COASTAL ZONE CONVERSION PERMIT ACT REGULATORY ENVIRONMENTAL IMPACT WORK GROUP MEETING #1
SEPTEMBER 12, 2018
DRAFT MEETING SUMMARY - TO BE FINALIZED AT NEXT MEETING

MEETING IN BRIEF

The meeting covered: 1) an introduction to the statute regarding environmental impact; 2) a review of the existing statutory and regulatory context; 3) a review of the 14 heavy industry use sites; 4) discussion of the scope of work; and 5) next steps. Presentations and background materials can be found at the DNREC RAC website at: de.gov/czcparac.

SUMMARY OF KEY POINTS

Review of Relevant Statutory Language and Initial Discussion

The group reviewed and discussed relevant statutory language within the Coastal Zone Act (CZA; Chapter 70), in the context of assessing what amount/type of information would be sufficient for a conversion permit with regards to environmental impacts. Options include the current CZA permit application, the current permit application plus additional components, or a modified CZA permit application.

- 7002(c) defines an environmental impact statement as describing effects of a proposed use on "the region." However "the region" is not defined.

  The group framed the issue of geographic scope, identifying potential options as including the Coastal Zone, the State of Delaware, and wherever releases have come to be located (e.g., other states).

- 7004(b)(1) describes environmental parameters that could be impacted, but the CZA (or other relevant acts or regulations) does not define "impact."

  The group discussed options for defining impact: 1) any release (e.g., air emissions) or change in the environment (e.g., surface water flow), which is how the current CZA permit application is structured, 2) a release or change that exceeds a promulgated threshold or criteria (e.g., air quality criterion), or 3) a release or change that results in a toxicological effect. The group will continue to discuss the benefits and challenges of each option, including whether there are existing sources of information, substance classification, or criteria that could be incorporated by reference (e.g., state water quality criteria, CERCLA list of hazardous substances).

  The group also discussed options for measuring environmental impacts. Multiple members of the group expressed a preference for quantitative metrics (as opposed to the qualitative conclusory statements currently required for CZA permits). This was followed by a question from one member about the Coastal Zone indicators and goals and whether environmental impact metrics should be consistent with those. This topic will be discussed at a future meeting. In addition, the group considered whether different media (e.g., sediment, soil, air) should be evaluated separately, as the methods and metrics for evaluating each media are distinct.

- 7004(b)(3) lists aesthetic effects as something to be considered when reviewing a permit. It is called out separately from the environmental impact description in (7004(b)(1) but it is not listed explicitly in 7014 so it is unclear whether aesthetics should be addressed in a conversion permit application.

In the initial group discussion of this topic, some members noted that it might be reasonable to assess those impacts qualitatively (rather than requiring quantification of aesthetic changes).

The group also briefly discussed other types of potential impacts that are not clearly included or excluded from the environmental impact assessment, such as human health (which is evaluated to some degree under the Hazardous Substances Control Act (HSCA)), recreation, and social/community impacts. The group should confer with the Economic Effect Work Group on some of these topics to determine whether they are being covered within the economic effect assessment.

- 7014 (c)(1) states that the application should consider the existing or previous use. No guidance is provided to identify a preference for existing or previous, nor is previous defined.

  The group spent a substantial amount of time on this issue. Some members indicated that previous use should be the most recent heavy industrial use at the site, even if that use ceased decades ago. Other members expressed the opinion that existing use is a more relevant condition against which to compare proposed use, and that previous use could be interpreted to mean prior to the permit application (i.e., current use). One member suggested a hybrid approach – some current parameters and some most recent industrial use parameters – depending on the media. The group discussed the benefits and challenges of these scenarios and raised some questions for further consideration:

  - Is it reasonable to expect a permit applicant to be able to find sufficient information on an industrial use that ceased decades ago?
  - What is a reasonable burden to place on the applicant in terms of information to support a conversion permit application?
  - If previous use is identified as the most relevant, how are remedial actions accounted for (e.g., some of the 14 heavy industrial sites are HSCA sites)? How are changes in environmental regulations (federal and state) accounted for (e.g., a heavy industry would not be allowed to operate (and discharge pollutants) in 2018 in the same manner they operated in the 1980s).
  - How would current regulatory requirements (e.g., HSCA) be accounted for in the analysis?

- 7014 (c)(3) states that the net environmental improvement inherent in the alternative or additional heavy industry use or bulk product transfer activity as compared to the most recent heavy industry use at the site should be considered. No language regarding net environmental neutrality (or detriment) is included. “Most recent heavy industry use” is not defined.

  This discussion was directly related to the group’s conversation on existing versus previous use, as “net” requires estimating the change between existing or previous use and the proposed heavy use.

Two supplemental topics were evaluated:

- The group discussed whether options should be presented to the RAC with the assumption of normal working conditions for the site or catastrophic events/”Acts of God”. A work group member reminded the group that companies will have risk assessments and emergency

management plans in place, which could allow the Work Group to focus just on impacts under normal working conditions.

- A conceptual site model would provide comprehensive information on sources, pathways, receptors, etc. and could inform environmental impacts.
- The CZA requires compliance with existing federal and state laws. The group determined that further discussion is needed to assess what is already required for a site and what the likely order of relevant permits would be.

Public Input

A member of the public made the following points:

- DNREC should ensure that the agency has requested the most recent data about a site when they are reviewing a permit.
- Strict air and dust control during site preparation is critical.
- The work of the Environmental Impact Work Group and Offsets Work Group is linked.
- An independent process operational analysis should determine if a proposed new design is acceptable.
- Real-time emissions monitoring should be required for companies applying for permits.

Clarifications

A few key clarifications were made:

- This Work Group's discussions and products will intersect with those of the Offsets and Economic Effect Work Groups. The facilitation teams and technical teams for these three groups will coordinate their efforts and likely hold a joint meeting later in the process.
- The Work Group will develop alternatives around the identified statutory issues and provide pros and cons for each alternative for the RAC to consider. The Work Group will not provide explicit recommendations.

Next Steps

Before the next meeting, DNREC and IEc (the technical consultant) will prepare a revised Scope of Work and a matrix of issues for the group to address. Work Group members should email any late fall date conflicts to rgilbert@cbi.org and read the background materials that will be distributed via email before the next meeting. The next Environmental Impact Work Group meeting will be held on **Wednesday, September 26, 1-4pm at 391 Lukens Drive, Conference Room B.**

Appendix A: Participant List

Work Group member attendance

Name	Affiliation
Jay Cooperson	Sierra Club
David DeCaro	Chesapeake Utilities Corp.
Thomas Godlewski	Delaware City Refinery/PBF Energy
Simeon Hahn	National Oceanic and Atmospheric Administration
Ellie Mortazavi	New Castle County, Department of Public Works
Ian Park	DNREC Division of Fish & Wildlife

Bob Scarborough	DNREC Division of Climate, Coastal, & Energy
Kari St. Laurent	DNREC Division of Climate, Coastal, & Energy
Kristen Thornton	DNREC Waste and Hazardous Substances
Ping Wang	DE DNREC Division of Water

Facilitation and technical team

Name	**Affiliation**
Rachel DelVecchio	Industrial Economics, Inc (IEc)
Rebecca Gilbert	Consensus Building Institute (CBI)
Judy Jordan	DNREC Division of Climate, Coastal, & Energy

RAC members and others attending

Name	**Affiliation**
Sierra Davis	DE DNREC
Bill Dunn	Civic League of New Castle County
Tim Konkus	RAC member (Delaware City Marina and Main Street Delaware City, Inc.)
Kris Saum	TRC Solutions, Inc.