

**BEFORE THE  
COASTAL ZONE INDUSTRIAL CONTROL BOARD**

JEANETTE SWAIN, COLLINS PARK	)	
CIVIC ASSOCIATION,	)	
	)	
Appellants,	)	
	)	
v.	)	No. 2021-01
	)	
DELAWARE DEPARTMENT OF NATURAL	)	
RESOURCES AND ENVIRONMENTAL	)	
CONTROL, and FUJIFILM IMAGING	)	
COLORANTS, INC., Permittee,	)	
	)	
Appellees.	)	

**APPELLANTS’ PRE-HEARING STATEMENT OF THE CASE**

Appellants Jeanette Swain and Collins Park Civic Association (“Appellants”), by and through their counsel, hereby submit this Pre-Hearing Statement of the Case to assist the Board in understanding the issues in this appeal ahead of the September 15, 2021 public hearing.

The background facts should not be in dispute. On or about March 24, 2021, Fujifilm Imaging Colorants, Inc. (“Fujifilm”) submitted an application for a Coastal Zone Act permit to the Delaware Department of Natural Resources and Environmental Control (“DNREC”). Fujifilm sought the permit for the construction and operation of a 110 ton per year plant (designated L44) that would produce high-performance pigment dispersions.

In Part 6A of its application, Fujifilm identified certain air emission environmental impacts from its proposed L44 plant. Application page 15 contains a table of air emission information, including the net increases in emissions of certain pollutants compared to current emissions:

Pollutant	Existing Emissions		Net Increase/Decrease		New Total Emissions		Percent Change (compare tons/year)
	Pounds (lbs.)/day	Tons/year	lbs/day	Tons/year	lbs/day	Tons/year	
Nitrogen Oxides (NOx)	1.424	0.259	5.276	0.963	6.700	1.223	371%
Carbon Monoxide (CO)	0.783	0.143	11.950	2.181	12.733	2.324	1526%
Carbon Dioxide (CO <sub>2</sub> )	1708	311.8	26074	4758.4	27782	5070.2	1526%
Lead	0.000007	0.000001	0.00011	0.00002	0.0001	0.00002	1526%
Nitrous Oxide (N <sub>2</sub> O)	0.031	0.006	0.140	0.026	0.172	0.0313	448%
Particulate Matter (PM) Total	0.108	0.020	1.651	0.301	1.760	0.321	1526%
PM Condensable	0.081	0.015	1.239	0.226	1.320	0.241	1526%
PM Filterable	0.027	0.005	0.413	0.075	0.440	0.0803	1526%
Sulfur Dioxide (SO <sub>2</sub> )	0.009	0.002	0.130	0.024	0.139	0.025	1526%
Total Organic Compounds (TOC)	0.157	0.029	2.390	0.436	2.547	0.465	1526%
Methane	0.033	0.006	0.499	0.091	0.533	0.097	1526%
Volatile Organic Compounds (VOC)	0.078	0.014	1.195	0.218	1.273	0.232	1526%

Section 9.1.1 of the Coastal Zone Act Regulations, 7 Del. Admin. C. 101 § 9.1.1, requires that “any applicant for a permit for an activity or facility that will result in any negative environmental impact shall contain an offset proposal . . . Offset projects shall more than offset the negative environmental impacts associated with the proposed project or activity requiring a permit, including on an annual basis, if applicable.” Fujifilm’s application contains an offset proposal (at pp. 33 – 36). Fujifilm totaled up the net emission increases (measured in Tons per

Year (“TPY”) for Nitrogen Oxides (NO<sub>x</sub>), Carbon Monoxide (CO), Lead, Nitrous Oxide (N<sub>2</sub>O), Particulate Matter (“PM”) Total,<sup>1</sup> Sulfur Dioxide (SO<sub>2</sub>), Total Organic Compounds (TOC), Methane, and Volatile Organic Compounds (VOC) to reach a total of 3.931 TPY of increases over these nine pollutants. In adding up these increases, Fujifilm did not include the 4,758.4 TPY increase in Carbon Dioxide (CO<sub>2</sub>) shown in the table.<sup>2</sup> Fujifilm, stating that it is “required to offset its emission increase at 1.1 times the emission rate,” then multiplied its calculated 3.931 TPY of net emission increases by 1.1, and concluded that it is “required to offset L44’s projected 3.931 TPY of emissions by an offset of 4.325 TPY.” Application p. 33.

To meet its calculated number, Fujifilm proposed an offset project consisting of annually purchasing Emission Reduction Credits (“ERCs”) from the Delaware Division of Small Business: two NO<sub>x</sub> ERCs and one VOC ERC.<sup>3</sup> Fujifilm’s offset uses the 3 ERCs to cover 3 TPY of its 4.325 TPY offset amount. For the final 1.325 TPY of emissions offset needed, Fujifilm proposed eliminating use of five propane-operated forklifts at its facility, resulting in a reduction of 1.325 TPY of Carbon Monoxide (CO) emissions. Application pp. 33-34. In effect, Fujifilm proposed to offset the emissions of nine different pollutants (NO<sub>x</sub>, Carbon Monoxide (CO), Lead, Nitrous Oxide (N<sub>2</sub>O), PM, Sulfur Dioxide (SO<sub>2</sub>), Total Organic Compounds (TOC), Methane, and Volatile Organic Compounds (VOC)) by purchasing ERCs for two pollutants (NO<sub>x</sub> and VOC) and modifying its operations to reduce (but not completely offset) a third (CO).

DNREC approved this calculation of, and proposal for, the Section 9 offsets required of Fujifilm. *See* Secretary’s April 28, 2021 Environmental Assessment p. 6; the Hearing Officer’s

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<sup>1</sup> In a note, Fujifilm indicates that PM Total is the sum of PM Condensable and PM Filterable values shown in the chart. Application p. 33.

<sup>2</sup> In a note under the chart on Application page 33, Fujifilm stated that “The Coastal Zone Regulations do not require the offset of Carbon Dioxide emissions. Therefore, these emissions are not included in the total summation of net emission increase nor identified for offset requirements.”

<sup>3</sup> ERCs are created within the Emission Reductions and Banking System regulations found at 7 Del. Admin. C. 1134, and each represents a certified one-ton reduction of NO<sub>x</sub> or VOC pollution at the facility creating the credit.

July 12, 2021 Report p. 6; Secretary’s July 23, 2021 Order p. 7. The CZA Permit, at ¶ 4, requires Fujifilm to purchase the NOx and VOC ERCs annually and eliminate the five forklifts as the offsets for the L44 project.

Appellants have appealed the permit for the purpose of challenging the adequacy and legality of the approved offset proposal. Appellants do not oppose Fujifilm’s L44 project itself, but believe that the CZA Regulations preclude what Fujifilm proposed and DNREC approved for offsetting L44’s negative environmental effects. As such, Appellants respectfully suggest that the issuance of the CZA Permit as written was contrary to law, and fails to protect their community, the closest to Fujifilm’s facility, from 1526% increases in most pollutants.

**I. THE SECRETARY AND DNREC IMPROPERLY ISSUED THE CZA PERMIT BECAUSE EMISSION CREDITS FOR ONE POLLUTANT CANNOT BE USED TO OFFSET ANOTHER POLLUTANT.**

Fujifilm’s approved offset project relies on purchasing ERCs for NOx and VOC to offset the net emission increases of seven other pollutants (CO, Lead, N<sub>2</sub>O, PM, SO<sub>2</sub>, TOC, and Methane) plus NOx and VOC. The CZA Regulations preclude this type of offset shortcut.

Section 9 of the CZA regulations<sup>4</sup> governs offsets. Section 9.1.1 requires that, when the proposed activity or facility “will result in any negative environmental impact,” the application must contain an offset proposal. The proposed offset project “shall more than offset the negative environmental impacts associated with the proposed project or activity requiring a permit.” 7 Del. Admin. C. 101 § 9.1.1. Section § 9.1.2 furthers this by making clear that “[a]ll applicants are required to more than offset the negative impacts of the project or activity that is the subject of the application for a permit.” 7 Del. Admin. C. 101 § 9.1.2. Thus, a proposal alone—though required—is not enough; the applicant must actually “more than offset” the negative impacts.

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<sup>4</sup> For the Board’s convenience, a copy of Section 9 is attached.

Section 9.1.5 provides the regulatory rules for offsets when one of the negative environmental impacts involves the release (or emission) of a pollutant. It states:

If negative environmental impacts involve the release of a pollutant, the applicant shall attempt to offset the release by eliminating or obtaining credits for the release of the same pollutant, if practicable. If it is not practicable to eliminate or obtain a credit for the release of the same pollutant, the applicant may propose the elimination of a different pollutant that affects humans, wildlife or the environment in a way that is similar to the effects of the pollutant that will be released by the project.

7 Del. Admin. C. 101 § 9.1.5. The plain language of § 9.1.5 draws a distinction between offsets involving the same vs. different pollutants. As the first sentence makes clear, when the offset involves the *same* pollutant as the one creating the negative impact, § 9.1.5 allows two options for achieving the offset: **eliminating** some other emission of that same pollutant<sup>5</sup> OR **obtaining credits** “for the release of the same pollutant.” By contrast, if it is not possible (or “practicable”) to eliminate or obtain credits for the same pollutant, the second sentence makes clear that an offset can involve a *different* pollutant, but the regulatory language only allows one option for achieving the offset: **elimination** of that different pollutant (and only if the different pollutant “affects humans, wildlife, or the environment in a way that is similar to the effects of the pollutant that will be released by the project”). Thus, § 9.1.5 only recognizes and allows the use of “obtaining credits” when the credit is for a reduction of the **same** pollutant as the one creating the negative impact from the CZA project. Or, to put it another way, § 9.1.5 does not recognize (and therefore does not allow) using a “credit” for one pollutant to offset the negative impacts from emissions of a **different** pollutant.

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<sup>5</sup> Fujifilm provides the perfect example of the elimination approach with its proposal to eliminate the CO emissions from five propane-powered forklifts in order to reduce net increased CO emissions by 1.325 TPY. Note, however, that this only partially offsets increased CO emissions, as the total amount of increased CO to be offset is 2.399 TPY. Thus, Fujifilm still needs to have an offset that accounts for 1.074 TPY of CO.

This interpretation naturally follows from applying Delaware’s principles of statutory and regulatory construction. As the Delaware Supreme Court said in *Garrison v. Red Clay Consol. School Dist.*, 3 A.3d 264, 267 (Del. 2010), “The Court’s goal, in construing statutes and regulations, is to ascertain and give effect to the intent of the legislative body.” *Id.* When the language “is clear on its face and is fairly susceptible to only one reading, the unambiguous text will be construed accordingly.” *Progressive Northern Ins. Co. v. Mohr*, 47 A.3d 492, 495 (Del. 2012). The plain language of § 9.1.5 makes clear that “obtaining credits” to achieve an offset is only possible when the credits are for the *same* pollutant; when dealing with *different* pollutants, the fact that “obtaining credits” is not listed as an option means that only elimination of that different pollutant can satisfy the regulatory requirements. Under Delaware law, when a provision appears in one part of a statute or regulation but not in another, one presumes the omission was intended. *Giuricich v. Emtrol Corp.*, 449 A.2d 232, 238 (Del. 1982). Here, the fact that “obtaining credits” is recognized for offsetting the *same* pollutant in the first sentence of § 9.1.5 but not recognized for offsetting a *different* pollutant in the second sentence means a distinction was intended and has been made. Quite simply, the regulatory language precludes using credits to offset emissions when the credit is for a *different* pollutant than the one needing to be offset.

Given the clear language of § 9.1.5, Fujifilm cannot use ERCs for NO<sub>x</sub> and VOCs to offset emissions of Carbon Monoxide (CO), Lead, Nitrous Oxide (N<sub>2</sub>O), PM, Sulfur Dioxide (SO<sub>2</sub>), Total Organic Compounds (TOC), Methane.<sup>6</sup> The Secretary and DNREC erred as a matter of law when they allowed the NO<sub>x</sub> and VOC credits to offset these other pollutants. Under the terms of

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<sup>6</sup> It is questionable whether Fujifilm can use ERCs *at all*. Section 9.8.1 of the regulations governing the Emissions Banking and Trading Program, 7 Del. Admin. C. § 9.8.1, states that “ERCs shall not be used to satisfy an applicable requirement unless . . . the use of ERCs is specifically provided for by that particular requirement.” A general reference to “obtaining credits” in § 9.1.5 of the CZA Regulations does not qualify as “specifically provid[ing] for” the use of ERCs. That issue is academic in this case, as the language of § 9.1.5 precludes the use of “obtaining credits” for one pollutant to offset the emissions a different pollutant (exactly what Fujifilm is trying to do here).

§ 9.1.5, Fujifilm either must obtain credits for those particular pollutants or eliminate other sources of emission of those particular pollutants or some different pollutant. Having done neither, Fujifilm did not propose, and Secretary and DNREC approved a proposal that did not, “more than offset the negative environmental impacts” of the L44 project as required by Section 9 of the CZA Regulations, and therefore the issuance of the CZA Permit was wrong as a matter of law.<sup>7</sup>

## **II. THE SECRETARY AND DNREC IMPROPERLY ISSUED THE CZA PERMIT BECAUSE THERE IS NO OFFSET FOR CARBON DIOXIDE EMISSIONS.**

A second deficiency of the proffered and approved offsets is that there is nothing which attempts to offset the 4,758 TPY increase in emissions of Carbon Dioxide (CO<sub>2</sub>) shown in the Application’s p. 15 chart. Even if Fujifilm could buy its way to offset of a pollutant like CO<sub>2</sub> via the purchase of NO<sub>x</sub> and VOC ERCs (which it cannot), Fujifilm is at least 4,755 credits—and more likely 5,231 credits<sup>8</sup>--short. The glaring lack of any such offset means that Fujifilm has not more than offset the negative environmental impact of its increased CO<sub>2</sub> emissions.

There should be no serious debate that CO<sub>2</sub>—a greenhouse gas (“GHG”) that contributes to climate change—produces negative environmental effects. Delaware—and in particular, DNREC—has long recognized the effect of greenhouse gas emissions and climate change on the state of Delaware. Governor Markell’s 2013 Executive Order No. 41, *Preparing Delaware for Emerging Climate Impacts and Seizing Economic Opportunities from Reducing Emissions*, noted effects of climate change such as:

- “as a low-lying coastal state with the lowest average land elevation in the United States and significant population living along 381 miles of shoreline, Delaware is vulnerable to

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<sup>7</sup> DNREC must follow its own regulations. *See Hanson v. Delaware State Public Integrity Com’n*, 2012 WL 3860732 (Super. Ct. Aug. 30, 2012), *citing Dugan v. Delaware Harness Racing Commission*, 752 A.2d 529 (Del.2000) (“once an agency adopts regulations governing how it handles its procedures, the agency must follow them. If the agency does not, then the action taken by the agency is invalid”); *Mumford & Miller Concrete, Inc. v. Dept of Labor*, 2011 WL 2083940 at \*6 (Super. Ct. April 19, 2011) (same). Nor can DNREC claim it is entitled to deference for its interpretation because “[d]eference to an administrative agency’s interpretation of its regulations cannot go so far as to authorize a regulation other than the one that was duly adopted.” *Garrison*, 3 A.3d at 269.

<sup>8</sup> Using Fujifilm’s 1.1 multiplier, a 4,758.4 TPY increase in CO<sub>2</sub> would require an offset of 5,234.2 TPY.

coastal erosion, storm surge, flooding, saltwater intrusion, and tidal wetland losses, all of which will be exacerbated by sea-level rise;”

- “Delaware's critical infrastructure, including roads, bridges, dams, dikes, impoundments, energy distribution systems, emergency services, outdoor recreation facilities, drinking water and wastewater treatment facilities, industrial sites, and landfills are at-risk to climate change impacts;”
- “Delaware's Bayshore and Inland Bays communities have experienced saltwater intrusion into drinking water supplies and irrigation systems, and climate impacts could negatively affect the availability and reliability of the groundwater aquifers that provide water to many municipalities, residents, and farmers;” and
- While Delaware had reduced greenhouse gas emissions, “more must be done.”

Pursuant to Executive Order No. 41, a *Climate Framework for Delaware* recommended a 30% reduction of greenhouse gas emissions from 2008 base levels to be achieved by 2030. A 2016 *Climate Action in Delaware: a 2016 Progress Report*—prepared by the predecessor of the DNREC Division of Climate, Coastal and Energy that handled the Fujifilm CZA application— noted that emissions from the industrial section had increased (p. 2) and that “There are ample opportunities for reducing emissions in every sector. Special attention should be given to reductions or policies that can be deployed in the electric generation and industrial sectors” (p. 5). A 2020 Climate Action Plan brochure on the Division’s website recognizes CO<sub>2</sub> as a GHG that contributes to climate threats in Delaware. An undated Climate Change Causes and Consequences document also on the Division’s website identifies CO<sub>2</sub> as a GHG causing climate change and lists increased temperatures, longer, hotter summers, sea level rise, and increased precipitation as consequences.

Fujifilm’s excuse for not offsetting its additional 4,758 TPY of CO<sub>2</sub> each year is its claim that the CZA Regulations “do not require the offset of Carbon Dioxide emissions.” However, nothing in the §9 provisions of the CZA Regulations governing offsets creates an exception for CO<sub>2</sub>.<sup>9</sup> Indeed, the very language of § 9.1.1 and § 9.1.2 is wholly inconsistent with the notion of a

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<sup>9</sup> In fact, Appellants’ counsel cannot find reference to a carbon dioxide exception *anywhere* in the CZA Regulations.



CO<sub>2</sub> exception. Section 9.1.1 requires an offset proposal if the permitted activity “will result in *any* negative environmental impact,” 7 Del. Admin. C. 101 § 9.1.1 (emphasis supplied), and that the offset proposal “shall more than offset *the negative environmental impacts* associated with the proposed project or activity requiring a permit.” *Id.* (emphasis supplied). That language is inclusive of *all* negative environmental effects. Section § 9.1.2’s requirement—that “all applicants are required to more than offset *the negative impacts of the project*,” 7 Del. Admin. C. 101 § 9.1.2 (emphasis supplied), is likewise all inclusive. Quite simply, there is no support in the regulations for Fujifilm’s position. Fujifilm must more than offset the 4,758 TPY of CO<sub>2</sub> it will emit every year. Because the application did not make such a proposal, and the Secretary and DNREC issued a CZA Permit that fails to more than offset those emissions, the permit was issued contrary to law.

### **III. THE REMEDY APPELLANTS SEEK**

The Coastal Zone Act empowers this Board to “modify any permit granted by the Secretary of the Department of Natural Resources and Environmental Control, grant a permit denied by the Secretary, deny a permit or confirm the Secretary's grant of a permit.” 7 Del. C. § 7007(a). Given Fujifilm and DNREC’s failures to comply with the offset provisions of the CZA Regulations, Appellants believe that the Board can rectify these errors of law in one of two ways:

1. Deny the CZA Permit as currently issued. Given the failures to comply with the CZA Regulations pertaining to offsets, the Board has ample justification to do so. Such a denial would not prevent Fujifilm from applying for, and DNREC from issuing, a second CZA Permit for L44 that in fact correctly complies with the offset requirements of the CZA Regulations and keeps pollutants out of their neighborhood.

2. Modify ¶ 4 of the Permit to specifically require that Fujifilm more than offset the emissions of all pollutants that will increase as a result of L44. To do this, the Board could specify

the amounts that must be offset: Carbon Monoxide – 1.074 TPY,<sup>10</sup> keeping the elimination of the five forklifts in the Permit; Carbon Dioxide – 5,234 TPY; Lead - 0.00002 TPY; Particulate Matter Total – 0.331 TPY; Sulfur Dioxide – 0.0264 TPY; Total Organic Compounds – 0.144 TPY; Methane – 0.100 TPY, NO<sub>x</sub> – 1.056 TPY; and VOC – 0.240 TPY. The one downside to this approach is that the Permit would not specify how those reductions must occur (because Fujifilm did not provide a proposal to achieve reductions for any pollutants other than NO<sub>x</sub>, VOC, and part of CO). Specifying the particular offset projects Fujifilm would have to undertake makes the Permit clear and its requirements easier to enforce. For this reason, Appellants advocate for the permit denial option so that Fujifilm can propose concrete offset projects for each pollutant that could then be incorporated in a later-issued permit.

### CONCLUSION

For the reasons set forth above, the Appellants request that the Board deny and/or modify the CZA Permit issued to Fujifilm.

Respectfully submitted,

JEANETTE SWAIN and COLLINS PARK  
CIVIC ASSOCIATION

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<sup>10</sup> Calculated by taking the Offset number on Application page 33 (2.399 TPY) and subtracting the 1.325 TPY from eliminating the use of the five propane-powered forklifts. All numbers listed here are taken from the table on p. 33 of Fujifilm's application.

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- 8.6.5.6 Be effective no later than the date of permit issuance, and prior to any land disturbing or construction activity;
- 8.6.5.7 Be affirmed annually, at least 30 days prior to the anniversary date of permit issuance, through submission to the Secretary of an originally signed and certified amendment to the Surety Bond confirming the penal sum of the Surety Bond in the amount then-approved by the Department as the Financial Assurance Amount, consistent with subsection 8.4.7.

**23 DE Reg. 222 (09/01/19)**

**23 DE Reg. 322 (10/01/19)**

## **9.0 Offsets**

### **9.1 Offset Proposal Requirements**

- 9.1.1 Any application for a permit for an activity or facility that will result in any negative environmental impact shall contain an offset proposal for a project that benefits Delaware. Offset projects shall more than offset the negative environmental impacts associated with the proposed project or activity requiring a permit, including on an annual basis, if applicable. The applicant shall propose an offset project that is clearly and demonstrably more beneficial to the environment in Delaware than the harm done by the negative environmental impacts associated with the proposed project.
- 9.1.2 All applicants are required to more than offset the negative impacts of the project or activity that is the subject of the application for a permit. Applicants who have undertaken past voluntary improvements may be required to provide less of an offset than applicants without a similar record of past achievements.
- 9.1.3 An applicant shall propose an offset project that countervails the negative environmental impacts of the conversion project, matching its location, pollutant released, if applicable, environmental medium and timing as closely as practicable.
- 9.1.4 Offset proposals shall be well-defined and contain measurable goals or accomplishments which can be verified by a third-party or the Department.
- 9.1.5 If negative environmental impacts involve the release of a pollutant, the applicant shall attempt to offset the release by eliminating or obtaining credits for the release of the same pollutant, if practicable. If it is not practicable to eliminate or obtain a credit for the release of the same pollutant, the applicant may propose the elimination of a different pollutant that affects humans, wildlife or the environment in a way that is similar to the effects of the pollutant that will be released by the project.
- 9.1.6 An applicant may propose an offset project that affects a different environmental medium from that which will receive negative impacts only if it demonstrates to the satisfaction of the Department that it was not feasible to achieve an offset in the same environmental medium.
- 9.1.7 An applicant may propose an offset project at a location other than the project site only if it demonstrates to the satisfaction of the Department that it was not feasible to execute the offset on the project site.
- 9.1.8 Where an offset project in itself requires one or more permits from a program or programs within the Department, the Secretary shall issue the permit only after all applicable permit applications for offsetting projects have been received and deemed administratively complete by the Department.

### **9.2 Offset Proposal Contents.** The applicant may provide whatever materials or evidence, in addition to the requirements of subsections 9.2.1 through 9.2.9, that are appropriate in order to furnish the Secretary with the information necessary for him to determine the adequacy of the offset proposal. The applicant must provide, at a minimum, the following information:

- 9.2.1 A qualitative and quantitative description of how the offset project will more than offset the negative impacts of the proposed project, including on an annual basis, if applicable.
- 9.2.2 How the permittee plans to perform or complete the offset, including a schedule for completion.
- 9.2.3 What the environmental benefits will be and when the permittee proposes to ensure their delivery.
- 9.2.4 How the offset will impact the attainment of the Department's environmental goals for the Coastal Zone and any environmental indicators used to assess long-term environmental quality within the zone.
- 9.2.5 What, if any, negative impacts are associated with the offset project or projects.
- 9.2.6 Scientific evidence, which may consist of peer-reviewed studies, models, or state, local or federal government publications concerning the efficacy of the offset project in producing its intended results.
- 9.2.7 How the applicant proposes to quantitatively and qualitatively measure the success or failure of the offset project in the short term and long term.

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- 9.2.8 A monitoring schedule that describes a process for third-party verification of the offset project's operation, completion, and efficacy.
- 9.2.9 What, if any, public outreach about the proposed project has been done and what the results of the outreach are.
- 9.2.10 A description of the process the applicant used in identifying potential offset projects and the reason for any determination that it was not practicable to match the location, pollutant, or environmental medium of the proposed project's environmental impacts.

**23 DE Reg. 222 (09/01/19)**

**10.0 Withdrawal of and Revisions to Applications**

- 10.1 An applicant may withdraw a request for a status decision or permit at any time by submitting a written request, signed by the original applicant or applicants, to the Secretary. The Secretary shall provide public notice of the applicant's withdrawal of an administratively complete request and the Secretary's action on the request for withdrawal. In the case of such withdrawal there shall be no refund of the application fee paid. Once publicly noticed, the decision is final and cannot be reversed by the applicant or the Secretary.
- 10.2 Once public notice announcing a public hearing is advertised according to Section 14.0 of these regulations, no revisions to any application will be permitted beyond those allowed in subsection 10.3 below. In the event an applicant finds cause to make substantive revisions to an application after publication of the notice, the applicant will be required to submit a new application, including an additional application fee, an offset project and any other required application submissions as specified under Section 8.0 of these regulations.
- 10.3 A new application is not required for changes which can be incorporated into the original application where such changes will not significantly affect the nature of the project first proposed and which will not significantly increase the Department's review and evaluation of the application originally submitted. Such changes must be submitted in writing prior to publication of the legal notice announcing the public hearing.
- 10.4 If the Secretary receives information which may significantly alter the scope of the project, the applicant may be required to submit a new application to reflect the altered nature of the project.

**23 DE Reg. 222 (09/01/19)**

**11.0 Abandoned Uses**

The abandoned status that was assigned to certain nonconforming uses prior to August 2, 2017 has been repealed with the passage of the CZCPA, thereby rendering all nonconforming use sites potentially eligible for permitting in accordance with these regulations.

**23 DE Reg. 222 (09/01/19)**

**12.0 Permit Recordkeeping and Reporting**

- 12.1 All permittees shall:
  - 12.1.1 At all times keep a copy of the permit on the premises where permitted activities occur;
  - 12.1.2 Allow access by the Department for inspections;
  - 12.1.3 Produce any and all records relevant to the permit and compliance therewith upon being requested by the Department;
  - 12.1.4 Notify the Department immediately of any event or condition that affects the ability of the permittee to comply with the terms of the permit or of any violation of any term or condition of the permit.
  - 12.1.5 Permittees who have been issued conversion permits to perform bulk product transfers shall:
    - 12.1.5.1 Maintain records of the types and quantities of bulk products transferred from shore to ship, ship to ship, and ship to shore, the dates of the transfers, the origin and destination of all products shipped from the facility, except grain, which shall maintain records only of the quantities and dates of transfers; and
    - 12.1.5.2 Submit to the Secretary annually, no more than 10 days prior to or after the anniversary of permit issuance, a report summarizing all bulk product transfers to and from the facility during the preceding calendar year, including the quantity, date and type of goods received by and shipped from the project site, and its origin and destination, except that bulk transfers of grain shall not report the shipping destination.