

**COASTAL ZONE CONVERSION PERMIT ACT
RISK EVALUATION AND FINANCIAL ASSURANCE WORK GROUP MEETING #1
SEPTEMBER 5, 2018
MEETING SUMMARY**

APPROVED BY THE RISK EVALUATION AND FINANCIAL ASSURANCE WORK GROUP ON SEPTEMBER 19, 2018

MEETING IN BRIEF

The meeting covered: 1) an introduction to the statute regarding financial assurance and risk evaluation, 2) an overview of financial assurance and common financial assurance instruments and their use in a regulatory context, 3) discussion of the scope of issues to cover, and 4) next steps. Presentations and background can be found at the DNREC Work Groups webpage at: de.gov/czcpaworkgroups.

SUMMARY OF KEY POINTS

Work Group members raised a variety of issues for consideration as the process continues:

- While much of the first meeting focused on financial assurance topics, the risk evaluation component of this work group is important and will need to be integrated with the logistics of financial assurance.
- While the CZCPA is not intended to revisit existing decision-making under the CZA and other federal, state, and local laws and regulations, the existing environmental and risk evaluation/financial assurance context of the 14 sites relevant to the CZCPA is important to understand. Additional site-related information should be provided to WG members as background.
- As a general matter, CZCPA financial assurance should be integrated with existing financial assurances applicable to the site, addressing Delaware's financial assurance needs where existing coverage is absent or insufficient in some manner.
- Coastal Zone conversion permit financial assurance should be cognizant of other federal, state, and local statutes and regulations that come into play if particular types of events occur (e.g., Oil Pollution Act of 1990 for oil spills).
- WG focus should be on ensuring that sufficient funding is available in an appropriate instrument to undertake key actions to protect the environment and human health in the event of non-performance by the Applicant. The probability of any such events occurring primarily affects the cost of obtaining financial assurance and is not a primary WG focus. Nevertheless, event probabilities may still factor into WG discussion of risk evaluation and financial assurance topics.
- The potential for financial assurance related to: a) CZCPA offsets, b) economic incentives provided to an owner/operator, and 3) third-party liability/claims by private parties were briefly discussed but may be out of scope for the WG – further clarification is needed.
- Financial assurance to ensure regulators have access to sufficient funding to address environmental needs in the event of non-performance by a facility owner/operator were deemed important to consider
- It may be helpful for the WG to identify and briefly review examples of state or federal financial assurance regulations.
- Other topics brought up but placed into a “parking lot” to potentially address later include: 1) ways to integrate risk into conversion permit financial assurance (e.g., basing financial assurance

on “risk buckets” that take into account a variety of variables [e.g., proximity of a site to the shoreline, proactive measures taken by the applicant to reduce risk, risk to neighboring sites/off-site impacts], pooling the 14 sites into an insurance framework); 2) liability if a developer were to dig into an already capped contaminated site; and 3) considering the complexities of financial assurance for a brand new development vs. an expansion of an already-developed site

Next steps include IEC, the technical consultant, bringing forward additional information about existing FA regulations and identifying options under various issues named in the scoping paper distributed the meeting. DNREC will provide additional contextual information about the 14 sites relevant to the CZCPA. The next Offset WG meeting is: **Wednesday, September 19, 1:00pm – 4:30pm, Grass Dale Center, 108 N. Reedy Point Rd, Delaware City, DE 19706.**

APPENDIX A: PARTICIPANT LIST

Work Group member attendance

Name	Affiliation
Eileen Butler	DNREC Division of Waste and Hazardous Substances – Tank Management Section
Dave Carpenter	New Castle County Emergency Management
Michael Gould	Department of Insurance
Hon. Randy J. Holland	CZCPA RAC Chair
Carol Houck	City of Delaware City
Richard “Dick” Kirk	Bayard, P.A.
Leslie Ledogar	Department of Insurance
Erich Schuller	DNREC Division of Waste and Hazardous Substances – Emergency Response Team
Ed Tyczkowski	Delaware Emergency Management Agency, Natural Hazards Section
Bob Whetzel	Richards, Layton & Finger / CZCPA RAC Member
Jill Williams-Hall	DNREC Division of Waste and Hazardous Substances – Site Investigation and Restoration Section

Others in attendance

Name	Affiliation
Mike Donlan	Industrial Economics (staff)
Chiara Trabucchi	Industrial Economics (staff, by phone)
Martin Willis	Self
Ian Yue	DNREC Division of Climate, Coastal, & Energy (staff)