

**COASTAL ZONE CONVERSION PERMIT ACT REGULATORY  
RISK EVALUATION AND FINANCIAL ASSURANCE WORK GROUP MEETING #4  
OCTOBER 16, 2018**

APPROVED BY THE RISK EVALUATION AND FINANCIAL ASSURANCE WORK GROUP ON OCTOBER 30, 2018

**MEETING IN BRIEF**

The meeting covered: 1) feedback from the RAC on the initial options the Work Group (WG) presented, 2) review of revised draft strawmen based on WG input from the previous meeting, 3) discussion of a draft strawman related to categories of actions/incidents for which conversion permit financial assurance should be considered, 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](http://de.gov/czcpaworkgroups).

**SUMMARY OF KEY POINTS**

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

- Issue #1 Strawman (Standard Financial Assurance Instruments) will be updated to include reference to which instruments are allowed under relevant, existing Delaware environmental regulations. Footnotes or other means will be used to identify when referenced statutes/regulations were last updated, in case they change again in the future.
- The potential for incentivizing developers to clean up abandoned, contaminated sites was discussed.
- The potential for using Supplemental Environmental Projects (SEPs) as a substitute for financial assurance in some circumstances was discussed. In such circumstances, the potential use of SEPs hinges on the ability of regulators to release liability.
- Most of the discussion focused on Issue #3 Strawman (Potential Approaches to Categories of Actions/Incidents for Which Conversion Permits Should be Considered).
  - The strawman should be organized such that actions/incidents clearly required by statutory language are listed first.
  - The terms “site closure” and “post-closure” have specific meanings in other regulatory contexts and should be avoided in conversion permit regulations to minimize potential confusion. Consider replacing these terms with phrasing that more closely matches CZCPA statutory language.
  - Asset retirement obligation processes might provide analytic procedures that could inform development of closure cost estimates for the heavy industry use sites.
  - What has heretofore been referred to as “site closure and post-closure financial assurance” should reflect CZCPA statutory language to clarify that coverage is simply to “minimize environmental damage and stabilize and secure the heavy industry site.” Stabilization and securing the site are different from “cleanup” (i.e., complete remediation).
  - The WG will need to see what recommendations emerge from the RAC with respect to actions required of applicants to address sea level rise and coastal storm impacts in order to evaluate whether there might be a potential need for associated financial assurance.
  - Consider replacing the term “future environmental incidents” with phrasing that more closely matches CZCPA statutory language.

- Work Group members should keep in mind that DNREC can deny permits to owner/operators who do not demonstrate sufficient capacity, experience, and willingness to meet CZCPA requirements. Financial assurance regulations should not presume that unsuitable applicants will get permits approved.
- Work Group members should keep in mind that Delaware Hazardous Substance Cleanup Act funding has numerous demands on it, and, as such, one should not assume that funding will necessarily be available to address hazardous substance releases at heavy industry use sites.
- Public/private risk sharing financial assurance approaches were discussed, particularly in the context of potentially catastrophic risks and whether the state should take on any risk for future environmental contamination incidents. Such approaches often are complex to develop and implement and may require authorities not granted by the CZCPA (e.g., partial liability release for applicants).
- To the extent insurance is considered to address potential third-party liability and compensation, specialty carriers and customized policies may be needed to ensure that covered events are addressed as intended.
- There may be some existing models off of which a conversion permit financial assurance “concept plan” can be based. Such models include the Spill Prevention, Control, and Countermeasure (SPCC) Plan and the Facility Response Plan (FRP). Such models have varying levels of protection and customizability. Work Group members mentioned that some of these plans may not be the most appropriate to serve as models for the conversion permit application process, especially if they are list-based (i.e., plans that only address elements that specifically fall on a list, such as a list of contaminants).

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: **Wednesday, October 30, 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

<b>Name</b>	<b>Affiliation</b>
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	Retired attorney (private practice)
Leslie Ledogar	Department of Insurance
Erich Schuller	DNREC Division of Waste and Hazardous Substances – Emergency Response Team
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

<b>Name</b>	<b>Affiliation</b>
Mike Donlan	Industrial Economics (staff)
Bill Dunn	Civic League for New Castle County
Chiara Trabucchi	Industrial Economics (staff, by phone)
Ian Yue	DNREC Division of Climate, Coastal, & Energy (staff)