholder groups should be represented in the RAC?

Affected municipalities, environmental groups with a history on these issues, citizens who could be affected as well as across the state, small business owners, University of Delaware experts

The CZA has been a model throughout the country, so changes will affect all residents.

How should RAC members be identified and selected?

After solicitation and response, questionnaire and interview by Department of State, DNREC, & the Legislature.

What role should the RAC play in the development of regulations?

Should have a meaningful voice in drafting – not token presence. Review drafts, discuss revisions, have vote in adoption.

Do you have additional thoughts and suggestions you would like to share?

Because this was pushed through quickly it is very important to have an OPEN process from here on.

COMMENT 12

The transportation of hazardous materials by rail from Delaware City to the Pennsylvania border will be increased by the changes to the Coastal Zoning Act. The railroad tracks, particularly those owned by CSX, run through highly populated areas of New Castle County and the City of Wilmington. CSX currently carries sulfur in its cars and is anticipated to add ethanol to the list. Railroad tracks and cars have not been updated in some cases in hundreds of years. Compared to other developing countries the railroads of the United States, including CSX in Delaware, are backwards. In the event of a spill or a catastrophe emergency planning by various levels of government are probably the best that can be expected under the circumstances. However, the risk to the public from increased traffic on the rail lines and the increase in hazardous materials being carried should be taken into consideration when deciding regulatory regimes resulting from changes to the Coastal Zone Act. It is to be hoped that every effort will be to bring railroading and the transportation of hazardous materials into a technologically advanced state in Delaware, possibly devising ways to avoid congested cities and populations that frequently include the poor, the elderly, and the disabled who are limited in their ability to be sheltered and/or evacuated should an accident occur. CSX needs to be asked to improve their tracks, require the most up-to-date railroad cars carrying hazardous materials, to coordinate their schedules with schools and public events along the railroad lines to avoid conflict whenever possible, and to plan for the future to include going around major metropolitan areas with magnetic levitation tracks, tunnels, bridges, and barriers on overhead tracks. Specifically, there are no barriers on the tracks adjacent to Baynard Stadium and Trolley Square in Wilmington and probably other places.

COMMENT 13

Coastal Zone Waivers (i.e. Conversion Permits)

Every Waiver has an Industrial Company and the specific land they will use. The waiver is Company, use proposed, and property specific and must go to a Public Hearing before it is granted.

Land remediation currently needed by the property would be included in the waiver process.

Any change in the Company or their use would require a new waiver. Change in the owner, for example, might be a merger, their purchase or their purchase of another Company to run the site or a change in their process used for the site.

Lack of the use by the Company of the site for one year would require a new waiver.

Note that we believe that the Company/use/land are key specifics that the Public knows more about than the Department and requires a public hearing to provide that information to the Department.

COMMENT 14

I thought I would send a few remarks on some key items I took away from last evening's Coastal Zone Conversion Permit Act (CZCPA) Public Workshop.

- 1) More than once the concern was raised about what the impact of the CZCPA would be upon the granting of permits to applicants during the interim period between the passage of the Act and the finalization of revised regulations. DNREC needs to address those concerns in a way that provides assurance to concerned individuals, communities, and public advocacy organizations, as well as provides regulatory certainty under a fair, legally defensible process for potential applicants. The more authoritatively DNREC can do so, the less likelihood there will be for misunderstandings or recriminations after the fact.
- 2) Although there seemed to be general consensus among attendees that a *nomination* process be used to identify likely RAC participants, I did not

apprehend that there was nearly as much commentary about the *selection* process other than, chiefly, that it be transparent and that it not excessively represent the business and industry stakeholder sector. I write here only to make the additional recommendation that the DNREC selection process be clearly thought out and explained to the public well before the nomination process gets underway. For example: What criteria for evaluation—diversity, qualifications, expertise, etc., would be sought? What structure of committee would best accomplish the consensus for the committee’s role as envisioned at the workshops? It would also be acceptable to me if the Secretary would choose to form a small, collegial Nominations Committee of Delawareans of unimpeachable character, with representatives from across the spectrum of stakeholder sectors, but who are also able to recognize the need for all parties to be at the table, to assist the Secretary in constructing slates of eligible candidates from which the Secretary could make his final choices ... But DNREC may have confidence it can manage this process on its own without such external assistance.

- 3) I believe I brought this up in other comments I have given, but I think it bears repeating: To the extent there are any reasonably expected conversion uses that are “waiting in the wings” to be proposed by likely applicants, or to the extent there are brownfield redevelopment or air or water quality concerns that are likely to become recognized as more prominent issues, I believe it will help DNREC’s process if it can anticipate those possibilities in a transparent way, and take extra pains to ensure that the RAC includes among its members those who have skills in addressing these. The regulations that emerge from this process should at least be looking in the right direction when they hit the pages of the Delaware Register.
- 4) I applaud DNREC’s decision to hold the workshop at the location it did, at a community center in close proximity to the Coastal Strip and to some of the Industrial Zones at issue. I recognize that there were difficulties posed by the

need to schedule these so quickly, and by the acoustics of the meeting space. Nevertheless, despite the involvement of many and the vigorous discussion, the relative sparseness of attendance by local residents or by their neighborhood representatives was somewhat disheartening. Given the importance the American Lung Association places on Environmental Justice, I strongly recommend that further, deliberate steps be taken as follows:

- a. Continue working to hold future meetings in locations closest to where those most affected (near the Industrial Zones and the transportation corridors and waterways anticipated to be most heavily impacted by CZ Conversion as well as by current active and brownfield sites in the Coastal Strip.
- b. Do the best you can to get sites that can accommodate the crowds expected, that have adequate parking, transit (or DNREC-supported shuttle) access, accessibility, lighting, acoustics, etc.
- c. Work with everyone interested in EJ, including especially with the most vociferous critics of DNREC's EJ performance thus far, to identify and recruit public interest and involvement in this process, with the goal that success will be measured by the extent that involvement comes to fruition. I would hope that those who express outrage about the depth of flaws in the community recruitment process thus far would have some meaningful recommendations for *how* to resolve those flaws.
- d. Ensure communications to people of such local communities are informative and suitably couched in language that will be comprehensible to them. Again, the need to work with local communicators is necessary here.
- e. Ensure that opportunities for local community involvement are provided on terms that people in those communities can take advantage of. For example, if full-day meetings are impractical for EJ community members, then find out and implement the kind and duration of meetings that *are* practicable, and then implement those to garner involvement.

- f. DNREC should solicit advice from CBI regarding what that organization's decades of experience advise and what decades of professional literature show pertaining to effective, demonstrated means to secure public involvement in EJ communities. Be prepared to think outside the box of "public meetings with people in chairs in a room."
- g. Finally, it also seemed clear that the community's input is *not* likely to be monolithic—e.g., in the sense of there being blanket opposition to whatever conversion projects may be permitted under the CZCPA. Therefore, DNREC should be prepared to manage receiving strong, divergent views from local residents and, with CBI's assistance, actively to look for and find common ground.

Appendix E: Draft Nomination Form

Per a Start Action Notice signed by Secretary Garvin on September 28, 2017, Delaware's Department of Natural Resources and Environmental Control (DNREC) will develop the amendments to the Coastal Zone Regulations to implement the conversion process recently enacted by the General Assembly in a transparent and inclusive process. In order to promote the involvement of stakeholders, including communities, regulated parties, large and small businesses, organized labor, conservation and environmental organizations, public health, local government, and other affected persons, DNREC will convene a Regulatory Advisory Committee (RAC) to help the agency draft conversion permit regulations. It will also support public outreach and engagement efforts to ensure a collaborative regulatory development process.

This form should be used to submit nominations for a Regulatory Advisory Committee member. Please submit a new form for each candidate you wish to nominate.

Nominee's Name:

Nominee's Organization, Entity or Primary Affiliation for purposes of this Nomination:

Address:

Phone Number:

Email:

Self-Nomination: (Please check box here)

Nominating Another: (Please check box here acknowledging that this person is aware of her/his nomination)

Will the nominee be able to identify an alternate? (Please check box Y/N here)

Nomination is for which stakeholder category: 1) environment, environmental justice, and public health; 2) community including fenceline communities; 3) industrial business and labor; and 4) other.

If “Other” please explain why this nomination does not fit within the first three categories.

Please express the candidate’s interests in the Coastal Zone.

What entity or stakeholders or community does this candidate represent?

What special skills, training, abilities, or experience does this candidate possess that will allow him/her to serve the Regulatory Advisory Committee well?

Do you have experience with, connections to, or networks with marginalized communities, fenceline communities, public health advocacy, or equity and environmental justice organizations?

What involvement has this candidate had with DNREC and the CZA regulatory process to date?

What other affiliations or experience does this candidate have that might be relevant to the CZA Regulatory Advisory Committee and DNREC’s regulatory development process?

Why are you recommending this person? Please speak to this candidate’s qualifications based on the membership criteria put forward by the Secretary.

Can you recommend who should serve as this candidate’s alternate, in the event that they are not able to attend a Regulatory Advisory Committee meeting?

Is the candidate willing to work respectfully and collaboratively with those they may not agree with?

Additional information or comments:

Appendix F: Draft Disclosure Form

Per a Start Action Notice signed by Secretary Garvin on September 28, 2017, Delaware's Department of Natural Resources and Environmental Control (DNREC) will develop the amendments to the Coastal Zone Regulations to implement the conversion process recently enacted by the General Assembly in a transparent and inclusive process. In order to promote the involvement of stakeholders, including communities, regulated parties, large and small businesses, organized labor, conservation and environmental organizations, public health, local government, and other affected persons, DNREC will convene a Regulatory Advisory Committee (RAC) to help the agency draft conversion permit regulations. It will also support public outreach and engagement efforts to ensure a collaborative regulatory development process.

The purpose of this form is to foster transparency of a public process and is not necessarily an effort to preclude someone from serving. Answers to this form will be made public, minus any personal contact information.

This form should be used to disclose any financial, personal or organizational interests related to the Coastal Zone for a Regulatory Advisory Committee member. Please submit a new form for each candidate you are nominating.

Nominee's Name:

Does this candidate, relatives, or their employer, hold any financial interest, even if modest, in one or more of the 14 sites that would be regulated under the new CZA conversion permits? If so, please note the properties to which they have an interest and the nature of that interest (property owner, investor, lease holder of an operation, shareholder, lender, etc.)?

Does this candidate or their employer provide services to any of the owners or operators of one, some, or many of the 14 sites under the new Coastal Zone Conversion Permit Act? If yes, please include a list of the candidate's clients (legal, technical, or otherwise) and the general nature of the work (technical services, legal services, etc.)?

Does this candidate work for an organization that accepts funds from DNREC or other state agencies as part of their program resources? If yes, please describe the types and frequency of grants received.

At this time, is this candidate or the entity(s) they are affiliated with engaged in any litigation related to DNREC or any business located or operating in the Coastal Zone?

Are there any other business interests, political ties, funding interests, or community interests that the candidate should disclose for purposes of transparency? If so, please offer such disclosures.

Appendix G: List of Possible Resources for the Regulatory Advisory Committee

CBI recommends that DNREC, and others as appropriate, provide the RAC with the necessary information for the RAC to jointly educate itself and be informed about technical and legal information relevant to their deliberations. Some of this information rests with DNREC while some may rest with other state agencies or stakeholder organizations. It may not be possible to gather, organize and provide to the RAC all of the below. However, the below lists the advice offered by a number of commenters on information needed:

- **Details for each site**
 - History of site activities
 - Contamination history
 - Remediation status
 - Current usage
 - Current on-site requirements (e.g. H&S protocols, daily monitoring)
 - Infrastructure/site amenities status.
 - Planned/prospective development opportunities by site (Duffield, D2, Claymont, Prosperity Partnership may have this kind of information)
 - Existing natural resources, if any
 - Risk assessment (TBD)
 - Readiness for leasing
- **Past data on the DNREC Coastal Zone program**
 - History and details on past permits and results (e.g. current site status)
 - History and details on past approved offsets and results
 - Timelines of actual permit application cases
- **Current permitting process**

- List and brief descriptions of relevant laws and regulations (include links to full language)
- List of required documents a company must submit to EPA, DNREC, New Castle County, etc. under the current process
- All permits currently required and their sequencing under the current process
 - Diagram of the process to develop a property
 - Other processes already in place (e.g. HSCA, NPDES, CAA)
 - Permit prerequisites (i.e. Do some permits require others first?)
- **Benchmarking**
 - Current standards for heavy industrial infrastructure (e.g. double hulled ships, tank secondary containment)
 - Existing models for financial assurance (e.g. under RCRA, HSCA)
 - CZ language in other coastal states' regulations (e.g. PA, NJ, MD)
- **Definitions**
 - Materials on recognized definitions of industry types.
 - Current state definitions of heavy industry vs. manufacturing and how that is determined in cases.
- **Forecasting**
 - Contractor(s) to analyze and/or information on the direct benefit to the state of each job created or state revenues for different scenarios. (e.g. taxes generated – payroll taxes, property taxes, personnel income, corporation tax, gross receipts, county, market potential; number of jobs)
 - Proposed/likely operations on these sites that would give rise to a Conversion Permit. What is the universe of likely businesses – what were the companies “knocking on the door” in the past?
 - Prospects for a future DE economy, located in the CZ (i.e. feasible “new” business arenas)

- **Background reading**
 - Environmental justice, with a focus on Delaware history
 - Remediation techniques, costs, timelines
 - Cumulative health impacts of exposure to chemicals of concern
 - History of the CZA and the Coastal Zone

- **Other information/materials**
 - What is DNREC's vision for these sites?
 - Large, detailed maps of the 14 sites
 - List of acronyms
 - List of potential technical advisors (if subcommittees are not set up)
 - Timeline of when key pieces are due to DNREC
 - Employment statistics
 - Employment rates in New Castle Co. and the rest of DE.
 - Employment rates by industry.

Appendix H: Public Comments Submitted on the Draft Report

The following stakeholders submitted written public comments on the draft Report. Their comments are included below. Comments submitted via the online feedback survey are included together, grouped by recommendation.

| Name | Affiliation |
|---|---|
| Karen Barker | Citizen |
| Sarah Bucic | Citizen |
| Coalition for the Coastal Zone c/o Amy Roe | Coalition for the Coastal Zone |
| Council of Civic Organizations of Brandywine Hundred c/o Eugene McCoy | Council of Civic Organizations of Brandywine Hundred |
| Keith Delaney | D2 Organization |
| Delaware Audubon c/o Mark Martell | Delaware Audubon |
| Delaware Nature Society c/o Brenna Goggin | Delaware Nature Society |
| Delaware Sierra Club c/o Stephanie Herron | Delaware Sierra Club |
| Eastern Brandywine Hundred Coordinating Council, Inc. c/o Terrence Wright | Eastern Brandywine Hundred Coordinating Council, Inc. |
| Octavia Dryden and Michele Roberts | DCR4EJ and EJHA |
| Lorraine Fleming | Citizen |
| Richard Fleming | Citizen |
| Debra Hall | Citizen |
| Ashley Kennedy | Citizen |
| Douglas Janiec | Citizen |
| League of Women Voters of Delaware | League of Women Voters of Delaware |

| | |
|---|--|
| c/o Peggy Schultz | |
| Ellen Lebowitz | Citizen |
| Pastor Louis McDuffy | Citizen |
| Amy Roe | Citizen |
| Brett Saddler | Claymont Renaissance Development Corp. |
| Victor Singer | Citizen |
| Sheila Smith | Citizen |
| The Committee of 100 c/o Paul Morrill | The Committee of 100 |
| The Nature Conservancy – Delaware c/o Sarah Cooksey | The Nature Conservancy – Delaware |
| University of Delaware Faculty and Staff c/o Jeanette Miller | University of Delaware |
| Martin Willis | Citizen |
| Anonymous commenter | N/A |

Q1 Scope Recommendation #1: The RAC would focus solely on changes to existing regulations or the creation of additional regulations necessary to implement the CZCPA. The RAC would not be charged with amending or revising the regulations already in place for existing permits.

Answered: 4 Skipped: 6

| # | RESPONSES | DATE |
|---|--|--------------------|
| 1 | It is very important to provide a historical analysis on the CZPA. The largest reason being the evolution of the focus on environmental justice, which was not a "recognized" issue under that past policy. Given the known disproportionate environmental and health impacts all contributing to cumulative impacts must be factored in. That said, the RAC MUST find a way for incorporating into their processes across the board. In addition, there must be engagement of technical advisors identified by the communities from those who have "proven" backgrounds in the area. One being the Center for Earth, Energy and Environment (www.ceed.org). | 1/19/2018 4:23 PM |
| 2 | The RAC should focus solely on changes to the existing Regulations and make additional Regulations to implement the CZCPA | 1/17/2018 10:25 AM |
| 3 | Agreed. | 1/8/2018 10:36 AM |
| 4 | The regulations should ensure that regulations related to protection and restoration of coastal resources, including Natural Resource Damage assessment regulations, are adequately addressed. These are covered in CERCLA, HSCA, (and OPA) which are described on the website but NRDA is not mentioned. | 1/2/2018 1:37 PM |

Q2 Stakeholder Groups Recommendation #2: The Secretary should provide for representation by three broad stakeholder categories and one “other” category for those who may not fit clearly in one of those three categories: 1) environment, environmental justice, and public health; 2) community including fenceline communities; 3) business and labor; and 4) other.

Answered: 7 Skipped: 3

| # | RESPONSES | DATE |
|---|---|--------------------|
| 1 | Fenceline communities MUST include all the folks who live along the train tracks where there will be increased traffic, noise and potential danger as more materials are transported from inland to these coastal industries. | 1/19/2018 8:02 PM |
| 2 | The draft report recommends environment, environmental justice and public health as a single stakeholder category. Each of these three interests are actually very different in what they represent and whom they serve. These 3 groups cannot be represented by the same individual or groups and in fact many things that are critical issues to one group are not necessarily critical to the other even though there may at times be overlap. The Coastal Zone Act is an environmental law governed by an environmental agency and the Environmental group should be considered separate from other stakeholder groups. Health and Environmental Justice should be treated as separate stakeholder groups. Health should be represented by a variety of healthcare professionals and not just include non-profits dedicated to health but include licensed providers who stake is in health of patients as well as including those who work at public health who will ultimately be dealing with the consequences of HB 190. Environmental Justice would be best served by community members within close proximity of these 14 sites. The draft report defines community stakeholders to include employees from planning departments and emergency services. Community stakeholders should be defined to encompass the fenceline communities and anyone in the neighborhoods impacted by the new regulations. The voice of these stakeholders should not be diluted through the appointment of agency employees who answer to higher ups but rather voice and seats should be given to those who live their day to day life next to these facilities. Planners and emergency service providers can be included in their own separate category of stakeholder. The draft report recommends inviting those with a clear conflict of interest to the decision-making table in a formal regulatory process from which they will directly profit, which is unethical and should not be allowed. Those with a conflict of interest should participate in the process as members of the public, but not as voting members of the RAC. | 1/19/2018 5:04 PM |
| 3 | In addition, stakeholder groups, such as environmental justice and and fence line communities must have access to resources to identify and provide technical resource guides for them to participate in the process. There must be a strong focus on the inclusion of labor of color and women in the labor force. It should also include displaced labor and small fisherman and waterman. | 1/19/2018 4:23 PM |
| 4 | there should be ONLY 1 category and that is simply STAKEHOLDER | 1/17/2018 10:25 AM |
| 5 | MUST include substantial input and representation from the folks who are "fenceline communities" - in other words, they live near the 14 sites that could now be developed for heavy industry. This also includes all the people who live near train tracks that will be used to transport a much higher amount of dangerous chemicals from inland to the coastal zone. | 1/9/2018 5:51 PM |
| 6 | Fence line communities Should also include communities through which freight rail lines pass through, carrying materials to and from the new sites If those materials pose some environmental risk to those communities. | 1/9/2018 4:30 PM |
| 7 | Agreed. | 1/8/2018 10:36 AM |

Q3 Committee Size and Balance Recommendation #3: The Secretary should target a RAC of 15-20 members and allow for the following: 1) five to six members (5 to 6) from each of the three categories noted above, in equal balance of numbers for each of the three main stakeholder categories; 2) one to three (1 to 3) additional seats for those who do not fit within those three categories, if needed; 3) one (1) full member seat for DNREC; and 4) alternates should be allowed.

Answered: 3 Skipped: 7

| # | RESPONSES | DATE |
|---|--|--------------------|
| 1 | We agree and believe that impacted communities should be able to participate fully and have the technical resources they need to sit at the table. | 1/19/2018 4:23 PM |
| 2 | 21 members | 1/17/2018 10:25 AM |
| 3 | Agreed. | 1/8/2018 10:36 AM |

Q4 Criteria for Membership Recommendation #4: The Secretary should establish clear criteria for membership and require that nominees to the RAC complete a nomination and disclosure form that is made publicly available.

Answered: 4 Skipped: 6

| # | RESPONSES | DATE |
|---|--------------------------------------|--------------------|
| 1 | All members should be from Delaware. | 1/19/2018 8:02 PM |
| 2 | Yes | 1/19/2018 4:23 PM |
| 3 | a resident of the state of DELAWARE | 1/17/2018 10:25 AM |
| 4 | Agreed. | 1/8/2018 10:36 AM |

Q5 Membership Selection Recommendation #5: The Secretary should establish a transparent nomination process for each stakeholder category. Interested parties would nominate potential representatives (self-nominations would be accepted as well) to the RAC during a period of time in early 2018. The DNREC Secretary would review the nominations and select members and alternates from the pool of nominees within a committee structure decided by the Secretary as informed by the Report.

Answered: 4 Skipped: 6

| # | RESPONSES | DATE |
|---|---|--------------------|
| 1 | How do we know that the DNREC Secretary would be balanced and fair? Maybe the secretary and others should select the members. | 1/19/2018 8:02 PM |
| 2 | yes | 1/19/2018 4:23 PM |
| 3 | no comment | 1/17/2018 10:25 AM |
| 4 | Agreed. | 1/8/2018 10:36 AM |

Q6 Workgroups and Technical Expertise Recommendation #6: The Secretary should allow for the formation of RAC subcommittees or technical workgroups that can take on detailed analysis and discussion of specific topics. These may include non-member technical experts. Workgroups would be for deliberation, exploration, and option generation but any and all decisions should rest solely with the full RAC.

Answered: 4 Skipped: 6

| # | RESPONSES | DATE |
|---|--|--------------------|
| 1 | Yes and impacted communities should have input on "community based" technical advisors who should be included such as the technical advisors from the Center for Earth, Energy and the Environment (www.ceed.org), Dr. Cecilia Martinez is the E.D. and very familiar with DE. | 1/19/2018 4:23 PM |
| 2 | no comment | 1/17/2018 10:25 AM |
| 3 | Agreed. | 1/8/2018 10:36 AM |
| 4 | Agree with the recommendation of appropriate technical workgroups. Specific technical input should be included for natural resource restoration including Estuary restoration goals, in particular in the urban estuary. Specific technical expertise should also be included for environmental economics evaluating the costs/benefits to different resources based on specific actions. Assistance/participation from federal natural resource agencies with environmental economic experience, like NOAA, should be included. Simeon Hahn from NOAA is a regional NOAA NRDA expert/contact. | 1/2/2018 1:37 PM |

Q7 Community Outreach Recommendation #7: The Secretary and the RAC should make a concerted effort to reach out to, communicate with, and build working relationships with marginalized and potentially impacted communities, neighborhoods, and groups. The RAC should consider forming a workgroup to address the needs of marginalized, environmental justice, and fenceline communities and groups in the development of regulations.

Answered: 7 Skipped: 3

| # | RESPONSES | DATE |
|---|--|--------------------|
| 1 | This has NOT happened so far with DNREC, but it is CRUCIAL. | 1/19/2018 8:02 PM |
| 2 | The DNREC Secretary and the RAC have to do more than "make a concerted effort." They must show they actually did reach out and make meaningful connections in impacted communities. Meetings must be held during reasonable times for communities to actively participate and adequate public notice and outreach should take place. | 1/19/2018 5:04 PM |
| 3 | Yes, and that group MUST be facilitated by technical advisors skilled in, respected by and identified by the community. | 1/19/2018 4:23 PM |
| 4 | If the Secretary would like to make a concerted effort to reach out to impacted communities just simply give them a seat on RAC. In my opinion you only marginalized their needs by forming a working group. | 1/17/2018 10:25 AM |
| 5 | MUST include substantial input and representation from the folks who are "fenceline communities" - in other words, they live near the 14 sites that could now be developed for heavy industry. This also (IMHO) includes all the people who live near train tracks that will be used to transport a much higher amount of dangerous chemicals from inland to the coastal zone. | 1/9/2018 5:51 PM |
| 6 | I agree that a work group SHOULD be formed to represent the concerns of marginalized groups regarding environmental justice. | 1/9/2018 4:30 PM |
| 7 | Agreed. | 1/8/2018 10:36 AM |

Q8 Committee Transparency Recommendation #8: The Secretary should ensure RAC transparency by considering the time, place, and form of its meetings and any associated public outreach and engagement to provide for public access and participation.

Answered: 4 Skipped: 6

| # | RESPONSES | DATE |
|---|---|--------------------|
| 1 | YES this is a MUST | 1/19/2018 4:23 PM |
| 2 | just follow DNREC current "procedural guidelines for public hearing on proposed regulations and plans" | 1/17/2018 10:25 AM |
| 3 | Meetings should be announced well in advance, with agendas, and should be held at a variety of locations with consideration given to proximity of affected communities. | 1/9/2018 4:30 PM |
| 4 | Agreed. | 1/8/2018 10:36 AM |

Q9 Committee Product Recommendation #9: The Secretary should instruct the RAC to write prescriptive guidance (Option #2) and review regulatory language drafted by DNREC (Option #4) when possible. This would allow for the RAC to draft detailed, prescriptive guidance to provide DNREC with the conceptual approach and many details for drafting actual regulations. Wherever possible, the RAC should have the opportunity to review and comment on specific draft regulatory language as it is developed by DNREC during the process.

Answered: 3 Skipped: 7

| # | RESPONSES | DATE |
|---|------------|--------------------|
| 1 | YES | 1/19/2018 4:23 PM |
| 2 | no comment | 1/17/2018 10:25 AM |
| 3 | Agreed. | 1/8/2018 10:36 AM |

Q10 Membership Expectations Recommendation #10: The Secretary should establish expectations for participation. RAC members should review, revise as needed, and adopt such expectations as formal groundrules for participation.

Answered: 3 Skipped: 7

| # | RESPONSES | DATE |
|---|-------------------------------|--------------------|
| 1 | YES and where needed provided | 1/19/2018 4:23 PM |
| 2 | no comments | 1/17/2018 10:25 AM |
| 3 | Agreed. | 1/8/2018 10:36 AM |

Q11 Committee Decision Rule Recommendation #11: The Secretary should allow the RAC to utilize a “consensus” approach, which seeks to identify a final package of recommendations that all or almost all RAC members can “live with”. The Committee would issue a final report with consensus as defined generally above to the greatest extent possible within the time and resources allocated to the Committee.

Answered: 3 Skipped: 7

| # | RESPONSES | DATE |
|---|-------------|--------------------|
| 1 | yes | 1/19/2018 4:23 PM |
| 2 | no comments | 1/17/2018 10:25 AM |
| 3 | Agreed. | 1/8/2018 10:36 AM |

Q12 Role of DNREC on the Committee Recommendation #12: DNREC should participate as a full member of the RAC and its representative should serve as the committee chair to ensure forward progress. DNREC staff will participate in RAC meetings and support the chair as necessary. If resources allow, a non-partisan facilitator would facilitate meetings and support the RAC and the chair throughout the process.

Answered: 5 Skipped: 5

| # | RESPONSES | DATE |
|---|---|--------------------|
| 1 | yes | 1/19/2018 4:23 PM |
| 2 | no comments | 1/17/2018 10:25 AM |
| 3 | Resources should be made available to allow for a non-partisan facilitator. | 1/9/2018 5:51 PM |
| 4 | Agreed. | 1/8/2018 10:36 AM |
| 5 | Federal resource agencies should be considered for the RAC, or definitely technical workgroups. | 1/2/2018 1:37 PM |

Q13 Issues to Cover in the Deliberations Recommendation #13: DNREC should develop a draft work plan and timeline based on these issues identified in the assessment and the RAC should review, revise as needed, and adopt the work plan and timeline at one of its first meetings.

Answered: 3 Skipped: 7

| # | RESPONSES | DATE |
|---|------------------|--------------------|
| 1 | yes with the RAC | 1/19/2018 4:23 PM |
| 2 | no comments | 1/17/2018 10:25 AM |
| 3 | Agreed. | 1/8/2018 10:36 AM |

Q14 Do you have additional thoughts or feedback you would like to share about this draft Report, this process, the RAC, or any other subject you would like to comment on?

Answered: 7 Skipped: 3

| # | RESPONSES | DATE |
|---|--|--------------------|
| 1 | I think it will be of utmost importance to involve bordering community residents/leaders in this process. Also, please consider the formation of formal evacuation procedures if needed in the event of an accident. | 1/19/2018 6:37 PM |
| 2 | This process from the beginning was deeply flawed from the beginning. | 1/19/2018 4:23 PM |
| 3 | It's ridiculous to suggest that Delaware can't clean up these 14 sites without changing the CZA, and equally ridiculous to suggest that we have to sacrifice environmental quality to bring in jobs. I support efforts by Delaware Audubon, Delaware Nature Society, Delaware Sierra Club, and numerous other environmental groups to oppose the revision. I am extremely disappointed in my delegation (Senator Townsend and Rep. Osienski) for putting our environment at risk to disaster and increased pollution. This change to the CZA is bad news for Delawareans. | 1/19/2018 10:28 AM |
| 4 | MUST include input and representation from the folks who are "fenceline communities" - in other words, they live near the 14 sites that could now be developed for heavy industry. This also (IMHO) includes all the people who live near train tracks that will be used to transport a much higher amount of dangerous chemicals from inland to the coastal zone. | 1/9/2018 5:51 PM |
| 5 | Make results of this survey available to those who participated | 1/9/2018 4:30 PM |
| 6 | I look forward to making self nomination and to nominate another Claymont resident who is more "fenceline" thank most and who has been active in Claymont's industrial/environmental issues for many years. | 1/8/2018 10:36 AM |
| 7 | A main factor, perhaps the MAIN factor, is to ensure that the cleanups and permitting process are consistent with Delaware Estuary and Coastal Zone conservation and restoration goals. The Partnership for the Delaware Estuary coordinates the Delaware River National Estuary Program and has published a Comprehensive Conservation and Management Plan which is being updated. There should not be any perception of the cleanups being "fast tracked" sweetheart deals and the cleanups need to consider impacts, historical and current, from the sites being cleanup up. Natural resource damage restoration planning should be a component of all the site redevelopment activities, whether on site or off site to compensate for natural resource injuries. In addition appropriate scale spill prevention planning and exercises should be required relative to the cumulative redevelopment of these sites. These drills need to include response and resource agencies. A joint assessment team should be comprised to ensure resource protection planning is appropriately included in implementation of the Act. | 1/2/2018 1:37 PM |

Q15 Name (optional):

Answered: 9 Skipped: 1

| # | RESPONSES | DATE |
|---|------------------------------------|--------------------|
| 1 | Karen Barker | 1/19/2018 8:02 PM |
| 2 | Debra Hall | 1/19/2018 6:37 PM |
| 3 | Sarah Bucic, RN | 1/19/2018 5:04 PM |
| 4 | Octavia Dryden and Michele Roberts | 1/19/2018 4:23 PM |
| 5 | Ashley Kennedy | 1/19/2018 10:28 AM |
| 6 | martin willis | 1/17/2018 10:25 AM |
| 7 | Ellen Lebowitz | 1/9/2018 5:51 PM |
| 8 | Sheila Smith | 1/9/2018 4:30 PM |
| 9 | Brett Saddler | 1/8/2018 10:36 AM |

Q16 Affiliation (optional):

Answered: 4 Skipped: 6

| # | RESPONSES | DATE |
|---|---|-------------------|
| 1 | Delaware citizen | 1/19/2018 8:02 PM |
| 2 | Delaware Resident since 1981, lived in 2 separate areas of coastal zone for a total of 10 years | 1/19/2018 5:04 PM |
| 3 | DCR4EJ and EJHA | 1/19/2018 4:23 PM |
| 4 | Executive Director, Claymont Renaissance Development Corp. | 1/8/2018 10:36 AM |

Comments on Draft CZCPA Process Recommendations Report

Eugene McCoy

Jan. 19, 2018

First there is a boo boo on Page 10 of the report: Sentence says "DNREC for approving a before the new' - - a what???"

Recom. #3 Add the words and 4) alternates "from the same category" should be allowed.

Recom. #6 Add the word These may include non-member "neutral" technical experts.

Recom. #8 Add the words to provide for public access and participation "and Public Hearings."

An additional Recommendation is needed that suggests to the Secretary that a Public Hearing be held on the CBI recommendations to the Secretary and a recommendation that the RAC recommendations to the Secretary go first to a Public Hearing.

Recom. #12 A DNREC person should be present to help the RAC with information, but not for decisions. The Public would consider a DNREC Committee Chair unbelievable. There should be a recommendation on how the RAC Chair would be selected or how Public Hearing Leaders would be selected, and even workgroup leaders selected.

I enjoyed the process and believe the type of Participant Groups suggested is appropriate. The idea of making the information on the participants public is a real safeguard on their selection to be on the RAC. The "no name calling" suggests the type type of Chair the RAC needs (Team Leader).

It surprised me that the DNREC Staff was not considered competent to do the job by the Legislature!! It has been an interesting Process,

Dr. V. Eugene McCoy Jr.

COMMENT SHEET

Comments on these sheets are provided by D2 Management, the Managing Partner for the former Gen Chem site in Claymont, DE and incorporates the comments as provided by members of our team. Any questions or clarifications can be sent directly to Keith Delaney, President of D2.

(1) What specific feedback do you have on the 13 recommendations listed in the draft Report? Please write specific feedback about each recommendation you wish to comment on under the corresponding header.

The new law makes a few modest changes to the CZA and only pertains to 14 specific properties within the Coastal Zone. The new regulations must be limited to the implementation of those changes, can nothing more. Any suggestion that the regulatory process should be a vehicle for limiting or hampering the newly granted authority, must be rejected.

Largely missing from the CBI monologue is the statutory impetus for HB 190 economic development. The Delaware Prosperity Partnership should be prominent in assisting the DNREC Secretary with the selection of the Committee members, and in the promulgation and review of the Committee's work product.

While the new law allows for two years for the promulgation of Regulations, there is no reason why the work product of the advisory committee should take more than 6 months. The Committee should adopt a timeline for its hearings and deliberations accordingly.

The new law anticipates and addresses the possibility that applications to develop one or more of the grandfathered heavy industry sites may precede the adoption of the final regulations. There can be no excuse for delaying consideration of any such application until the regulatory process is completed. For too long the opponents of development within the coastal zone have effectively used delay to thwart all coastal zone development. The HB 190 rulemaking process should not be the instrument for creating a new set of barriers to zone development.

The bottom line is that it is time to honor the clear mandate of the General Assembly that the Delaware Coastal Zone heavy industry sites in New Castle County be restored to productive, labor intensive use. The process of considering and adopting regulations implementing the economic opportunity created by HB 190 should embrace that mandate as the premise for its work.

Scope

Recommendation #1: The RAC would focus solely on changes to existing regulations or the creation of additional regulations necessary to implement the CZCPA. The RAC would not be charged with amending or revising the regulations already in place for existing permits.

Anyone who is going to discuss this legislation and the regulations of the permitting process needs to be educated on the existing CZA permitting process, and the EPA and DNREC permitting and approval process. It would be encouraged to have multiple experts on these as part of any regulatory process. I would strongly suggest someone like Jeff Bross from Duffield and Marian Young from Brightfields as they lead companies who specialize in this.

It cannot be stressed enough that this RAC process needs to be divorced from the legislation that has been passed and not a forum to change or interpret the intent of the legislative branch.

The consultants need to take into consideration that fact that there are many oppositions to the passing of this bill and this RAC cannot be a forum to oppose the actual bill itself, or an effort to revisit legislation that has passed. This will only cause us delays and I can only imagine the fruitless arguments on the Bills merit.

I firmly believe that this RAC should ONLY have on its committee, persons who, regardless of their pro or con on this HB190, will actively work towards producing reasonable regulations for this permitting process. Having representation on this RAC who strongly oppose the HB190 existence will leave us in delays, long meetings, and lack of productivity.

Stakeholder Groups

Recommendation #2: The Secretary should provide for representation by three broad stakeholder categories and one “other” category for those who may not fit clearly in one of those three categories: 1) environment, environmental justice, and public health; 2) community including fenceline communities; 3) business and labor; and 4) other.

The stakeholder groups are not balanced in any way in this RAC. Clearly business and labor were for this bill to pass and are grouped into the same group, limiting any say in the decisions, whereas there is listed Communities as a listing. There should be very specific identifiers as to who should serve on this committee. Using the categories ‘Community’ or ‘Other’ are very broad. Specify who and in what communities should be qualified as to have relevant knowledge and interests in this regulatory session.

Right now, it is clear that there will be many more that are even opposed to this bill ever being passed on this RAC so it must be balanced out to have a productive forum. Otherwise, you will never reach consensus on anything.

Something VERY important to consider here. Everyone on this committee who opposed this bill will be representing a cause, a group, a membership and will need to die on the sword for their beliefs, or they have not stood ground and represented their membership. This is an important factor to consider when you are talking about public forums, public meetings and the strong personalities that will inevitably be stroking for a cause to reopen the legislative process or lawsuits.

Committee Size and Balance

Recommendation #3: The Secretary should target a RAC of 15-20 members and allow for the following: 1) five to six members (5 to 6) from each of the three categories noted above, in equal balance of numbers for each of the three main stakeholder categories; 2) one to three (1 to 3) additional seats for those who do not fit within those three categories, if needed; 3) one (1) full member seat for DNREC; and 4) alternates should be allowed.

The proposed advisory committee is too big and too Balkanized. The prolix selection process proposed by CBI will also require months to implement. A representative group of respected

and knowledgeable citizens with co-chairs selected by the Secretary of DNREC will suffice; always has in Delaware.

This is entirely too many people to reach consensus within a regulatory process. We are talking about 20 people in a group, for months on end, and trying to reach a consensus. This large of a group on a sensitive issue such as HB190, is going to inevitably lead towards arguments and power struggles to reach consensus and productive, timely discussions.

Criteria for Membership

Recommendation #4: The Secretary should establish clear criteria for membership and require that nominees to the RAC complete a nomination and disclosure form that is made publicly available.

A representative group of respected and knowledgeable citizens with co-chairs selected by the Secretary of DNREC will suffice.

The Delaware Prosperity Partnership should be prominent in assisting the DNREC Secretary with the selection of the Committee members, and in the the promulgation and review of the Committee's work product.

Membership Selection

Recommendation #5: The Secretary should establish a transparent nomination process for each stakeholder category. Interested parties would nominate potential representatives (self-nominations would be accepted as well) to the RAC during a period of time in early 2018. The

DNREC Secretary would review the nominations and select members and alternates from the pool of nominees within a committee structure decided by the Secretary as informed by the Report.

Workgroups and Technical Expertise

Recommendation #6: The Secretary should allow for the formation of RAC subcommittees or technical workgroups that can take on detailed analysis and discussion of specific topics. These may include non-member technical experts. Workgroups would be for deliberation, exploration, and option generation but any and all decisions should rest solely with the full RAC.

This is adding increased complexity and time to a regulatory process that does not need more committees. The amount of time being asked of these committee members is an incredible sacrifice and will limit who can afford the time to participate actively.

While the new law allows for two years for the promulgation of Regulations, there is no reason why the work product of the advisory committee should take more than 6 months. The Committee should adopt a timeline for its hearings and deliberations accordingly.

Community Outreach

Recommendation #7: The Secretary and the RAC should make a concerted effort to reach out to, communicate with, and build working relationships with marginalized and potentially impacted communities, neighborhoods, and groups. The RAC should consider forming a workgroup to address the needs of marginalized, environmental justice, and fenceline communities and groups in the development of regulations.

This issue is clearly addressed and should be addressed by the Secretary of DNREC in the committee selection process. If you look at the areas, most are located in New Castle County and in particular 3 of the 14 are in Claymont. I would absolutely avoid workshops and sub-committees as it is a delay in time and overthinking what should be a fluid communication and regulatory process.

Committee Transparency

Recommendation #8: The Secretary should ensure RAC transparency by considering the time, place, and form of its meetings and any associated public outreach and engagement to provide for public access and participation.

Committee Product

Recommendation #9: The Secretary should instruct the RAC to write prescriptive guidance (Option #2) and review regulatory language drafted by DNREC (Option #4) when possible. This would allow for the RAC to draft detailed, prescriptive guidance to provide DNREC with the conceptual approach and many details for drafting actual regulations. Wherever possible, the RAC should have the opportunity to review and comment on specific draft regulatory language as it is developed by DNREC during the process.

This suggestion is putting great faith in the skillset of the RAC. If this is the case, there must be

attorneys and experts in the field of the regulatory process to guide RAC in both its scope and drafting. DNREC is much more qualified to draft such regulations and RAC should be tasked with coming up with topical guidance for DNREC here.

Membership Expectations

Recommendation #10: The Secretary should establish expectations for participation. RAC members should review, revise as needed, and adopt such expectations as formal groundrules for participation.

Agreed. There must be much consideration on work schedules and expectations. As stated above there also should be a deadline for each meeting time and a final draft product so this regulatory process does not take the full 2 years.

Committee Decision Rule

Recommendation #11: The Secretary should allow the RAC to utilize a “consensus” approach, which seeks to identify a final package of recommendations that all or almost all RAC members can “live with”. The Committee would issue a final report with consensus as defined generally above to the greatest extent possible within the time and resources allocated to the Committee.

Recommendations should be made to DNREC with DNREC making the final decision. Again, as stated above, there will inevitably be people with strong opinions and agendas to combat here.

Role of DNREC on the Committee

Recommendation #12: DNREC should participate as a full member of the RAC and its representative should serve as the committee chair to ensure forward progress. DNREC staff will

participate in RAC meetings and support the chair as necessary. If resources allow, a non-partisan facilitator would facilitate meetings and support the RAC and the chair throughout the process.

Issues to Cover in the Deliberations

Recommendation #13: DNREC should develop a draft work plan and timeline based on these issues identified in the assessment and the RAC should review, revise as needed, and adopt the work plan and timeline at one of its first meetings.

Do you have additional thoughts or feedback you would like to share about this draft Report, this process, the RAC, or any other subject y



DELAWARE AUDUBON SOCIETY

Chapter of National Audubon

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302-292-3970

To: Mr. Kevin Coyle
State of Delaware
Department of Natural Resources and Environmental Control (DNREC)
Principal Environmental Planner
100 W. Water Street, Suite 5A
Dover, DE 19904

From: Delaware Audubon Society
Mark Martell, Conservation Chair mark@actua.com

Re: CBI Conversion Conversion Act Permit Report

January 18, 2018

Dear Mr. Coyle,

The Delaware Audubon Society ("DAS") was not interested in participating in the process that mirrors the process from the late 1990's in promulgating regulations around the Coastal Zone Act. We fully believe this process is being used solely to provide political cover to legislators and the Governor who amended the original Act with zero participation from fenceline communities and environmental organizations. It is our view that once this process is completed, the Governor and legislators will declare that all interests; business, community, environmental and health; were fairly represented in the drafting of the legislation and the promulgating of rules. They were not.

The Governor and legislators have shown a great deal of hypocrisy regarding environmental protection with their public comments in opposition of externalities to Delaware that damage the state's water and air quality by eroding the landmark legislation of environmental protection, the Coastal Zone Act. Since the passing of this legislation, DNREC and the Governor have fought against upwind sources of pollution, decrying the damage to the state's air quality. However, those states can look at this amended legislation that enables new source pollution from heavy industry emissions to enter our coastal zone and cite this as an example of our lack of seriousness regarding toxic air emissions.

Further, DNREC and the Governor have also publicly exclaimed their anger towards the Trump Administration's consideration of offshore drilling, claiming that this risks the tourism industry and our coastal resources. Again, the Federal government can reply to Delaware that the amended Coastal Zone Act does precisely the same thing. It brings more toxic materials into and through the Coastal Zone and risks the very same tourism industry and our sensitive estuary of the Delaware River and Bay all for jobs and economics.

DNREC itself is an agency that has demonstrated a lack of organizational competence in handling the current volume of permit enforcement actions. The reason these 14 sites tied to the amended legislation wound up being brownfields with legacy pollutants was not because of the original CZA, but due to DNREC's inability to deal with permit enforcement and oversight. The Governor's report on Metachem's failure identified agency issues which are still plaguing it today, many years later. Despite their current and historic inability to manage their existing permitting oversight, the Agency told their stakeholders that they would be able to deal with permit enforcement to the newly amended Act.

DNREC is currently advertising the hiring of staff to manage these new conversion permits, yet as far as DAS is aware, DNREC didn't ask for budget adjustments in the amendment writing process through a fiscal note. DAS has no hope or faith that DNREC can and will be able to deal with new conversion permit monitoring and violation actions resulting in fines that won't be collected.

DNREC is an agency, that in conjunction with the Governor and DEDO (or the new public private agency dealing with business development), will seek to underwrite site consideration costs for any new business coming into the Coastal Zone. Past is prologue. Whatever new site permit rules that are promulgated which pertain to up front siting costs, such as historic pollution mitigation, insurance costs, sea level rise plans, etc will be partially or fully offset by taxpayer investment from a combination of grants, pollution emission reduction credits, loans and infrastructure investments. In short, the State is willing to entice pollution into the Coastal Zone and near fence line communities and sensitive waterways while having the taxpayers pay for it under the auspices of improved economics.

Delaware has not had much success with these economic incentive packages over the last several decades. The refinery restart investment was not designed to grow jobs, but to save jobs that were leaving. While the restart has been successful, the refinery continues to violate their permits and fight against any fines rendered by the Agency. Bloom, Fisker and other smaller investments by Delaware's taxpayers have not resulted in growth but just a drain of taxpayer resources. Yet we can rest assured that whatever comes out of the new regulations to be drafted regarding up front siting costs for these new conversion permits will be offset by the taxpayer through DEDO.

All of the above is central to DAS's desire to not participate in a rigged process designed solely to pacify the environmental community and fence line communities after

the horses had already left the barn on the amended law. That being said, DAS hereby offers some comments and criticisms regarding the CBI report that was prepared.

First, CBI and DNREC worked on a series of questions that came with a range of possible answers. This was designed to limit the dialogue and scope of discussion. This is referred to as top down management of an issue. It doesn't try to get ideas outside of the box. It is designed to steer the result as much as possible. A more honest approach would have been for a bottom up discourse where ideas are generated by the participants and not the agency. Where the table discussions of varied private interests could yield a variety of responses that could have been coalesced and brought forward in the manner to which the ideas were generated. Instead, CBI and the Agency were able to drive the data to fit a range of conclusions offered.

Second, the CBI conclusions do not match the tenor of the room that came from the discourse for the two public discussions. It was clear to those in the room for these discussions that a common theme for forming the RAC was that those who have a possible financial conflict of interest shouldn't be represented on the Committee. Yet in the report it only mentions that candidates need to disclose these conflicts, with no mention how those with conflicts would or would not be considered in the formation of the Committee.

Third, the report floats the idea of having a RAC that is constituted by 15-20 individuals, a third from the environmental community, a third from the business community, a third from fence line communities and a small residual for "other". It mentions that the DNREC Secretary will select. In DAS's view, this is precisely the problem with the process and why we refused to participate as an organization. The Secretary will most likely, fairly or not, bring a level of bias to the decision made.

Utilizing this process, the Agency would be faced with a tilted RAC towards environmental and fenceline communities given the numbers above. However, if the Secretary had listened well during the two hearings, he would have heard that those fenceline communities that spoke more or less virtually aligned themselves with the environmentalists. Given this truism, DNREC and the business community and legislators that wrote the amendments to the Act will have to lay down parameters that would not harm financial interests for those businesses considering one of the 14 sites.

In other words, if the enviros and fenceline communities are able to vote on financial assurances and environmental considerations for site acquisition and they outnumber the business interests and other category individuals, the businesses will not agree with the economic conditions laid down. So that will force DNREC to have to step in and override the RAC, or to undermine the RAC after the rules are promulgated when deals are made with taxpayer funds used to help offset up front siting costs. It's the reason why Audubon has argued that the businesses and legislature and DNREC counsel that wrote the law, should also write the regulations by themselves and only ask for public comment afterwards. The RAC model from the late 1990's under the Carper regime

has been a failure over time. The Memorandum of Understanding executed 20 years ago has been ignored by the very Agency charged with enforcing it. Environmental Indicators were never developed or performed by the Agency. Whatever comes out of this rigged process will also be undermined by the Governor in the name of economic development.

So we offer these comments and criticisms merely to be on the record for the inevitable problems that will unfold.

DAS Board of Directors



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January 15, 2018

To: Shawn Garvin, DNREC Secretary

From: Anne Harper, Acting Executive Director
Brenna Goggin, Director of Advocacy

Subject: Draft Coastal Zone Conversion Permit Act Process Recommendations Report

Delaware Nature Society is a private, non-profit, membership, organization with more than 6,500 members statewide that works to foster understanding, appreciation, and enjoyment of the natural world through education, advocacy, and preservation. We believe the draft recommendation report encompasses the concerns as well as the suggestions heard by the Consensus Building Institute (CBI) at both the public workshops. We commend CBI for their thoroughness and thoughtfulness in putting together this report. We agree with recommendations 2, 6, 7, & 8 as spelled out in the draft report but ask DNREC to take into consideration the following comments as they relate to the other nine recommendations.

Recommendation 1 Scope: We feel the scope of the Regulatory Advisory Committee (RAC) should be limited to the new conversion permit regulations and those issues specifically spelled out in HB 190.

Recommendation 3 Committee Size & Balance: It is imperative that a relationship be established and open communication exist between the representative and the alternate. Therefore, alternates should be nominated by each member, not the DNREC Secretary. Alternates should be required.

Recommendation 4 Membership Criteria: The draft nomination form must be amended to include a member-selected alternate. Clear criteria for who can be nominated must be delineated before the RAC is assembled. DNS would like clarification on whether or not the Secretary will be reviewing nominations based upon individuals, organizations, or both.

Recommendation 5 Membership Selection: We strongly encourage DNREC to allow representatives to nominate their own alternates and require those alternates to fill out the same nomination and conflict of interest forms.

Recommendation 9 Committee Product: CBI neglected to define the term “perspective guidance.” A definition or concrete examples of prescriptive guidance is needed to fully endorse or oppose this recommendation. The first two sentences in the recommendation are unclear. In all materials provided by DNREC to the RAC, DNREC should provide those materials at least one week prior to meetings or action requested by the RAC.

Recommendation 10 Membership Expectations: DNREC should draft ground rules and criteria prior to the formation of the RAC and schedule meetings in a timely fashion.

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Recommendation 11 Committee Decision Rule: The recommendation should read "The RAC should utilize a "consensus" approach which seeks to identify a final package of recommendations..."

Recommendation 12 Role of DNREC on the RAC: We believe that the success of this endeavor lies on the ability for DNREC to obtain the necessary resources to hire an independent facilitator to assist the RAC Chair and DNREC in facilitating meetings.

Recommendation 13 Issues to Cover in Deliberations: We agree with the issues for deliberation identified in the DRAFT CBI report. We believe the workplan and corresponding documents should be made available for public review and comment prior to the first meeting of the RAC.

One outstanding issue not addressed in the draft CBI report but must be of focus of DNREC is ensuring the regulations for the conversion permit and the original Coastal Zone Act are compatible. There were some comments made during the public workshop process that the RAC should address potential inconsistencies with existing regulations. We believe the task of making existing regulations consistent falls entirely to DNREC and should not be part of the scope of the RAC's work.

Thank you for the opportunity to comment.



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**Comments from the Delaware Chapter of the Sierra Club on the
COASTAL ZONE CONVERSION PERMIT ACT DRAFT RECOMMENDATIONS
REPORT FEEDBACK, JANUARY, 2018**

Please share your feedback on the draft Coastal Zone Conversion Permit Act (CZCPA) Process Recommendations Report. Your feedback will be incorporated into a final version of this Report to be released in January 2018. Your feedback will help DNREC set up a Regulatory Advisory Committee (RAC) for development of regulations for Coastal Zone Conversion Permits.

Please write specific feedback for each recommendation you wish to comment on. There is space at the end of this form to add any additional comments.

Scope

Recommendation #1: The RAC would focus solely on changes to existing regulations or the creation of additional regulations necessary to implement the CZCPA. The RAC would not be charged with amending or revising the regulations already in place for existing permits.

We agree that the changes should be focused on the properties subject to HB190. Given the extremely tight timeline set forward in HB190, coupled with limitations on DNREC staff capacity and broad public concern about changes to the CZA, we think that the CZPA should be interpreted as narrowly as possible.

Stakeholder Groups

Recommendation #2: The Secretary should provide for representation by three broad stakeholder categories and one “other” category for those who may not fit clearly in one of those three categories: 1) environment, environmental justice, and public health; 2) community including fence-line communities; 3) business and labor; and 4) other.

We generally agree with these broad stakeholder categories, but how each is ultimately be defined and turned into 5-6 specific representatives will be critical.

We believe that the RAC should have significant representation from businesses that are dependent on clean water and a healthy, ecologically diverse environment. The protection of Delaware’s Coastal Zone has resulted in economic gains from general tourism, oyster harvesting, sport fishing, boating, and similar activities. Adding in the money brought in by restaurants

and hotels serving tourists, these visitors brought in close to \$4.4 billion in 2015. These businesses have not, to date, been represented in discussions of the Coastal Zone Conversion Permit Act. DNREC needs to actively reach out to these important stakeholders so that the business and labor stakeholder category on the RAC can be fully representative.

Committee Size and Balance

Recommendation #3: The Secretary should target a RAC of 15-20 members and allow for the following: 1) five to six members (5 to 6) from each of the three categories noted above, in equal balance of numbers for each of the three main stakeholder categories; 2) one to three (1 to 3) additional seats for those who do not fit within those three categories, if needed; 3) one (1) full member seat for DNREC; and 4) alternates should be allowed.

Criteria for Membership

Recommendation #4: The Secretary should establish clear criteria for membership and require that nominees to the RAC complete a nomination and disclosure form that is made publicly available.

We agree with this recommendation. The disclosure form should include a place for each member of the RAC to disclose any potential conflicts of interest they may have, including but not limited to any financial interest they personally or professionally have in one or more of the 14 CZCPA sites. If needed, a protocol should be established by the RAC for recusal of individual members from specific votes when appropriate.

Membership Selection

Recommendation #5: The Secretary should establish a transparent nomination process for each stakeholder category. Interested parties would nominate potential representatives (self-nominations would be accepted as well) to the RAC during a period of time in early 2018. The DNREC Secretary would review the nominations and select members ~~and alternates~~ from the pool of nominees within a committee structure decided by the Secretary as informed by the Report.

We believe that RAC alternates should be selected by the RAC member (or organization), which they would represent in the event the primary member is unavailable.

Workgroups and Technical Expertise

Recommendation #6: The Secretary should allow for the formation of RAC

subcommittees or technical workgroups that can take on detailed analysis and discussion of specific topics. These may include non-member technical experts. Workgroups would be for deliberation, exploration, and option generation but any and all decisions should rest solely with the full RAC.

We agree with this recommendation. Consistent with Delaware open meeting laws, RAC subcommittee meeting notices, agendas, and meeting minutes must be posted on the RAC website.

Community Outreach

Recommendation #7: The Secretary and the RAC should make a concerted effort to reach out to, communicate with, and build working relationships with marginalized and potentially impacted communities, neighborhoods, and groups. The RAC should consider forming a workgroup to address the needs of marginalized, environmental justice, and fence-line communities and groups in the development of regulations.

We agree with this recommendation. These meetings must be held at times and locations which are convenient for community members; including evening meetings in locations which are nearby the CZCPA sites and accessible by foot and/or public transportation.

Committee Transparency

Recommendation #8: The Secretary should ensure RAC transparency by considering the time, place, and form of its meetings and any associated public outreach and engagement to provide for public access and participation.

We agree with this recommendation.

The great majority of meetings should be held in the Coastal Zone to make them accessible to individuals who live and/or work in the Coastal Zone, including the tourism industry.

Meetings will presumably (and certainly should) have a time for open public comment. The RAC meetings should be held at a variety of times and locations in order to be fully accessible to a maximum number of impacted Delawareans. To the maximum extent possible, meetings should be held at locations that are accessible by public transportation.

Committee Product

Recommendation #9: The Secretary should instruct the RAC to write

prescriptive guidance (Option #2) and review regulatory language drafted by DNREC (Option #4) when possible. This would allow for the RAC to draft detailed, prescriptive guidance to provide DNREC with the conceptual approach and many details for drafting actual regulations. Wherever possible, the RAC should have the opportunity to review and comment on specific draft regulatory language as it is developed by DNREC during the process.

We agree with this recommendation.

Membership Expectations

Recommendation #10: The Secretary should establish expectations for participation. RAC members should review, revise as needed, and adopt such expectations as formal ground-rules for participation.

We agree that there need to be clear membership expectations. These expectations (at least the first iteration) need to be set out before final selection of members, so potential RAC members know the expectations before agreeing or disagreeing to be on the committee.

Committee Decision Rule

Recommendation #11: The Secretary should allow the RAC to utilize a “consensus” approach, which seeks to identify a final package of recommendations that all or almost all RAC members can “live with”. The Committee would issue a final report with consensus as defined generally above to the greatest extent possible within the time and resources allocated to the Committee.

We are deeply concerned about the use of word “consensus” as loosely defined as it is here. Consensus can mean different things to different people and a pure consensus could be impossible to achieve, particularly if there is even one committee member who is repeatedly insistent on holding up the process. We believe the process needs to be very clearly defined.

We are not devoted to a specific number, however one needs to be identified. Perhaps that could be that a super majority of at least $\frac{3}{4}$ or 75% of the committee must support a recommendation in order for it to be included in the final package. Each individual recommendation should be voted on singly in addition to or instead of voting only on all recommendations as a “slate” or final package. Dissenting votes and the dissenting RAC members reasoning should be made public as well.

Role of DNREC on the Committee

Recommendation #12: DNREC should participate as a full member of the RAC and its representative should serve as the committee chair to ensure forward progress. DNREC staff will participate in RAC meetings and support the chair as necessary. If resources allow, a non-partisan facilitator would facilitate meetings and support the RAC and the chair throughout the process.

Of course DNREC should participate in the RAC, however it is critical to have an outside, non-partisan facilitator.

Issues to Cover in the Deliberations

Recommendation #13: DNREC should develop a draft work plan and timeline based on these issues identified in the assessment and the RAC should review, revise as needed, and adopt the work plan and timeline at one of its first meetings.

As in the case of the expectations for participation, a clear outline of the proposed work plan should be available to potential RAC members before final selection so they will not have to commit to responsibilities that they do not understand.

Do you have additional thoughts or feedback you would like to share about this draft Report, this process, the RAC, or any other subject you would like to comment on?

We have concerns about the focus of the benefits of offsets:

- The original regulations made it clear that offsets would have to benefit the Coastal Zone to an extent that was clearly greater than the harm done by the new process that was being permitted. On page 16 of the Draft Process Recommendations Report there is also a reference to “. . . preferred focus on benefits to the Coastal Zone . . .”. Yet HB 190 does not express any such preference. Will the RAC be allowed to incorporate such a preference?**
- Despite the clear language in the original regulations, offsets permitted in recent years by DNREC have not clearly benefited the CZ. In fact, they are so opaque as to be incomprehensible. An example of this would be the credits for emissions supplied by DEDO.**

We are very concerned about the language in HB 190 relevant to bulk product transfer. An environmental lawyer who served as a witness described the

language as ambiguous and said that it could possibly be interpreted in such a way as to allow unlimited bulk transport of materials. We believe that this issue must be resolved as soon as possible, and certainly before any conversion permits come before DNREC in the absence of completed regulations.

Many in the environmental community feel the original regulations, as written, provided a reasonable balance between industrial and environmental concerns. However, the failure of DNREC to make any serious attempt to implement Environmental Goals and Indicators, its failure to require meaningful offsets for new permits and its failure to properly regulate bulk transfer have seriously diminished the level of protection.

Before new regulations are completed, we need transparent, independent legal advice as to whether all regulations are legally enforceable and what steps residents may take to provide redress in cases where regulations are not enforced. The options currently available have proved entirely unsatisfactory.

Name (optional):

Delaware Sierra Club Conservation Committee

Affiliation (optional):

Delaware Chapter of the Sierra Club

Eastern Brandywine Hundred Coordinating Council, Inc.

1212 Haines Avenue
Wilmington, Delaware
19809

**The Honorable Shawn M. Garvin
Secretary
Delaware Department of Natural Resources
And Environmental Control
89 King's Highway
Dover, Delaware 19901**

January 17, 2018


Dear Secretary Garvin:

The Board of Directors of the Eastern Brandywine Hundred Coordinating Council, Inc. (EB100) has asked me to contact you regarding the implementation of the changes to Delaware's Coastal Zone Act brought about by the Coastal Zone Conversion Permit Act of 2017.

Having looked at the Draft Report as prepared by the Consensus Building Institute, we are especially encouraged the Department's apparent commitment to public input, particularly from the communities most affected by the implementation of these changes, through the Regulatory Advisory Committee (RAC).

Because five of the sites: Sun Oil; General Chemical; Oceanport; Citi Steel/EVRAZ; and the former DuPont/Chemours Edgemoor site are located along the Delaware River in Eastern Brandywine Hundred, the Board of Directors of EB100 believes that at the appropriate time in the process, a public meeting should be held at a location within Eastern Brandywine Hundred as these changes are discussed and put into effect.

The Board of Directors of EB100 recognizes that the Edgemoor site has been purchased by the Port of Wilmington for the Port's proposed expansion, and does not fall under the purview of the RAC. However, the changes affecting – and the future use of – the four sites in northern Claymont are of great interest to the communities in Eastern Brandywine Hundred, and particularly the neighboring communities in Claymont. The Board believes that a public meeting held in the Claymont area would allow residents to both share their concerns, and hear about DNREC's plans for implementation and its plans for the public safety requirements that will necessarily go along with those plans.

Because EB100 never makes a request without offering to be a part of the solution, EB100 is willing to work with the Department in organizing, publicizing, and facilitating such a meeting at the appropriate time.

The Board thanks you for recognizing the critical need for public input, and looks forward to working with you on this matter.

Sincerely,



**Terrence K. Wright
Chairman
Eastern Brandywine Hundred
Coordinating Council, Inc.**

**CC: Members of the EB100 Board
Council of Civic Associations of Brandywine Hundred**

Comments on Draft CZCPA Process Recommendations Report
Lorraine Fleming
Jan. 16, 2018

(1) What specific feedback do you have on the 13 recommendations listed in the draft Report? Please write specific feedback about each recommendation you wish to comment on under the corresponding header.

Scope

Recommendation #1: The RAC would focus solely on changes to existing regulations or the creation of additional regulations necessary to implement the CZCPA. The RAC would not be charged with amending or revising the regulations already in place for existing permits.

I would like to eliminate “to existing regulations” in the first sentence. I view the CZCPA regulations as a new and separate set of regulations pertaining exclusively to applications for conversion permits on the 14 grandfathered sites. The existing regulations should remain in place for all other situations/permit applications. To the extent that there may be some intrinsic language conflicts they should be resolved by DNREC and the DOJ, not the RAC.

Stakeholder Groups

Recommendation #2: The Secretary should provide for representation by three broad stakeholder categories and one “other” category for those who may not fit clearly in one of those three categories: 1) environment, environmental justice, and public health; 2) community including fenceline communities; 3) business and labor; and 4) other.

O.K. “Other” could include, as suggested in the discussion, those whose livelihood is dependent on the natural resources of the Coastal Zone and Delaware River and Bay, including commercial and recreational uses and tourism.

Committee Size and Balance

Recommendation #3: The Secretary should target a RAC of 15-20 members and allow for the following: 1) five to six members (5 to 6) from each of the three categories noted above, in equal balance of numbers for each of the three main stakeholder categories; 2) one to three (1 to 3) additional seats for those who do not fit within those three categories, if needed; 3) one (1) full member seat for DNREC; and 4) alternates should be allowed.

Alternates should be required. Inevitably it will not be possible for one individual to attend every meeting. The number is realistic. In '97-'99 the group began at 15 and grew to 20 in order to be more inclusive.

Criteria for Membership

Recommendation #4: The Secretary should establish clear criteria for membership and

require that nominees to the RAC complete a nomination and disclosure form that is made publicly available.

The criteria should be established and included on the nomination form before the nomination process begins. The disclosure form is in good order.

Membership Selection

Recommendation #5: The Secretary should establish a transparent nomination process for each stakeholder category. Interested parties would nominate potential representatives (self-nominations would be accepted as well) to the RAC during a period of time in early 2018. The DNREC Secretary would review the nominations and select members and alternates (NO) from the pool of nominees within a committee structure decided by the Secretary as informed by the Report.

From experience I believe strongly that a close collegial relationship between member and alternate, including frequent and timely communications throughout the process will be essential; hence, the member should select his/her own alternate from the same organization or community. The Secretary should select the member but not the alternate.

Workgroups and Technical Expertise

Recommendation #6: The Secretary should allow for the formation of RAC subcommittees or technical workgroups that can take on detailed analysis and discussion of specific topics. These may include non-member technical experts. Workgroups would be for deliberation, exploration, and option generation but any and all decisions should rest solely with the full RAC.

I support use of subcommittees and technical workgroups to increase the efficiency of the RAC and technical efficacy of the final regulations. Assembling those groups should begin as soon as feasible given that certain needs can be identified in advance.

Community Outreach

Recommendation #7: The Secretary and the RAC should make a concerted effort to reach out to, communicate with, and build working relationships with marginalized and potentially impacted communities, neighborhoods, and groups. The RAC should consider forming a workgroup to address the needs of marginalized, environmental justice, and fenceline communities and groups in the development of regulations.

Excellent suggestion! This can be done relatively soon as per comment in #6 above.

Committee Transparency

Recommendation #8: The Secretary should ensure RAC transparency by considering the time, place, and form of its meetings and any associated public outreach and engagement to provide for public access and participation.

This is very important!

Committee Product

Recommendation #9: The Secretary should instruct the RAC to write prescriptive guidance (Option #2) and review regulatory language drafted by DNREC (Option #4) when possible. This would allow for the RAC to draft detailed, prescriptive guidance to provide DNREC with the conceptual approach and many details for drafting actual regulations. Wherever possible, the RAC should have the opportunity to review and comment on specific draft regulatory language as it is developed by DNREC during the process.

Suggest removing “when possible” in the first sentence and “wherever possible” in the third sentence. I would like to see an amplification of the term “prescriptive guidance” with examples. How would you characterize the M.O.U. of 1998? Reviewing and affirming draft regulatory language is an important function of the RAC.

Membership Expectations

Recommendation #10: The Secretary should establish expectations for participation. RAC members should review, revise as needed, and adopt such expectations as formal groundrules for participation.

Expectations/ground rules should be drafted by the Secretary in advance of the first RAC meeting. Materials for the RAC to consider should always be available several days ahead of a meeting to improve efficiency in a compressed process.

Committee Decision Rule

Recommendation #11: The Secretary should allow the RAC to utilize a “consensus” approach, which seeks to identify a final package of recommendations that all or almost all RAC members can “live with”. The Committee would issue a final report with consensus as defined generally above to the greatest extent possible within the time and resources allocated to the Committee.

Suggest rewording this recommendation as follows: The RAC should utilize a consensus approach, which seeks to identify a final package of recommendations that all RAC members can “live with.” Anything less than full consensus will lead to opposition when the draft regulations come before the CZICB.

Role of DNREC on the Committee

Recommendation #12: DNREC should participate as a full member of the RAC and its representative should serve as the committee chair to ensure forward progress. DNREC staff will participate in RAC meetings and support the chair as necessary. If resources allow, a non-partisan facilitator would facilitate meetings and support the RAC and the chair throughout the process.

If DNREC is to chair the RAC, I recommend consideration of a co-chair from the non-DNREC membership or from the outside consultant/facilitator. I view an independent, impartial facilitator as critical to the success of the process. Without the guidance of CBI the consensus on the M.O.U. would not have been reached in 1998.

Issues to Cover in the Deliberations

Recommendation #13: DNREC should develop a draft work plan and timeline based on these issues identified in the assessment and the RAC should review, revise as needed, and adopt the work plan and timeline at one of its first meetings.

DNREC should develop promptly the draft work plan and timeline and allow for a public comment period in advance of the first RAC meeting. This is one more step in demonstrating the “extreme” transparency I believe is needed to restore public trust in the workings of DNREC.

(2) Do you have additional thoughts or feedback you would like to share about this draft Report, this process, the RAC, or any other subject you would like to comment on?

As noted in the discussion preceding recommendation #13, “Monitoring and Enforcement” as elements of the conversion permitting process prompt many questions that must be addressed satisfactorily. I don’t believe that the RAC should have any role in requests for conversion permits prior to promulgation of final regulations in order to avoid any perception of conflict of interest.

The draft report as a whole, including summarizing the input from interviews, the two workshops, and the many additional comments, is excellent. I was expecting nothing less from CBI based on my experience of many years ago. I have suggested some tweaking of the recommendations based on my experience with development of CZA regulations and long years of working on environmental issues in Delaware.

I fully appreciate the efforts of DNREC and CBI thus far in the process to embrace full public participation. Keep up the good work!

Appendix H: Public Comment Form for Draft Report

COMMENT SHEET

DRAFT Coastal Zone Conversion Permit Act Process Recommendations Report

Please share your feedback on the draft Coastal Zone Conversion Permit Act (CZCPA) Process Recommendations Report. Your feedback will be incorporated into a final version of this Report. Your feedback will help DNREC set up a Regulatory Advisory Committee (RAC) for development of regulations for Coastal Zone Conversion Permits.

Comments should be emailed to CZA_Conversion_Permits@state.de.us. You can also submit your own typed comments to DNREC at this email address. Comments received by DNREC by January 19, 2018 will be incorporated into the final Report.

(1) What specific feedback do you have on the 13 recommendations listed in the draft Report? Please write specific feedback about each recommendation you wish to comment on under the corresponding header.

Scope

Recommendation #1: The RAC, [consistent with the entire process](#), would focus solely on changes to existing regulations or the creation of additional regulations necessary to implement the CZCPA. The RAC would not be charged with amending or revising the regulations already in place for existing permits.

Stakeholder Groups

Recommendation #2: The Secretary should provide for representation by three broad stakeholder categories and one “other” category for those who may not fit clearly in one of those three categories: 1) environment, environmental justice, and public health; 2) community including fence line communities; 3) business and labor; and 4) other.

[These categories initially may “appear” to make senses, but, with closer consideration, the category groupings do not. For example: a generic definition \(Wikipedia\) for *Environmental Justice* is provided below. Wouldn’t *Environmental Justice* fit better with *Community*?](#)

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

[It is not clear what or how *Business and Labor* is defined for this category. Would “*Economics*” be a better catch term for this category?](#)

[I would suggest that the three category titles be simplified as follows: *Environmental & Public Health*; *Environmental Justice & Community*; and *Business & Community*](#)

Economics. You could eliminate the “*Other*” category because there would be no need for it. Each category can be further defined to clarify the various title meanings. This would allow the category titles to remain simple, not having to include phrases like “including fence line communities.”

There should be no reason why an individual RAC member could not represent more than one category. Lastly, it is recommended that the Secretary establish some minimum technical criteria for a RAC member. This can be based on education, experience, etc. The purpose is to help ensure that guidance and comments are based upon some logical basis rather than emotion, gross misinformation, or gut reactions.

Committee Size and Balance

Recommendation #3: The Secretary should target a RAC **not to exceed** 20 members, and allow for the following: 1) five to six members (5 to 6) from each of the three categories noted above, in **an appropriate** balance of numbers for each of the three main stakeholder categories; 2) one to three (1 to 3) additional seats for those who do not fit within those three categories, if needed; 3) one (1) ~~full-member~~ **Ex Officio** seat for DNREC; and 4) alternates should be **named**.

The 1 to 3 *Other* seats need to have better definition. Otherwise, the Department may be accused of skewing the make-up of the RAC. Also, during one of the workshops, it was suggested that representatives from the State House and Senate (i.e., those responsible for the CZCPA) not sit on the RAC, which is consistent with many regulatory processes. An undefined *Other* category could undermine this recommendation. The *Other* category, if kept, is recommended to allow for specific inclusion of technical and/or experienced RAC members.

It is recommended to have a representative from DNREC to participate on the RAC in a non-voting *Ex Officio* role. Offering full member status (i.e., voting privileges) may “appear” as a procedural conflict of interest for the Department relative to the intent of the RAC.

Criteria for Membership

Recommendation #4: The Secretary should establish clear criteria for membership and require that nominees to the RAC complete a nomination and disclosure form that is made publicly available.

See above, and

If a disclosure form is agreed to be used and made publicly available, it is recommended that the required disclosed information be kept generic. Also, any disclosure ought to be developed based upon a stated parameters, that is, what is the specific purpose of the disclosure and how will the information be used? Also, it is the Secretary’s responsibility to ensure the RAC members are appropriately selected. There is no requirement to let a private entity(s) review and judge potentially personal information of individuals willing to serve on the RAC. We are not creating a court jury here.

There appears to be no need for publicly available disclosure statements. However, it does make sense for the Department to provide the public a summary of the RAC member vetting process, and if necessary, offer rationale on why a particular individual was selected. That should be sufficient.

Membership Selection

Recommendation #5: The Secretary should establish a [single](#) transparent nomination process [consistent](#) for each stakeholder category. Interested parties would nominate potential representatives (self-nominations would be accepted as well) to the RAC during a period of time in early 2018. The DNREC Secretary would review the nominations and select members and alternates from the pool of nominees within a committee structure decided by the Secretary as informed by the Report.

Workgroups and Technical Expertise

Recommendation #6: The Secretary should allow for the formation of RAC subcommittees or technical workgroups that can take on detailed analysis and discussion of specific topics. These may include non-member technical experts. Workgroups would be for deliberation, exploration, and option generation but any and all decisions should rest solely with the full RAC.

Community Outreach

Recommendation #7: The Secretary and the RAC should make a concerted effort to reach out to, communicate with, and build working relationships with marginalized and potentially impacted communities, neighborhoods, and groups. [The RAC should consider forming a workgroup to address the needs of marginalized, environmental justice, and fenceline communities and groups in the development of regulations.](#)

[The highlighted sentence is likely outside the scope of the RAC, and the task noted above is recommended to remain the sole responsibility of the Department.](#)

Committee Transparency

Recommendation #8: The Secretary should ensure RAC transparency by considering the time, place, and form of its meetings and any associated public outreach and engagement, [and to determine the appropriate level of ~~to provide for~~](#) public access and participation.

[Public access and involvement are important elements to the process. However, this recommendation appears to suggest that all activities are to have public access, which simply is not possible without significantly impacting efficiencies of the process.](#)

Committee Product

Recommendation #9: The Secretary should instruct the RAC to write prescriptive guidance (Option #2) and review regulatory language drafted by DNREC (Option #4) when possible. This would allow for the RAC to draft detailed, prescriptive guidance to [provide](#) DNREC [with the conceptual approach](#) and many details for drafting actual regulations. [Wherever possible, the The RAC and DNREC should develop a review](#)

schedule, ensuring consistent minimum review and comment expectations, and review period deadlines, to maintain regulatory development schedules ~~should have the opportunity to review and comment on specific draft regulatory language as it is developed by DNREC during the process.~~

Membership Expectations

Recommendation #10: The Secretary should establish expectations for participation. RAC members should review, revise as needed, and adopt such expectations as formal ground rules for participation.

Committee Decision Rule

Recommendation #11: The Secretary should allow the RAC to utilize a “consensus” approach, which seeks to identify a final package of recommendations that all or almost all RAC members can “live with”. The Committee would issue a final report with consensus as defined generally above to the greatest extent possible within the time and resources allocated to the Committee.

It is recommended that the term “consensus” be defined. Does it mean majority, $\frac{3}{4}$ support, or something else?

Role of DNREC on the Committee

Recommendation #12: DNREC should participate as a full member of the RAC and its representative should serve as the committee chair to ensure forward progress. DNREC staff will participate in RAC meetings and support the chair as necessary. If resources allow, a non-partisan facilitator would facilitate meetings and support the RAC and the chair throughout the process.

Having the Department Chair the RAC could be a potential major issue, for appearances if nothing else. An experienced facilitator would be ideal. If there are insufficient resources for a facilitator, then a non-voting, non-controlling representative of the Department is recommended to be appointed to the RAC to help ensure forward progress. That said, the RAC will initially need to be reminded that the RAC exists at the discretion of the Secretary, and the Secretary is under no obligation to maintain the existence of the RAC. Therefore, the existence of the RAC relies on its ability to maintain a level of efficiency and value to the regulatory development process.

Issues to Cover in the Deliberations

Recommendation #13: DNREC should develop a schedule for developing the new regulations that incorporates the RAC’s participation. ~~draft work plan and timeline based on these issues identified in the assessment and the~~ The RAC should review, revise as needed, and adopt, as amended, the schedule ~~work plan and timeline~~ at ~~one of~~ its first meetings.

Having a schedule is critical to a timely and successful draft of new regulations. Requiring a workplan that needs to be approved by the RAC appears to be overkill and outside of the RAC’s scope. The RAC’s primary role is to offer guidance and comment

on draft regulations. Its role does not need to include governing the Department's internal processes for developing the draft regulations.

(2) Do you have additional thoughts or feedback you would like to share about this draft Report, this process, the RAC, or any other subject you would like to comment on?

The two comments below pertain the RAC functioning efficiently as intended.

I would recommend carefully looking at Recommendation #1 and expanding it to specifically defining the role of the RAC. Based on my observations at one of the workshops, there appears to be a lost appreciation of the RAC's role by a few interested parties. The RAC is a regulatory advisory committee, which supports the regulation development process, not a regulatory steering committee (RSC) controlling the overall regulatory development process. It is recommended that the Department remain literally consistent regarding the roles and powers of the RAC. Equally as important *for this particular regulatory process*, the Department is recommended to ensure that the RAC functions essentially as an independent group, separate from the Department, and make every effort to address the RAC's comments and suggestions. Achieving this balance is key to an efficient and successful regulatory development effort.

Although I 100 percent support the use of a RAC, I also appreciate the potential delays it can cause if certain RAC members become uncooperative or obstructionistic. Another issue is that a certain entity may get representation on the RAC, but may not be part of the consensus on particular issues. Rather than accepting the consensus decision, the entity elects to fight the decision outside of the participation on the RAC. This somewhat defeats the purpose of the RAC. Is it possible to make a condition of RAC membership, that if a particular entity or organization is represented on the RAC, they waive their right to otherwise comment, on issues decided on by the RAC, outside of the RAC? If so, this could reduce the amount of "disagreeing for the sake of disagreeing;" and spending excessive Department resources catering to, and dealing with, the few (the minority opinion) over the many (overall public interest).

SUPPLEMENTAL REPORT AND COMMENTS ON THE COASTAL ZONE CHANGES

Pastor Louis McDuffy

Jan. 17, 2018

In addition to the opposition I commented on during the comment period, I firmly believe that the level of training, experience, and background of scientist working for DNREC and or the EPA, severely limits their ability to monitor and enforce good and safe practices of new industries sponsored in the changing of the Coastal Zones.

I advise that if I am out voted and the changes are made, the state should allow training to all of its scientist and the public, on the effects of contamination on the physical, emotional, mental and spiritual health of children and their families.

I watched numerous mistakes by scientist working on trying to decide when to close a Refinery in Delaware City at the point where there was a projected ten-million-dollar cleanup, and then postponing it until a lot of people were sick, some died, and the price of remediation of the area approaching one hundred million dollars.

The limited experience of most workers with the Psychological effects of pollution on children must be trained in order to successfully work in this area.

Comments provided by Sarah W. Cooksey, Director of Conservation, The Nature Conservancy Delaware

DRAFT Coastal Zone Conversion Permit Act Process Recommendations Report

Please share your feedback on the draft Coastal Zone Conversion Permit Act (CZCPA) Process Recommendations Report. Your feedback will be incorporated into a final version of this Report. Your feedback will help DNREC set up a Regulatory Advisory Committee (RAC) for development of regulations for Coastal Zone Conversion Permits. Comments should be emailed to CZA_Conversion_Permits@state.de.us. You can also submit your own typed comments to DNREC at this email address. Comments received by DNREC by January 19, 2018 will be incorporated into the final Report.

(1) What specific feedback do you have on the 13 recommendations listed in the draft Report? Please write specific feedback about each recommendation you wish to comment on under the corresponding header.

Scope

Recommendation #1: The RAC would focus solely on changes to existing regulations or the creation of additional regulations necessary to implement the CZCPA. The RAC would not be charged with amending or revising the regulations already in place for existing permits.

I agree that the RAC should focus solely on change due to the CZCPA.

I also believe that other changes are needed for Delaware and DNREC should include those that advance its mission and are supported by science and good government practices. Regulatory changes are time-consuming and opportunities for improvement should be seized during this period. At a minimum, environmental offsets, de minimis permits and housekeeping should be included. Further, the costs of expeditious permit application evaluation should be examined and fees levied appropriately. Finally, the definition of renewable energy should be evaluated as described in Delaware Offshore Alternative Energy Framework: Review & recommendations, prepared by the Environmental Law Institute <https://www.eli.org/sites/default/files/eli-pubs/d21-07.pdf>.

Stakeholder Groups

Recommendation #2: The Secretary should provide for representation by three broad stakeholder categories and one “other” category for those who may not fit clearly in one of those three categories: 1) environment, environmental justice, and public health; 2) community including fenceline communities; 3) business and labor; and 4) other.

The report includes a statement that “Most commenters emphasized that the RAC should not include General Assembly members or state-level elected officials.” This statement is powerful, yet not included in the final recommendation. Please consider this as RAC committee members are selected.

Committee Size and Balance

Recommendation #3: The Secretary should target a RAC of 15-20 members and allow for the following: 1) five to six members (5 to 6) from each of the three categories noted above, in equal balance of numbers for each of the three main stakeholder categories; 2) one to three (1 to 3) additional seats for those who do not fit within those three categories, if needed; 3) one (1) full member seat for DNREC; and 4) alternates should be allowed.

Seems reasonable.

Criteria for Membership

Recommendation #4: The Secretary should establish clear criteria for membership and require that nominees to the RAC complete a nomination and disclosure form that is made publicly available.

This recommendation does not go far enough. If there are clear conflict of interests, particularly financial or familiar conflicts of interests, that nominee should not be invited to participate. Further scrutiny and a justification why another nominee won’t suffice is warranted. This process must have integrity for success.

Membership Selection

Recommendation #5: The Secretary should establish a transparent nomination process for each stakeholder category. Interested parties would nominate potential representatives (self-nominations would be accepted as well) to the RAC during a period of time in early 2018. The DNREC Secretary would review the nominations and select members and alternates from the pool of nominees within a committee structure decided by the Secretary as informed by the Report.

This recommendation reads as if the nomination process will vary from stakeholder category to stakeholder category. If that is the case, why?

Workgroups and Technical Expertise

Recommendation #6: The Secretary should allow for the formation of RAC subcommittees or technical workgroups that can take on detailed analysis and discussion of specific topics. These may include non-member technical experts. Workgroups would be for deliberation, exploration, and option generation but any and all decisions should rest solely with the full RAC.

Recommendation 6 and 7 include the words subcommittees, technical workgroups and then just workgroups. Clarify whether these groups are either members/alternates of the RAC or outside entities. Recommendation 7 reads as if that workgroup is made up of members of the RAC, whereas recommendation 6 reads as if it is outsider entities.

Community Outreach

Recommendation #7: The Secretary and the RAC should make a concerted effort to reach out to, communicate with, and build working relationships with marginalized and potentially impacted communities, neighborhoods, and groups. The RAC should consider forming a workgroup to address the needs of marginalized, environmental justice, and fenceline communities and groups in the development of regulations.

See comment under #6.

Committee Transparency

Recommendation #8: The Secretary should ensure RAC transparency by considering the time, place, and form of its meetings and any associated public outreach and engagement to provide for public access and participation.

Seems like a very good idea.

Committee Product

Recommendation #9: The Secretary should instruct the RAC to write prescriptive guidance (Option #2) and review regulatory language drafted by DNREC (Option #4) when possible. This would allow for the RAC to draft detailed, prescriptive guidance to provide DNREC with the conceptual approach and many details for drafting actual regulations. Wherever possible, the RAC should have the opportunity to review and comment on specific draft regulatory language as it is developed by DNREC during the process.

I agree with this recommendation.

Membership Expectations

Recommendation #10: The Secretary should establish expectations for participation. RAC members should review, revise as needed, and adopt such expectations as formal groundrules for participation.

No comment.

Committee Decision Rule

Recommendation #11: The Secretary should allow the RAC to utilize a “consensus” approach, which seeks to identify a final package of recommendations that all or almost all RAC members can “live with”. The Committee would issue a final report with consensus as defined generally above to the greatest extent possible within the time and resources allocated to the Committee.

Consensus defined this way leads to minority rule. If all RAC members have to “live with” something, then just one RAC member has all the power. I recommend there be an odd number of RAC members and that majority vote be used to make decisions. A minority report could be included in the final recommendations for DNREC consideration.

Role of DNREC on the Committee

Recommendation #12: DNREC should participate as a full member of the RAC and its representative should serve as the committee chair to ensure forward progress. DNREC staff will participate in RAC meetings and support the chair as necessary. If resources allow, a non-partisan facilitator would facilitate meetings and support the RAC and the chair throughout the process.

I don't disagree with this recommendation; I don't understand how it will be implemented. The text of the report states that DNREC staff will participate in the RAC deliberations – how will that work? Then it reads as if both the Secretary and a DNREC representative will be open to influence and negotiations and to provide like any other member an alternative approach to meet the interest and concerns expressed. This needs further clarification.

Issues to Cover in the Deliberations

Recommendation #13: DNREC should develop a draft work plan and timeline based on these issues identified in the assessment and the RAC should review, revise as needed, and adopt the work plan and timeline at one of its first meetings.

What is the “assessment”?

(2) Do you have additional thoughts or feedback you would like to share about this draft Report, this process, the RAC, or any other subject you would like to comment on?

Yes. In addition to all the work products DNREC is going to produce before the first meeting, I think it will be very valuable to develop a Goal Statement that the RAC can cogitate on, modify and ultimately review. It should be posted on the wall of every meeting so members can reference it.

Also, please correct the spelling of Richie Jones, State Chapter Director, The Nature Conservancy in the table of interviewees.

Consensus Building Institute (CBI) Interview
Notes from October 26, 2017 Conference Call Interview with
University of Delaware faculty and staff

- A) Background: DNREC has asked the Consensus Building Institute to carry out interviews with stakeholders, to gather input on the formation of a Regulatory Advisory Committee (RAC). The Delaware Environmental Institute (DENIN) requested that academic scientists/engineers and other UD experts be included in the interviews, a request that was quickly accommodated. The text of the invitation below provides additional detail.

Governor John Carney signed the Coastal Zone Conversion Permit Act, which amends the Delaware Coastal Zone Act, on August 2, 2017. The Act authorizes DNREC to issue permits for construction and operation of new heavy industry uses within the 14 existing sites of heavy industry use within the state's Coastal Zone. It also authorizes DNREC to issue permits for the bulk transfer of products under certain circumstances.

The Coastal Zone Conversion Permit Act directs DNREC to develop and promulgate regulations for the issuance of conversion permits by October 1, 2019. DNREC will convene a Regulatory Advisory Committee to develop – by consensus to the greatest degree possible – the framework and approach to these new regulations. The Advisory Committee will also assist with drafting proposed regulations and ensuring public engagement. To assist in the initial phase of this effort, DNREC has retained the same non-profit who assisted in the development of the original regulations for the Coastal Zone Act, the Consensus Building Institute (CBI). CBI is a nonprofit, non-partisan organization that provides mediation and facilitation services to a range of local, state, national, and international entities and stakeholders.

Before DNREC assembles the Regulatory Advisory Committee, CBI will be conducting separate, confidential conversations with key stakeholders, including local government officials, businesses, labor representatives, environmental advocates, and others. To reiterate, these conversations are confidential—CBI will not attribute statements collected in stakeholder conversations to individuals or individual organizations in its final convening report.

These interviews will be used to identify and capture the range of interests, opportunities, concerns, and ideas held by stakeholders about industrial redevelopment in the coastal zone, and to gather advice on how best to design a collaborative process in terms of membership, ground rules, sequencing of issues, and other process design considerations. The outcome of this initial step will be a brief report outlining the key issues, ideas, and concerns expressed by stakeholders regarding the creation of these new regulations and designing the consensus building process. DNREC will then establish the multi-stakeholder Regulatory Advisory Committee to begin the collaborative work.

B) Interview topics, comments, recommendations

The interview was facilitated by Rebecca Gilbert, a member of the CBI team. CBI provided three broad topics in advance of the conference call:

- Review of the statute and its changes and impacts — environmental, economic, public health
- Views on the regulations and their possible content per the statute
- Design of the negotiating committee process — membership, ground rules, scope, timeline

While the questions above were meant to provide some structure within the one-hour conversation, CBI was open to any comments or recommendations from the group. Accordingly, the comments and recommendations made by different members of the group are

laid out below, and include comments made during the call, as well as additional thoughts and recommendations members of the group wished to include. CBI encouraged the group to follow up with any further thoughts, which is part of the rationale for this summary.

[Rebecca Gilbert also indicated that going forward, there would be public workshops. These workshops have now been scheduled. The two workshops will be held: Wednesday, Nov. 29, at the Kingswood Community Center, [2300 Bowers Street, Wilmington, DE 19802](#); and Thursday, Nov. 30, at Delaware City Fire Hall, 815 5th Street, Delaware City, DE 19706. Both workshops will begin at 6 p.m.]

1. The group encouraged DNREC to consider expertise available at the University of Delaware. One process suggestion included the idea of having a RAC steering committee, as well as subgroups who might advise on more specific matters, ranging from technical questions in natural and physical sciences & engineering, environmental ethics/environmental justice, and economics and environmental policy issues. UD expertise might complement the substantial expertise available at DNREC.
2. The following concerns and recommendations were expressed by members of the group:
 - a. The group urged keeping in mind the historic intent of the Coastal Zone Act: to protect the environment in the state and the well-being of Delaware residents.
 - b. Concerns were raised regarding potential future issues with bulk transfer and possible implications for environmental damage and health risk.
 - c. A recommendation was made to plan for cumulative health impact assessments in communities located close to the port and its projected expansion.
 - d. The group noted the likely high cost of remediation of legacy contaminants in a number of sites.
 - e. Concerns were raised about preparing for extreme weather events, coastal storms, and sea level rise.
 - f. One question arose around having extra, or different, regulations for remediation, given the varying geology and hydrology of coastal locations.
 - g. Regarding the process of the Regulatory Advisory Committee, the group advised toward consensus, rather than a simple majority vote process.
 - h. Regarding the product of the Regulatory Advisory Committee, the group advised making the committee's product as close to the regulatory language as possible.

C) Participants on the call on October 26, 2017 (all are at the University of Delaware) are listed below, alphabetically, with expertise area:

| Name | Expertise | Title |
|---|--|--|
| Beth Chajes | Environmental communications | Communications Manager, Delaware Environmental Institute |
| Yu Chin | Civil engineering, water quality | Professor, Civil & Environmental Engineering |
| Kent Messer | Behavioral economics, environmental policy | Professor, Applied Economics & Statistics, and Director, Center for Experimental & Applied Economics |
| Holly Michael | Hydrogeology, water quality | Associate Professor, Geological Sciences Associate Director, Delaware Environmental Institute |
| Jeanette Miller | Environmental education, outreach, inclusion, partnerships | Associate Director, Delaware Environmental Institute |
| Tom Powers | Environmental ethics | Associate Professor, Philosophy Director, Center for Science, Ethics & Public Policy |
| Don Sparks | Environmental soil chemistry | Professor, Plant & Soil Sciences Director, Delaware Environmental Institute |
| Faculty who were not able to join the call include: | | |
| Pei Chiu | Civil engineering, pollutant degradation, water quality | Professor, Civil & Environmental Engineering |
| Murray Johnston | Atmospheric nanoparticles, air quality | Professor, Chemistry & Biochemistry |
| Victor Perez | Sociology, environmental justice | Assistant Professor, Sociology |

Comments on Draft CZCPA Process Recommendations Report

Commenter: Martin Willis

Received: January 22, 2018 via mail

These comments were transcribed from handwritten.

Hello Mr. Kevin Coyle,

Mr. Coyle, my name is Martin Willis and I would like to respond in writing with my comments and feedback on the Draft Coastal Zone Conversion Permit Act Process Recommendation Report

Scope – Recommendation #1

The position of the Regulatory Advisory Committee (RAC), in my humble opinion, is to follow the HB190 mandate for DNREC and go line by line through the current Regulations Governing Delaware's Coastal Zone and make changes, amend, revise or void altogether any Regulations in order to bring them up to correct standards. And, I believe the RAC has to establish additional Regulations necessary to implement HB190.

Mr. Coyle, I hold the opinion that HB190 Section 2, for example, and Sections 8 and 9, in particular take any guesswork out of what the duties of the RAC should be going forward. Here written below is a segment of the HB Section 2 and both Sections 8 & 9 in their entirety as they appear in HB190:

Section 2 Amend § 7002

Title 7 of the Delaware Code by making insertions as shown:

(g) Heavy industry use “site” means those 14 sites depicted in Appendix B of the Regulation Governing Delaware's Coastal Zone § 101, Title 7 of the Delaware Administrative Code in effect on (the effective date of this Act) including those sites which have been abandoned in fact or have been the subject of an abandonment proceeding.

Section 8:

When regulations governing the Coastal Zone are updated in accordance with the Act, the provisions governing abandoned uses and abandonment decisions by the Secretary as they pertain to heavy industry and bulk product transfer shall be removed.

Section 9:

The Department of Natural Resources and Environmental Control shall start the public workshop process to promulgate revised regulations consistent with this bill no later than October 1, 2017 and shall promulgate the revised regulations by October 1, 2019. Prior to promulgation, conversion permits may be issued following the statutory and existing regulatory framework.

Mr. Coyle, Sections 8 & 9 are not assumption, conjecture, or hypothesis on my part, but what was signed into law on August 2, 2017. The expectation of DNREC and the work scope of the RAC is to amend, revise, and update the current Regulations Governing Delaware's Coastal

Zone and of course “the creation of additional regulations necessary to implement a Coastal Zone Conversion Permit.

Stakeholder Groups – Recommendation #2

I believe there should only be ONE label attached to the members of the RAC and that is simply “stakeholder”. To pigeonhole the RAC and assign each member a particular category will only prolong the process at hand. DNREC has to make the RAC an ensemble from DAY 1 and the “Stakeholders” have to band together and perform as one rather than individual, unattached groups.

Committee Size & Balance – Recommendation #3

Mr. Coyle, I would like to reiterate my comments about “what stakeholder groups should be represented in the RAC” which can be found on page 51 of the Draft Report under “comment” and add on more stakeholders to increase the size to 21.

- One person from our State’s Academic Environmental Research
- One person from the State’s Agriculture interests
- One person from the State’s Economic Development Office
- One person from Delaware’s Coastal Waterman Association
- One person each from Kent and Sussex County Environmental advisory groups
- One person from the EPA
- One person from industry inside the Coastal Zone (CZ)
- One person from industry outside the CZ
- One person from the Delaware Attorney General’s Office
- One person from the Port of Wilmington
- Two people who are private citizens
- Four people from local government or communities inside the CZA
- One person from Delaware’s Emergency Management Agency

I didn’t realize until after the two public workshops that the RAC needs more representation from Kent and Sussex Counties to speak on their behalves. Again, I hold the belief that HB190’s intent is to amend, revise, and update the current Regulations.

Also, with the addition of the 8 new obligatory requirements found in HB190 Section 7 § 7014 Conversion Permit, I think someone from the State of Delaware’s Emergency Management Agency has to be included as a stakeholder on the RAC.

Criteria for Membership – Recommendation #4

In my opinion the ONLY criterion for membership is that ALL members of the RAC have to be residents of the State of Delaware, no exceptions.

As far as the Draft Nomination Form found on pg. 60 of the Draft Report: my recommendation to DNREC is to eliminate on the publicly available disclosure form any reference to a nominee’s

address, phone number, or email. A nominee's name, organization, entity, or primary affiliation is more than enough public information.

Membership Selection – Recommendation #5

No comments at this time.

Workgroups and Technical Expertise – Recommendation #6

No opinion.

Community Outreach – Recommendation #7

In my opinion, if the Secretary wants to make a concerted effort to reach out to communities impacted by HB190, do not form a workgroup to address the need. Work their chosen representatives from their neighborhoods in Claymont, the cities of New Castle and Wilmington, and the communities around Millsboro. Maybe the RAC should put someone from “Protection our Indian River” on the committee instead of the Delaware Nature Society? Or, maybe, instead of the Committee of 100, this time, put a representative from The Claymont Renaissance Development Corporation, and maybe ask a Longshoreman from the Port of Wilmington to join.

Committee Transparency - Recommendation #8

The RAC meeting should just follow DNREC's current “Procedural Guidelines for Public Hearings on Proposed Regulations and Plans”

Committee Product – Recommendation #9

No comment.

Membership Expectation – Recommendation #10

No comment.

Committee Decision Rule – Recommendation #11

No comment.

Role of DNREC on the Committee – Recommendation #12

No comment.

Issues to Cover in the Deliberation – Recommendation #13

No comment.

COASTAL ZONE CONVERSION PERMIT ACT DRAFT RECOMMENDATIONS REPORT FEEDBACK, JANUARY 2018...with responses from the League of Women Voters of Delaware.

Edits to recommendations are in bold red.

Comments are in green italics.

Please share your feedback on the draft Coastal Zone Conversion Permit Act (CZCPA) Process Recommendations Report. Your feedback will be incorporated into a final version of this Report to be released in January 2018. Your feedback will help DNREC set up a Regulatory Advisory Committee (RAC) for development of regulations for Coastal Zone Conversion Permits.

Please write specific feedback for each recommendation you wish to comment on. There is space at the end of this form to add any additional comments.

Scope

Recommendation #1: The RAC would focus solely on changes to existing regulations or the creation of additional regulations necessary to implement the CZCPA. The RAC would not be charged with amending or revising the regulations already in place for existing permits.

This is an altogether reasonable recommendation. To address Regulations not affected by the Coastal Zone Conversion Permit Act would be to obscure the fundamental mission of the RAC and open the Coastal Zone Act to changes in areas not envisioned by HB190.

Stakeholder Groups

Recommendation #2: The Secretary should provide for representation by three broad stakeholder categories and one “other” category for those who may not fit clearly in one of those three categories: 1) environment, environmental justice, and public health; 2) community including fenceline communities; 3) business and labor; and 4) **representatives of commercial fishing and recreation associated with the Delaware River and Bay, and other.**

This recommendation will ensure that all stakeholder groups are properly represented. It is important that “other” include representatives of industries dependent on a healthy Delaware River ecology, including those in commercial fishing and recreation associated with the Delaware River and Bay.

Committee Size and Balance

Recommendation #3: The Secretary should target a RAC of 15-20 members and allow for the following: 1) five to six members (5 to 6) from each of the three categories noted above, in equal balance of numbers for each of the three main stakeholder categories; 2) one to three (1 to 3) additional seats for those who do not fit within those three categories **[OMIT, if needed]**; 3) one (1) full member seat for DNREC; and 4) alternates should be **required since no member is going to be able to attend absolutely every meeting.**

This recommendation is sound, with the understanding that commercial fishing and recreational activities associated with the Delaware River and Bay be represented in the “other” category. It

should also be clear, that while alternates do not sit at the table with committee members, that they be allowed to attend every meeting and that they be fully informed of committee findings, at the same time as committee members. It is important to give the alternates full access to all the information given to committee members in the event that they are asked to step in if the standing member of the RAC to whose organization the alternate belongs is unable to fulfill his/her duties.

Criteria for Membership

Recommendation #4: The Secretary should establish clear criteria for membership and require that nominees to the RAC complete a nomination and disclosure form that is made publicly available.

This is a necessarily fairly open-ended recommendation. The Secretary should make public his criteria. Committee members ought to be allowed to choose their own alternates from among their organizations' members.

Membership Selection

Recommendation #5: The Secretary should establish a transparent nomination process for each stakeholder category. Interested parties would nominate potential representatives (self-nominations would be accepted as well) to the RAC during a period of time in early 2018. The DNREC Secretary would review the nominations and select members **[OMIT and alternates]** from the pool of nominees within a committee structure decided by the Secretary as informed by the Report. **Members will be allowed to choose their own alternates.**

This is a reasonable recommendation, except that it is vital that members choose their own alternates.

Workgroups and Technical Expertise

Recommendation #6: The Secretary should allow for the formation of RAC subcommittees or technical workgroups that can take on detailed analysis and discussion of specific topics. These may include non-member technical experts. Workgroups would be for deliberation, exploration, and option generation but any and all decisions should rest solely with the full RAC.

Subcommittees ought to be determined early in the process whenever possible.

Community Outreach

Recommendation #7: The Secretary and the RAC should make a concerted effort to reach out to, communicate with, and build working relationships with marginalized and potentially impacted communities, neighborhoods, and groups. The RAC should consider forming a workgroup to address the needs of marginalized, environmental justice, and fenceline communities and groups in the development of regulations.

Excellent recommendation.

Committee Transparency

Recommendation #8: The Secretary should ensure RAC transparency by considering the time,

place, and form of its meetings and any associated public outreach and engagement to provide for public access and participation.

Arranging meeting venues and times compatible with the schedules of working people is important. Special effort may be needed to elicit preferences along those lines from fence-line community members, often neglected in public discourse of this nature.

Committee Product

Recommendation #9: The Secretary should instruct the RAC to write prescriptive guidance (Option #2) and review regulatory language drafted by DNREC (Option #4) when possible. This would allow for the RAC to draft detailed, prescriptive guidance to provide DNREC with the conceptual approach and many details for drafting actual regulations. Wherever possible, the RAC should have the opportunity to review and comment on specific draft regulatory language as it is developed by DNREC during the process. **Reviewing and affirming regulatory language is a very important function of the RAC.**

This is a good recommendation, provided the goals are clearcut and generally understood. This would include a careful definition of “prescriptive guidance.”

Membership Expectations

Recommendation #10: The Secretary should establish expectations for participation. RAC members should review, revise as needed, and adopt such expectations as formal groundrules for participation.

This is a reasonable recommendation. The Secretary should prepare the ground rules in advance and inform participants of these rules prior to the first meeting. Adjustments to the ground rules could then be voted upon and adopted at the first meeting.

Committee Decision Rule

Recommendation #11: The Secretary should allow the RAC to utilize a “consensus” approach, which seeks to identify a final package of recommendations all **[OMIT “or almost all”]** RAC members can “live with.” **[OMIT]** The Committee would issue a final report with consensus as defined generally above to the greatest extent possible within the time and resources allocated to the Committee.]

Direction by consensus is a common approach of the League of Women Voters, and a reasonable approach in this situation. We suggest removal of “or almost all”, as well as the final sentence in order to make clear that it is an unmodified consensus approach which will be utilized.

Role of DNREC on the Committee

Recommendation #12: DNREC should participate as a full member of the RAC **[OMIT]** and its representative should serve as the committee chair to ensure forward progress]. DNREC staff will participate in RAC meetings and support the chair as necessary. **[OMIT]** If resources allow, **A** non-partisan facilitator **[OMIT]** would **will** facilitate meetings and support the RAC and the chair throughout the process.

It would be far more appropriate for a professional facilitator to chair the meetings than for a DNREC staff person to perform this function. The facilitator would “have no skin in the game,” and would be more likely to be seen as impartial and just, whether true or not.

Issues to Cover in the Deliberations

Recommendation #13: DNREC should develop a draft work plan and timeline based on these issues identified in the assessment and the RAC should review, revise as needed, and adopt the work plan and timeline at one of its first meetings.

The work plan ought to be drafted prior to the assembly of the RAC, and available for public review prior to meeting.

Do you have additional thoughts or feedback you would like to share about this draft Report, this process, the RAC, or any other subject you would like to comment on?

The regulations must include a clarification of the text of HB190 concerning the limitations on when a material is eligible for bulk product transfer, because one expert legal witness determined that the existing language is “ambiguous”.

Environmental Indicators should be developed, adopted and used in the implementation of HB 190.

Though the law allows the practice, we prefer that no permits be issued until the HB 190 Regulations are finalized.

In developing these new regulations, we need to get clear, formal responses on these questions: Is this regulation enforceable? If so, who will enforce it? What will be the consequences, for the enforcing agency, of failure to enforce a regulation.

Name (optional): *Peggy Schultz*

Affiliation (optional): *League of Women Voters of Delaware*
January 19, 2018

To: DNREC Division of Energy and
Climate CZA_Conversion_Permits@state.de.us

From: Amy Roe, Ph.D. Newark, DE

Re: Draft Coastal Zone Conversion Permit Process
Recommendations Report

January 19, 2018

1. **Recommendation # 1 Scope:** *“The RAC should focus solely on changes to existing regulations or the creation of additional regulations necessary to implement the CZCPA. The RAC would not be charged with amending or revising the regulations already in place for existing permits.”*

a. This is a reasonable goal.

2. **Recommendation #2 Stakeholder Groups:** *“The DNREC Secretary should provide for representation by three broad stakeholder categories and one “other” category for those who may not fit clearly in one of those three categories: 1) environment, environmental justice, and public health; 2) community including fence-line communities; 3) business and labor; and 4) other.”*

• **Environment, Environmental Justice and Public Health**

Stakeholders: The report recommends this as a stakeholder category. However, each of these three interests are separate and should be treated as such. They cannot be represented by the same individual or group, and they should not be clumped together into one category. As the Coastal Zone Act is an environmental law, and is governed by an environmental agency, the Environmental group should be considered separate from other stakeholder groups. Health and Environmental Justice should also be treated as separate stakeholder groups, as health is a profession and stakeholders would likely be comprised of health professionals, while Environmental Justice is a movement

of and by communities and would best be served by community members.

- a. **Community Stakeholders:** The Draft Report defines community stakeholders to include employees from planning departments and emergency services. Community stakeholders should be defined to mean the people who live in the neighborhoods impacted by the new regulations. The voice of these stakeholders should not be diluted through the appointment of bureaucrats to fill these seats on the Regulatory Advisory Committee. If there is a need for planners and emergency service providers to be included, they should have their own category of stakeholder.
- b. **Business and Labor:** The draft report recommends inviting those with a clear conflict of interest to the decision-making table in a formal regulatory process from which they will directly profit, which is unethical and should not be allowed. Those with a conflict of interest should participate in the process as members of the public, but not as voting members of the RAC.

3. **Recommendation #3: Committee Size and Balance:** *“The Secretary should target a RAC of 15-20 members and allow for the following: 1) five to six members (5 to 6) from each of the three categories noted above, in equal balance of numbers for each of the three main stakeholder categories; 2) one to three (1 to 3) additional seats for those who do not fit within those three categories, if needed; 3) one (1) full member seat for DNREC; and 4) alternates should be allowed.”*

- . **Category Balance:** The categories are poorly defined, so this recommendation needs additional work. “Environment, Environmental Justice and Health” should not be asked to share 5-6 seats, emergency services providers and planners should not be able to serve as community representatives, and business interests and labor should not have voting rights. The

categories should be made more specific (see comments on Number 3 above).

4. Recommendation #4: Criteria for Membership: *“The Secretary should establish clear criteria for membership and require that nominees to the RAC complete a nomination and conflict of interest disclosure form that is made publicly available.”*

- . **Conflict of Interest:** Conflicts of interest should prohibit participation; those with conflicts should be excluded from participating as members of the RAC.
- a. **Nominations:** Because of the poor definitions in the draft report, it is unclear who qualifies for making nominations in any of the stakeholder groups. For example, would a certain stakeholder group be able to use a subsidiary that claims to be another stakeholder group to fulfill a seat on the committee? Such shadow groups exist in Delaware and should be prohibited.
- b. **Criteria:** There should be clear criteria for who participates as a member of the RAC. For example, individuals who are not permanent residents of the State of Delaware or who have conflicts of interest should not be eligible.

5. Recommendation #5: Membership Selection: *“The Secretary should establish a transparent nomination process for each stakeholder category. Interested parties would nominate potential representatives (self-nominations would be accepted as well) to the RAC during a period of time in early 2018. The Secretary would review the nominations and select members and alternates from the pool of nominees within a committee structure decided by the Secretary as informed by the Report.”*

- . **Interested Parties:** Who are the interested parties? Is this based upon self-identification? For example, can anyone or any group claim to be a member of the environmental stakeholder category? Many groups are

multi-issue and therefore are not accurately represented in this category.

6. Recommendation #6: Workgroups and Technical

Expertise: *“The Secretary should allow for the formation of RAC subcommittees or technical workgroups that can undertake detailed analysis and discussion of specific topics. These may include non-member technical experts. Workgroups would be for deliberation, exploration, and opinion generation, but any and all committee decisions should rest solely with the full RAC.”*

- . **Transparency and Open Meeting Guidelines:** Will all meetings follow Delaware’s open meeting law? They are required to meet the minimum requirements of the Freedom of Information Act, yet DNREC has a poor track record of holding open meetings, so this should be made explicit.
- a. **Meeting Location:** Will these meetings be held in the Coastal Zone at times convenient for the public?
- b. Workgroups are an opportunity for shenanigans, where discussions take place outside of the public eye, either because of their scheduling at times and in locations when and where it is impossible for the impacted communities and stakeholders to attend, or because they are not properly noticed, not in meeting locations that are not ADA accessible or of sufficient size. DNREC has a track record of using workgroups inappropriately.
- c. The list of proposed subject areas did not include bulk product transfer and freight.

7. Recommendation #7: Community Outreach: *“The Secretary and the RAC should make a concerted effort to reach out to, communicate with, and build working relationships with marginalized and potentially affected communities, neighborhoods, and groups. The RAC should consider forming a workgroup to address the needs of marginalized,*

environmental justice, and fence-line communities and groups in the development of regulations.”

- . Community outreach should be a goal of the RAC and DNREC, and should not be doled off to a sub-committee. Outreach is an area that DNREC consistently performs poorly. This is not something that should be taken lightly. If the RAC is not willing to work with communities through sincere and protracted outreach, then the RAC is not the proper format for developing or reviewing regulations.

8. *Recommendation #8 Committee Transparency:* *“The Secretary should ensure RAC transparency by considering the time, place, and form of its meetings and any associated public outreach and engagement to provide for public access and participation.”*

- . **ADA Accessibility:** All materials and work product must meet ADA accessibility guidelines, including document guidelines for low-vision readers. For example, while I was able to obtain an accessible copy of the draft for low vision readers (which took nearly a week and reduced my time with the document), the Draft Report that appeared on the website for the entire comment period is not an accessible document. This is discriminatory and unacceptable. Below are a few references that may be helpful to keep in mind for DNREC's future publications.

- i. ADA requirements for effective communication <https://www.ada.gov/effective-comm.htm>

- ii. ADA toolkit for effective communication <https://www.ada.gov/pcatoolkit/chap3toolkit.htm>

- iii. American Council for the Blind best practices for formatting documents for low vision community <http://acb.org/large-print-guidelines>

- a. **Meeting Location:** The Draft Report recommends that meetings should be held in the Coastal Zone whenever possible. All meetings of the Regulatory Advisory Committee should be held in the Coastal Zone, and preferably in impacted communities. The Coastal Zone includes abundant meeting locations, including schools, fire halls, churches, and other appropriate venues.
- b. DNREC should establish public meeting and public hearing guidelines (which they do not have) to guide this process. These guidelines should not be limited to the RAC and CZA Regulations, but should apply to the entire department.

9. **Recommendation #9: Committee Product:** *“The Secretary should instruct the RA to write prescriptive guidance and review regulatory language drafted by DNREC (when possible). This would allow for the RAC to draft detailed, prescriptive guidance to provide DNREC with the conceptual approach and many details for drafting actual regulations. Whenever possible, the RAC should have the opportunity to review and comment on specific draft regulatory language as it is developed by DNREC during the process.”*

- . **Review of Regulations:** The Draft Report says that the Regulatory Advisory Committee should draft and also review the regulations whenever possible. It is the purpose of the Committee to assist in the development of these regulations. Therefore all sections of the regulations should be reviewed by the Committee and made available to the public.

10. **Recommendation #10: Membership**

Expectations: *“The Secretary should establish expectations for participation. RAC members should review, revise as needed, and adopt such expectations as formal groundrules for participation.”*

- . Isn't this the type of thing that this Draft Report should have recommended? The Final Report should detail

specific expectations for all members, and not leave it as a vague recommendation.

11. **Recommendation #11: Committee Decision Rule:** *“The Secretary should allow the RAC to utilize a “consensus” approach, which seeks to identify a final package of recommendations that all or almost all RAC members can “live with”. The RAC would issue a final report with consensus as defined generally above to the greatest extent possible within the time and resources allocated to the RAC.”*

- . A consensus approach is an unreasonable expectation, especially given the fact that the last RAC process reached consensus on items that were never implemented, rendering the RAC irrelevant and meaningless. We need to learn from our direct experience here.
- a. Who writes the committee report? DNREC? The RAC? What resources do they need to complete this report, and what are the costs?
- b. The report says that “If DNREC agrees to the final Package of recommendations, it must commit to advancing and supporting the recommendations as the draft regulations move through the formal public process.” How would DNREC commit? I am not clear about whether DNREC is legally able to commit to implementing things that a committee decides, and if they do commit, if that would be subject to administrative appeal.

12. **Recommendation #12: Role of DNREC on the RAC:** *“DNREC should actively support and participate in the RAC deliberations, and the DNREC counsel from the DOJ should provide legal assistance, including drafting, and advice to the RAC. If resources allow, a non-partisan facilitator would facilitate meetings and support the RAC and the chair throughout the process.”*

- . Consensus Building Institute should not serve as a facilitator for this process. They have proven in the language of the Draft Report that they are not non-biased. For example, calling heavy industry jobs in the Coastal Zone “good jobs” in the Draft Report is completely inappropriate and reveals that they have an implicit bias. If DNREC is to chair the RAC, it is their responsibility to facilitate.
- a. The costs to the public of using an outside consultant were never disclosed during the legislative hearings on HB 190 (there was no fiscal note). Spending taxpayer money on consultants is outside of the privileges of DNREC for these regulations. If DNREC wants to use a consultant for this RAC, they should have disclosed that, instead of Shawn Garvin claiming that DNREC had the existing capacity to do the regulations in the senate and house hearings.

13. Recommendation #13: Issues to Cover in the

Deliberations: “DNREC should develop a draft work plan and timeline for the RAC’s work and the RAC should review, revise as needed, and adopt the work plan and timeline at one of its first meetings.”

- . This is exactly the kind of thing that should be specifically suggested in this draft report. The suggested bullets do not include address community outreach and engagement, the protection health, environmental justice, ecosystems, improvement of water quality and air quality, or prevention of future brownfields and superfund issues.

Additional Thoughts:

The Draft Report mentions that the final decision for the regulations is with the DNREC Secretary. However, this is not correct. The final decision will be with the Coastal Zone Industrial Control Board, and the report should be updated to reflect this fact.

Background, paragraph 1 refers to the “14 heavy industry sites”. This is not an accurate description and not what the sites are called in the law. This should be changed to the “14 sites of nonconforming use”.

Many of the definitions used in the Draft Report are vague, which is interesting because the report says that “many terms require clear definitions”, yet in the report many jargon words are used without any definition or explanation:

1. “Good Jobs”? What is a bad job? What does this mean, exactly?
2. “Modernizes the state’s current approach...” What does “modernize” mean in this context?
3. “The need to follow public meeting best practices...” What are best practices?
4. “The need for comprehensive baseline data.” What is baseline data?
5. “Many commenters also emphasized that the RAC should focus on the regulatory changes needed and avoid re-litigating the decisions reached by the General Assembly”. What litigation occurred that would be subject to re-litigation? Has there been a court filing on these regulations?

General spelling and grammatical errors (all page numbers are of my large print copy) “advante” (p. 31); “advantages to this approach is are” (p. 32)... Please proofread the document.

DNREC process for establishing regulations... should read: “Concerns about DNREC’s lack of engagement with affected communities...”

Other issues or comments says: “Concerns about but also support for DNREC approving a before the new regulations are finalized.” This makes no sense. What is this supposed to say?

The online version of the fillable pdf for these comments does not include any space for people to put their names or contact

information. Is DNREC intentionally soliciting anonymous comments for this report? Also, I seem to recall that a survey-monkey style of comments was available late last month for this report, but that appears to no longer be available. Why was it removed? How are comments that were submitted with the survey monkey being archived?

For other committees that DNREC has for guidance on certain matters, for example the Energy Efficiency Advisory Council, DNREC has contracted with technical experts to provide assistance to the Committee. I am not sure if resources are available for this because there was no fiscal note attached to HB 190, but the stakeholders on the committee should have access to technical resources to enhance their understanding of the complicated technical aspects of the Coastal Zone Act and the regulations, including the health and hazardous substance cleanup components. Since DNREC has spent so much taxpayer money on this Draft for the RAC, there may not be any resources left to assist community stakeholders. That would be unfortunate.

Comment on draft CZCPA Process Recommendations Report
January 17, 2018

We have reviewed CBI's report and believe that it outlines a reasonable path forward for the CZA regulatory process and should be adopted as presented.

Cordially,

A handwritten signature in blue ink that reads "Paul".

Paul H. Morrill, Jr.
Executive Director
The Committee of 100

COMMENT SHEET

RICHARD A. FLEMING

DRAFT Coastal Zone Conversion Permit Act Process Recommendations Report

Scope

Recommendation #1: The RAC would focus solely on changes necessary to implement the CZCPA. The RAC would not be charged with amending or revising the regulations already in place for facilities not on grandfathered sites.

- **Wording of this first sentence is critical and must not be open to different interpretations. Some members of industry and some environmentalists would like to make a variety of changes to regulations that are unrelated to those changes required by or flowing from the Act's recent revision. Opening the door to regulatory changes not specifically needed in order to address Act changes resulting from HB190 would almost certainly mire the Committee in argument, and doom the overall effort to reach consensus. Changes to the Act are specific to permits for grandfathered sites and changes to regulations should be similarly narrow.**

richard fleming 1/17/2018 11:19 AM

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Stakeholder Groups

Recommendation #2: The Secretary should provide for representation by three broad stakeholder categories and one "other" category for those who may not fit clearly in one of those three categories: 1) environment, environmental justice, and public health; 2) community including fenceline communities; 3) business and labor; and 4) other.

- **I support as written.**

Committee Size and Balance

Recommendation #3: The Secretary should target a RAC of 15-20 members and allow for the following: 1) five to six members (5 to 6) from each of the three categories noted above, in equal balance of numbers for each of the three main stakeholder categories; 2) one to three (1 to 3) additional seats for those who do not fit within those three categories, if needed; 3) one (1) full member seat for DNREC; and 4) alternates, nominated by each member, should be required.

- **Change suggested: it is important that persons invited by the Secretary to be members be allowed to recommend their own alternates to the Secretary. (The Secretary can accept or reject.) This facilitates continuity of understanding and opinion whenever the alternate must act in place of the member.**

richard fleming 1/12/2018 11:22 AM

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Criteria for Membership

Recommendation #4: The Secretary should establish clear criteria for membership and require that nominees to the RAC complete a nomination and disclosure form that is made publicly available.

- **I support as written.**

Membership Selection

Recommendation #5: The Secretary should establish a transparent nomination process for each stakeholder category. Interested parties would nominate potential representatives and alternates (selfnominations would be accepted as well) to the RAC during a period of time in early 2018. The DRAFT Coastal Zone Conversion Permit Act Process Recommendations Report – Dec. 22, 2017 DNREC Secretary would review the nominations and select members and alternates from the pool of nominees and member-selected alternates within a committee structure decided by the Secretary as informed by the Report.

- **To repeat: it is important that persons invited by the Secretary to be members be allowed to recommend their own alternates to the Secretary. (The Secretary can accept or reject.) This facilitates continuity of understanding and opinion whenever the alternate must act in place of the member.**

Workgroups and Technical Expertise

Recommendation #6: The Secretary should allow for the formation of RAC subcommittees or technical workgroups that can take on detailed analysis and discussion of specific topics. These may include non-member technical experts. Workgroups would be for deliberation, exploration, and option generation but any and all decisions should rest solely with the full RAC.

- **I support as written.**

Community Outreach

Recommendation #7: The Secretary and the RAC should make a concerted effort to reach out to, communicate with, and build working relationships with marginalized and potentially impacted communities, neighborhoods, and groups. The RAC should consider forming a workgroup to address the needs of marginalized, environmental justice, and fenceline communities and groups in the development of regulations.

- **I support as written.**

Committee Transparency

Recommendation #8: The Secretary should ensure RAC transparency by considering the time, place, and form of its meetings and any associated public outreach and engagement to provide **ready** public access and participation.

- **I feel the Recommendation needs to be strengthened.**
- **Include a recommendation to promptly publicize meeting Minutes.**

Committee Product

Recommendation #9: The Secretary should instruct the RAC to write prescriptive guidance (Option #2) and review regulatory language drafted by DNREC (Option #4) when possible. This would allow for the RAC to draft detailed, prescriptive guidance to provide DNREC with the conceptual approach and many details for drafting actual regulations. Wherever possible, the RAC should have the opportunity to review and comment on specific draft regulatory language as it is developed by DNREC during the process.

- **"Prescriptive" is a seldom used term. Might different terminology be clearer?**

Membership Expectations

Recommendation #10: The Secretary should establish expectations for participation **and include them in the invitation to be on the Committee. In their first meeting**, RAC members should review, revise as needed, and adopt such expectations as formal groundrules for participation.

- **Prospective members need to know the obligation of membership before agreeing to serve.**

Committee Decision Rule

Recommendation #11: The Secretary should **request that** the RAC utilize a "consensus" approach, which seeks to identify a final package of recommendations that all RAC members can "live with". The Committee **should** issue a final report with consensus as defined generally above to the greatest extent possible within the time and resources allocated to the Committee.

- **I believe the need for consensus is great and this Recommendation should be stronger.**

Role of DNREC on the Committee

Recommendation #12: DNREC should participate as a full member of the RAC and its representative **(or alternate)** should serve as the committee chair to ensure forward progress. DNREC staff will DRAFT Coastal Zone Conversion Permit Act Process Recommendations Report, participate in RAC meetings and support the chair as necessary. **A** nonpartisan facilitator **should** facilitate meetings and support the RAC and the chair throughout the process.

- **There must be a facilitator – and that facilitator MUST be seen as non-partisan by all members, interested stakeholders and the public at large.**

Issues to Cover in the Deliberations

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Recommendation #13: DNREC should develop a draft work plan and timeline based on these issues identified in the assessment and the RAC should review, revise as needed, and adopt the work plan and timeline at one of its first meetings.

- I support as written.

(2) Do you have additional thoughts or feedback you would like to share about this draft Report, this process, the RAC, or any other subject you would like to comment on?

- Thanks to CBI for a very helpful analysis and set of proposed recommendations!

to existing regulations or the
creation of additional regulations

VICTOR SINGER

Newark DE

Jan 19, 2018

Subject: Comments on draft CBI report on CZCPA Process Recommendations

Folks:

This supplements my verbal and written comments during an interview some months ago at Buena Vista with Rebecca Gilbert of CBI, without repeating them.

CBI's thirteen recommendations implicitly reflect the notion that DNREC's Secretary holds exclusive authority to establish how to revise Delaware's Coastal Zone Regulation to reflect no less than the newly legislated requirements of the Coastal Zone Conversion Permit Act (CZCPA) -- HB 190 enacted in the 2017 session of the General Assembly. In an introductory "Background" statement, the DNREC Secretary's role is to be aided and abetted by a Regulatory Advisory Committee -- RAC -- that DNREC is to lead. The charge for the RAC is to "support its [i.e., DNREC's] development of new regulations."

Recommendation #1 urges the RAC to deal only with features reflecting the CZCPA, and not with other provisions needful of attention. Recommendations #2 thru #6 urge the DNREC Secretary to categorize RAC membership, establish membership qualification and/or disqualification criteria, to allow or disallow the RAC to form subcommittees whenever it so chooses, Recommendation #7 and #8 urge the DNREC Secretary and/or the RAC to TRY to reach out to the larger community.

Recommendation #9 urges the DNREC Secretary to give direction to the RAC to draft "detailed prescriptive guidance" for DNREC's staff to prepare actual regulations, which the RAC might -- or might not -- be allowed to review and critique. Recommendations #10 thru #13 involve RAC's work plan, work schedule and procedures, all under DNREC control.

Clearly, CBI judges that the DNREC Secretary and the Department he heads are totally in control. Whether or not that's consistent with the legislative intent deserves careful attention to the words enacted by the General Assembly.

The CZCPA was written as an addition to Delaware's Coastal Zone Act, CZA, to enable some previously prohibited activities and to preserve others. That is reflected in the engrossed version of the CZA available on the internet at <http://test.delcode.delaware.gov/title7/c070/index.html>.

Except for changes to accommodate newly permissible activities, the provisions of 7 Del. C. Section 7005 "Administration of this chapter" are preserved as they were prior to HB 190. Under Subsection 7005(b), the DNREC Secretary is authorized to issue regulations which do not have the force of law unless approved by the Coastal Zone Industrial Control Board, CZICB. And under Subsection 7005(c) the DNREC Secretary is required to develop and propose a comprehensive plan and guidelines for conversion permits which become binding regulations upon adoption by the CZICB after public hearing. And under Subsection 7005(d), DNREC and all other agencies of state government must assist the CZICB in developing policies and procedures and must provide all information that the CZICB may require.

Broadly interpreted, the General Assembly gave to the CZICB the authority to alter any part of or the entirety of any comprehensive plan or regulation proposed by DNREC and/or its Secretary at any time that the CZICB chooses to do so.

Yet the thirteen CBI recommendations do not mention any role for the CZICB in any part of the process for developing regulatory controls over newly authorized activities in the Coastal Zone. The thirteen CBI recommendations presuppose that the RAC will be totally controlled by DNREC and/or its Secretary, that effectively the RAC will be a puppet on the Secretary's strings. But the legislative intent according to the words of the CZA and the CZCPA enacted by the General Assembly is that for the Coastal Zone, DNREC and/or its Secretary are to be totally controlled by the CZICB, effectively puppets on CZICB's strings.

Clearly, CBI knows that its clients are the DNREC Secretary and DNREC, and that the clients want to be in total control despite what the law says. Indeed, recent history mutely demonstrates that the CZICB's overwhelming desire is to go along to get along, i.e., to be a puppet on DNREC's string. A notable recent demonstration of that, is the CZICB's refusal to hear an appeal on a CZ permit on the premise that the appellant didn't qualify for "standing" even though Section 7 Del. C. 7007(b) gives standing to "any person aggrieved by a final decision of the Secretary" and the Section 7 Del. C. 7002(h) definition of "person" as "any individual or group of individuals . . . or any other legal entity."

Since the CZICB would appear to be puppets on DNREC's or its Secretary's string, seeking CZICB's approval for proceeding according to the CBI recommendations might seem a mere formality. Exploring whether or not the CZICB would need to hold a public hearing before endorsing the CBI recommendations is an issue better explored at the outset than at the end of the process.

CBI needs to add to its final recommendation report an epilogue that it gives at least lip service to the statutory authority of the CZICB along with an explanation for why that wasn't recognized in its draft report. CBI needs to demonstrate that it has read AND UNDERSTOOD both the CZCPA and the CZA in order to make its work product worthy of respect.

Re: Draft Coastal Zone Conversion Permit Process Recommendations Report

The Draft Report defines community stakeholders to include employees from planning departments and emergency services. Community stakeholders should be defined to mean the people who live in the neighborhoods impacted by the new regulations. The voice of these stakeholders should not be diluted through the appointment of bureaucrats to fill these seats on the Regulatory Advisory Committee. If there is a need for planners and emergency service providers to be included, they should have their own category of stakeholder.

The Draft Report recommends that meetings should be held in the Coastal Zone whenever possible. All meetings of the Regulatory Advisory Committee should be held in the Coastal Zone, and preferably in impacted communities. The Coastal Zone includes abundant meeting locations, including schools, fire halls, churches, and other appropriate venues.

The Draft Report says that the Regulatory Advisory Committee should draft and also review the regulations whenever possible. It is the purpose of the Committee to assist in the development of these regulations. Therefore all sections of the regulations should be reviewed by the Committee and made available to the public.

City

~~Alan~~ Alan Harbaugh Newark
Rebecca Vargas Newark
Sally Reissman Wilmington.
Yuen Wai LAUREN VELLA MIDDLETOWN

Re: Draft Coastal Zone Conversion Permit Process Recommendations Report

Recommendation #1 Community Stakeholders
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|---------------|------------|
| RUBEN SANCHEZ | Newark |
| Alan Hitchner | Newark |
| Jordyn Pusey | Wilmington |
| John Irwin | Wilmington |

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| Name | City |
|---------------------|------------|
| Elisabeth Knapp | Newark |
| Heather Durigen | Newark |
| Amy Roe | Newark |
| David B. Chandler | Newark |
| Guathian C. Kreamer | Newark |
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| Jan Ratz | Newark |
| Linda Sanders | Wilmington |
| Lynn Anderson | Newark |
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| Amy Hughes | Wilmington |
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| Billy Medaris | Middletown |
| Andrew Dammann | Wilmington |
| Helga Nemarec | Middletown |
| Ranen Gripp | Wilmington |
| Gemma Lowrey | Bear |
| Maesha Coenibe | Wm. |
| Stacey Johnson | Bear |
| Shardae White | Wilmington |
| Dominique Oppenheimer | Wilmington |
| Brooklyn Hitchens | Wilmington |
| Melissa Benbow | Wilmington |

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| Deorly Shaze | Newark |
| Nedine Burdash | North Wilmington |
| Harry Anderson | Newark |
| John Anderson | Newark |
| Jim Owens | Newark |
| Sara Russell | Milford |
| Judy Butler | Wilmington |
| Maury Butler | " |
| Elizabeth Rausch | Wilmington |
| Jeffrey Richardson | Wilmington |
| Gabrielle Foreman | Wilmington |
| Meagan Hart | Milton |
| Brittany Hart | Milton |

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| Swiiryn Whittington | New Castle, DE |
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| Karen Barker | Newark |
| Chitra Vaidy | Newark |
| Jamie Kegerise | Wilmington |
| Margaret Ladd | New Ark. |
| WAYNE THOMPSON | NEWARK |
| Jack Guerin | Wilmington |
| N. Ivonne Antongiorgi | Wilmington |
| Sarah Nightingale | Wilmington |
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| Cami Seward | Newark |
| Erika Gutierrez | Newark. |

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| Sherri Evans-Stanton | Wilmington |
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| Donna Tutes | Wilmington |
| Eve Tahmircioglu | Wilmington |
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| Paige Chapman | Wilmington |
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| Thanylene Edwards | Wilmington |

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| Nancy Willing | Newark |
| Barry SHOTWELL | NEWARK |
| Mike Johnson | Wilmington |
| Charles C. Steen | Wilmington |
| Barack Bean | Wilmington |