

## **Coastal Zone Conversion Permit Act Financial Assurance Work Group**

### Draft Scope of Work for Discussion by Work Group

**Goal:** Arrive at a common understanding of the principles of financial assurance, balancing polluter pays' principle, the need to minimize the potential for orphaned/abandoned facilities, and incentivizing sound operational behavior that minimizes risks from facility releases. Synthesize information regarding financial assurance that informs the RAC, and that is necessary for the RAC to consider as it crafts regulations to support CZCPA.

### **Orienting Assumptions:**

- 1) Coastal Zone Conversion 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.
- 2) Coastal Zone Conversion 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).
- 3) 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 key WG focus.
- 4) WG will need to review information generated by Environmental Impact and Offsets Work Groups to determine if there are any additional potential FA needs that should be addressed.

### **Suggested Items for WG to Address in Upcoming Meetings:**

- 1) Provide RAC with a concise description of standard financial assurance instruments used in an environmental / regulatory context, including qualitative comparison across competing criteria (e.g., opportunity cost for

Applicant, risk to the regulator, direct/indirect access to funds, time period of activities, etc.).

- 2) Discuss whether applicants should identify existing financial assurance at the site (if any), and if so for what purposes and under which existing regulatory regime.
  - a. Provide RAC with options to minimum duplicative information that applicants must provide with respect to existing financial assurance instruments.
- 3) Provide RAC with options for addressing the type and amount of FA for any offsets required by Conversion Permit.
- 4) Provide RAC with options for addressing the type and amount of FA for the activities identified in the subparts below due to Applicant bankruptcy, site abandonment, etc. Such options may contemplate relaxing the need for such assurances if existing financial assurance sufficiently satisfies the risk exposure at the site.
  - a. Site closure.
  - b. Post-closure.
  - c. Ongoing corrective action.
  - d. Long term stewardship.
- 5) Provide RAC with options for addressing any other application-specific FA needs.
- 6) Provide RAC with options for ensuring DNREC is able to access financial assurance expertise to assist with its application review.
- 7) Discuss how best to address legislative requirement in FA section for a draft and final “plan” to address potential future site contamination incidents and closure/abandonment of facility.