DELAWARE’S COASTAL ZONE ACT

Background and Changes Resulting from the Coastal Zone Conversion Permit Act
CZA and CZCPA 101 for CZCPAWGs

- Title 7 Chapter 70 of the Delaware Code
- CZA passed in 1971, under Gov. Russell Peterson, in response to industrial development pressure in Delaware Bay region
- Established the boundaries of Delaware’s “Coastal Zone”
- Aimed to “strike the correct balance between” introducing new industry and protecting the state’s environment, natural beauty, and recreation potential
Delaware’s “Coastal Zone”

“Quick and Dirty” Description

- East of I-495 around Wilmington
- East of Routes 9 and 1 from Wilmington to Rehoboth
- East of Routes 24 and 20 from Rehoboth to Fenwick
- Includes some areas north and south of C&D Canal
The 14 Heavy Industry Use Sites

1. Chloromone (aka Kuehne)
2. Citi Steel
3. Delaware Storage and Pipeline
4. DuPont Edgemoor
5. Formosa Plastics
6. General Chemical
7. Kaneka Delaware
8. Ocean Port Industries
9. Oxy Chemicals
10. Port of Wilmington
11. Standard Chlorine (aka Metachem)
12. Sun Oil
13. Star Enterprise (aka Delaware City Refinery)
14. Uniqema (aka Croda)
Original Coastal Zone Act

- **Prohibited** new (i.e., post June 28, 1971):
  - Bulk product transfer facilities
  - Heavy industry use sites

- **Allowed with DNREC Permit**:
  - New and expanded manufacturing uses
  - Expanded or extended Heavy Industry Use

- No restrictions on commercial or residential development

- DNREC to make permit decisions considering:
  - Environmental impacts
  - Economic effects
  - Aesthetic effects
  - Impact of supporting facilities
  - Effect on neighboring land uses
  - County and municipal comprehensive plans
Definitions

• **Bulk Product Transfer Facility** – Port or dock for transferring bulk quantities of unincorporated, loose materials (e.g., liquids, sand, grain)

• **Heavy Industry Use** – “Characteristically” > 20 acres of smokestacks, tanks, distillation columns, chemical processing equipment (e.g., oil refineries, steel, petrochemical)

• **Manufacturing** – Mechanical or chemical transformation of organic or inorganic substances into new products
Coastal Zone Conversion Permit Act (CZCPA)

- Amended the CZA in 2017 to allow *alternate* or *additional* uses of 14 sites with a “conversion permit” from DNREC
- Mandated development of “conversion permit” regulations by October 1, 2019
- Conversion permit regulations will be amendment to the original CZA regs adopted in 1999
## Considerations for Both Coastal Zone Permit Types

<table>
<thead>
<tr>
<th>Type of permit required</th>
<th>Manufacturing or Expansion of Existing Heavy Industry Use</th>
<th>Additional or Alternative Heavy Industry Use</th>
<th>Bulk Product Transfer Facility</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Standard CZA Permit</td>
<td>CZCPA Conversion Permit</td>
<td></td>
</tr>
<tr>
<td>More than offset negative environmental impacts (including emissions)</td>
<td>✓</td>
<td>✓ (Annually)</td>
<td>✓ (Annually)</td>
</tr>
<tr>
<td>Account for economic effects</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Account for effects on neighboring land uses</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Prepare for potential impacts of sea level rise and coastal storms</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Provide evidence of financial assurance</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Agree to pay for cost of compliance for on-site hazardous substance cleanup (if applicable)</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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</tbody>
</table>
Conversion Permit (CZCPA) Regulations

- Secretary convened RAC to provide advice regarding new CZCPA regulations.
- Work Groups dive deep into the technical issues and provide options to the RAC
- Focus is on *only* conversion permits § 7014, which requires consideration of:
  - Environmental impact and economic effect of existing or previous use AND of the alternative or additional use
  - An proposal to more than offset the facility’s negative environmental impacts on an annual basis
  - Financial assurance
Moving Forward

- Economic Effect and Risk Evaluation and Financial Assurance
  - Draft Report due October 1
  - Final Report due November 1

- Environmental Impact and Offsets
  - Draft Reports due November 1
  - Final Reports due December 1
CZCPA Work Group Charges

DNREC Work Group Coordinators:
Ian Yue
Judy Jordan
Bob Scarborough
Ground Rules
Economic Effect
Work Group
Economic Effect Work Group

Provide technically feasible options for the RAC regarding the regulatory approach to...

• “economic effect”

• “net economic improvement”
According to the CZA, "economic effect" includes at least...

- Number of jobs created
- Income generated by wages/salaries of jobs in relation to land required
- Tax revenues potentially accrued to state and local government
Conversion permit applicants must address:

- **Economic effect** of existing or previous use
- **Economic effect** of alternative/additional heavy industry use or bulk product transfer
- **Net economic improvement** of alternative/additional heavy industry use or bulk product transfer compared to the most recent heavy industry use
Economic Effect Work Group

Some essential questions the Group must address:

• What is included in “economic effect”?

• Is “net economic improvement” the difference of the two “economic effect” measurements?

• How to verify applicant claims of economic information? (e.g., standards, third-party verification)

• What if an applicant cannot produce “economic effect” values from an existing/previous use?
Other questions the Group can consider:

- Account for specific facility life cycle?
- Reconcile short-term vs. long-term effect?
- Reconcile different effect at different scales?
- Account for “good neighbor” factors (e.g., workforce development, education)?
- Account for economic externalities?
- Require regular reporting from permittees?
Risk Evaluation and Financial Assurance Work Group
Provide technically feasible options for the RAC regarding the regulatory approach to...

“evidence of financial assurances in sufficient form and amount necessary”
Three types of financial assurances required:

1. **Compliance:** Costs to comply with laws that address cleanup of existing contamination (e.g., Delaware Hazardous Substances Cleanup Act)

2. **Corrective Action:** Concept plan to minimize damage and secure site for incidents that cause environmental contamination

3. **Closure/Post-Closure:** Concept plan to minimize damage and secure site upon termination, abandonment, or liquidation of heavy industry use
Variables the Group can consider:

- Size of heavy industry use area
- Quantity of chemicals maintained
- Quantity of chemicals generated as waste
- Other financial assurances with DNREC
- Consideration of a variety of securities to meet financial assurance
Some essential questions the Group must address:

- How can risk and cost be estimated?
- What securities are acceptable for financial assurance?
- Are there incidents of such low probability in which financial assurance may not be required?
- Are there upper thresholds for financial assurance?
- Credit for financial assurance already provided?
Other questions the Group can consider:

• Require financial assurances on a “per occurrence” and annual basis?
• Account for public health and safety?
• Account for scenarios where risk increases over time (e.g., sea level rise, flooding, coastal storms)?
• Require long-term assurances (e.g., pay in to create fund for long-term monitoring or cleanup)?
Environmental Impact Work Group
Provide technically feasible options for the RAC regarding the regulatory approach to...

- “environmental impact”
- “net environmental improvement”
According to the CZA, “environmental impact” includes at least...

- Air and water pollution
- Destruction of wetlands and flora and fauna
- Flood control and drainage issues
- Land erosion
- Quality/quantity of surface and groundwater
- Other: Glare, heat, noise, vibration, radiation, odors, electromagnetic interference
Offsets
Work Group
Offset:

“something that serves to counterbalance or to compensate for something else”
(Merriam Webster)

“to balance one influence against an opposing influence so that no great difference results”
(Cambridge Dictionary)
“An offset proposal that meets the requirements established by and includes the contents specified in regulations promulgated under this chapter and more than offsets the facility’s negative environmental impacts on an annual basis. Such proposal shall favor offsets that directly benefit Delaware”

7 Del. C. §7014(c)(6)
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7 Del. C. §7014(c)(6)

How much is “more than offsets”?
“An offset proposal that meets the requirements established by and includes the contents specified in regulations promulgated under this chapter and more than offsets the facility’s negative environmental impacts on an annual basis. Such proposal shall favor offsets that directly benefit Delaware”

7 Del. C. §7014(c)(6)

What is the definition of “directly benefit Delaware”? 
Offsets Work Group

Other questions the Group can consider:

- What will be accepted as an offset?
- Can and should offsets cross media, levels of toxicity?
- How should community concerns be incorporated into offsets (noise, traffic, light, smell)?
Other questions the Group can consider:

- How often and by whom should offsets be verified?
- Can there be an environmental and economic common denominator?
- Should climate change adaptation be allowed as an offset?