

**COASTAL ZONE CONVERSION PERMIT ACT REGULATORY
RISK EVALUATION AND FINANCIAL ASSURANCE WORK GROUP MEETING #3
OCTOBER 3, 2018**

APPROVED BY THE RISK EVALUATION AND FINANCIAL ASSURANCE WORK GROUP ON OCTOBER 16, 2018

MEETING IN BRIEF

The meeting covered: 1) potential consideration of third-party liability and compensation in Work Group (WG) discussions pertaining to the WG's initial scope of work, 2) review of revised draft strawmen based on WG input from the previous meeting, 3) discussion of draft strawmen related to two initial scope issues (options for providing financial assurance [FA] expertise needed by DNREC and identifying specific categories of activities/incidents for which conversion permit FA may be needed), and 4) 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:

- Several WG members noted their view that third-party liability and compensation should be discussed as part of the WG consideration of Initial Scope issues. A WG member raised the question as to whether local governments would be considered third parties for FA purposes.
- Considerations specific to the use of insurance as a financial insurance instrument were discussed, including the potential for insurance companies to cancel policies or change plan terms. Advance notification of any such changes is an important issue.
- Any WG advice with respect to suggestions for instrument-specific conditions or requirements should be provided to the RAC. The WG discussed the option of specifically writing or calling out FA instruments in the conversion permit regulations.
- The WG discussed several hypothetical examples of incidents or actions that could lead to a need for FA, and the extent to which existing FA might or might not be sufficient. Such examples include flow-through processes (e.g., transportation/shipment of chemicals), facilities that store chemicals, and emerging contaminants, which, depending on specific details, may vary in the degree to which they are covered under existing FA required by law.
- The WG noted how FA doesn't eliminate risk but rather is intended to ensure that sufficient funding is available in a timely manner to perform specified, quantifiable actions, in the event the owner/operator is unable or unwilling to perform.
- Potential FA options for site closure and post-closure should be explored further. The CZCPA statutory language makes reference to termination, abandonment, or liquidation of site activities. WG members are not aware of existing site closure or post-closure plans for the 14 heavy industry use sites and so existing financial assurance for such activities may be non-existent or limited. Site closure and post-closure costs should be reasonably estimable. It is unclear if closure and post-closure would need to address the entire "site" or only CZCPA-related portions of the site.
- Potential approaches for addressing the adequacy of existing FA for any ongoing or planned actions to address on-site environmental contamination should be discussed further, as that issue

is identified in CZCPA statutory language. It was noted that with respect to RCRA Subtitle C corrective action, FA is required only after remedy selection.

- To the extent the WG identifies other types of actions/incidents for which associated costs are reliably estimable, the WG will discuss potential FA options for them.
- The WG noted that actions/incidents at heavy industry use sites that may require FA fall into two categories: those for which associated costs are relatively known and quantifiable (e.g., site closure and post-closure) and those in which associated costs are relatively unknown and non-quantifiable (e.g., costs needed to address ecological harm caused by future accidental spills and releases, hurricanes, floods, or other extreme weather events).
- For actions/incidents at heavy industry use sites for which risk and associated costs may not be reliably estimated, the WG explore the possibility of public-private partnership and/or risk pool options to provide at least some funding for initial, quick action to limit environmental impacts. The WG also recognized, however, that other statutes and regulations may provide mechanisms and funding to address certain incidents. Further input or guidance may be needed from Delaware Department of Justice to determine whether a public-private indemnity model is within scope or allowed under the CZCPA.

Next steps include IEc, the technical consultant, making revisions to strawmen based on meeting discussions and developing additional strawmen related to various issues named in the Initial Scope of Work. The next Risk Evaluation and Financial Assurance Work Group meeting is: **Tuesday, October 16, 1:00pm – 4:30pm, DNREC Grantham Lane Building, 715 Grantham Lane, New Castle, DE 19720, in the West Wing Conference Room.**

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
Renee Hupp	Delaware Emergency Management Agency, State Emergency Response Team
Richard “Dick” Kirk	Retired attorney (private practice)
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

Others in attendance

Name	Affiliation
Mike Donlan	Industrial Economics (staff)
Stephen Sloamornche	Self
Chiara Trabucchi	Industrial Economics (staff, by phone)
Jameson Tweedie	Department of Justice (staff)
Ian Yue	DNREC Division of Climate, Coastal, & Energy (staff)