

**COASTAL ZONE CONVERSION PERMIT ACT REGULATORY
RISK EVALUATION AND FINANCIAL ASSURANCE WORK GROUP MEETING #2
SEPTEMBER 19, 2018
MEETING SUMMARY**

APPROVED BY THE RISK EVALUATION AND FINANCIAL ASSURANCE WORK GROUP ON OCTOBER 3, 2018

MEETING IN BRIEF

The meeting covered: 1) a revised Initial Scope of Work and clarification of the Work Group charge, 2) a brief overview of the 14 heavy industry use sites relevant to the CZCPA, 3) an example of state financial assurance (FA) regulations, 4) discussion of draft options “strawmen” that identify options and pros/cons related to two initial scope issues (standard financial assurance instruments and options for identifying existing FA applicable to a site). and 5) next steps. Meeting comments are captured in part in revisions to the short briefing papers prepared by IEc and DNREC. Presentations and background information 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:

- Based on decisions made by the RAC at its September 5, 2018 meeting, the Work Group will focus its discussions on the revised Initial Scope of Work (dated September 14, 2018) and hold off on the following three topics until the rest of the Initial Scope of Work is addressed:
 - Financial assurances and incentives (e.g., matching investment in development to financial assurances, requiring financial assurances to re-pay incentives provided to the developer in the event of certain incidents, indemnity financial assurance models);
 - Third-party liability and compensation (e.g., accident liability insurance that ensures sufficient funds to compensate third parties that are either physically harmed or have property damaged upon the event of an incident); and
 - Financial assurance for offset project success.
- The topic of third-party liability and compensation was brought up for discussion. The Work Group will continue to discuss this topic at future meetings.
- Prospective identification of risks for CZCPA sites is challenging because of differences between sites, their operational status, and the range in potential activities that can be pursued under the CZCPA (meaning that there are both known and unknown risks). Finding ways to “group” sites or activities using “low, medium, high” or other risk categories may be helpful.
- Risk can also come into play when determining upfront FA requirements of applicants (e.g., determine percentage of FA to require upfront based on the risk profile of the proposed project/site).
- The Work Group should remain cognizant of the potential differences in risk evaluation and financial assurance needs between abandoned and operating sites.
- When considering FA to provide for a conversion permit that does not replicate existing FA, it is helpful to think through the following questions: What is the incremental risk being added to the site due to its “conversion”? Are these incremental risks already being covered by existing FA?
- Work Group members noted that it should be made possible for applicants to be given credit for existing FA that utilizes an FA instrument not allowed under the conversion permit regulations.

- In considering the example state regulations, Work Group members shared the following thoughts:
 - The example regulations seem very general. How prescriptive should these regulations be? Is it helpful to be more or less prescriptive? What's the right balance?
 - There should be statements in the conversion permit regulations that note required information to be submitted as part of a conversion permit application.
- Careful consideration should be given to the degree different strawmen options have different pros or cons with respect to bankruptcy or owner/operator default.
- The conversion permit program should not be obliged to offer all FA instruments that other FA programs (both within the state and nationally) offer. It is common for one program to not allow a certain FA instrument that another program offers.
- Insurance has been a problematic financial assurance instrument for some Delaware remediation programs. Insurance is a contract between the insurer and the insured for the benefit of the regulator. Insurers sometimes impose new exclusions or endorsements to policies that can limit the effectiveness of insurance policies as an FA instrument. There can be disputes about whether events that occur are covered by the policy. It may be possible to address such issues by specifying conditions that must be met by insurance for it to be considered an acceptable FA instrument.
- Consideration should be given to mechanisms that increase or decrease FA amounts over time to account for inflation and/or other changes in anticipated costs to address adverse environmental impacts.
- It may be helpful, upon submission of a conversion permit application, to convene an internal DNREC advisory group that would assist the conversion permit analyst in determining whether the FA proposed by the applicant is sufficient.
- Presenting strawmen in more tabular form would be helpful.

Next steps include IEc, the technical consultant, making revisions to the strawmen based on meeting discussions and developing additional strawmen related to various issues named in the Initial Scope of Work distributed the meeting. The next Risk Evaluation and Financial Assurance Work Group meeting is: **Wednesday, October 3, 1:00pm – 4:15pm, 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
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
Jason Sunde	DNREC Division of Waste and Hazardous Substances – Solid and Hazardous Waste 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)
Ian Yue	DNREC Division of Climate, Coastal, & Energy (staff)