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**STATE COASTAL ZONE INDUSTRIAL CONTROL BOARD
APPLICATION TO APPEAL FROM
A COASTAL ZONE ACT DECISION**

Date August 13, 2021

Name of Appellants: Jeanette Swain and Collins Park Civic Association

A. Identify the Coastal Zone Decision Being Appealed

Secretary's Order 2021-CZ-0019 issued July 23, 2021, concerning FujiFilm Imaging Colorants, Inc., publicly noticed on August 1, 2021 (see <https://dnrec.alpha.delaware.gov/public-notices/coastal-zone-act-permit-fujifilm/>). A copy of the Secretary's Order is attached.

B. Date of Public Notice of the Coastal Zone Decision

08/01/2021

(to be filled in by the Secretary)

C. Signature of Appellant or Appellant's Representative

Kenneth T. Kristl, Esq.

Position or Title (if any)

Counsel for Appellant

D. Briefly State the Reasons for Your Appeal. For example, if you believe the Decision is contrary to the Coastal Zone Act, identify those parts of the law involved and state why the Decision is contrary to them. Your Statement of Reasons for Appeal should be attached to this Application Form.

See attached

Please include the appeal fee of One Hundred Dollars (\$100) with this Appeal Application. The check or money order should be made out to: **Department of Natural Resources and Environmental Control**

Submit the completed Appeal Application, including the appeal fee, within fourteen (14) days following the public notice of the Coastal Zone Act decision to:

Chair
State Coastal Zone Industrial Control Board
c/o Department of Natural Resources and Environmental Control
89 Kings Highway
Dover, DE 19901

Reasons for Appeal to the Coastal Zone Industrial Control Board concerning Secretary's Order 2021-CZ-0019 concerning a Coastal Zone Permit granted to FujiFilm Imaging Colorants, Inc.

Pursuant to 7 Del. C. §7007, Jeanette Swain and Collins Park Civic Association (Appellants) submit these Reasons for Appeal as part of and attached to their Application to Appeal from a Coastal Zone Act Decision form. Appellants challenge the Delaware Department of Natural Resources and Environmental Control Secretary's Order 2021-CZ-0019, issued July 23, 2021 and publicly noticed August 1, 2021 (Order), which grants FujiFilm Imaging Colorants, Inc. a Coastal Zone Act Permit (Permit) allowing the construction and operation of a new manufacturing plant to produce high-performance aqueous pigment dispersions at its facility located at 233 Cherry Lane, New Castle, DE 19720. Kenneth T. Kristl, Esq. of the Widener University Delaware Law School's Environmental and Natural Resources Law Clinic represents the Appellants in this matter.

Appellants ask the CZICB to reverse the Order and deny the Permit as issued, and/or to modify the Permit (or, if deemed appropriate, to remand the Permit back to the Secretary) for one or more of the following reasons in the alternative:

1. In issuing the Order and Permit, the Secretary erred as a matter of law and fact in that the Secretary failed to consider all environmental impacts and effects on neighboring land uses—specifically, all environmental impacts and effects on neighboring land uses from the emission and/or discharge of pollutants as identified in the Secretary's Environmental Assessment Report of April 28, 2021—as required by 7 Del. C. § 7004(a) and the Section 8.3.2 of the CZA Regulations.
2. In issuing the Order and Permit, the Secretary erred as a matter of law in that the Secretary failed to require the offset of all negative environmental impacts—including, but not limited to, the negative environmental impacts from the emission and/or discharge of pollutants as identified in the Secretary's Environmental Assessment Report of April 28, 2021—as required by Section 9.1 of the CZA Regulations.
3. In issuing the Order and Permit, the Secretary erred as a matter of law in that the Secretary failed to require compliance with, and therefore acted in violation of, the requirements for offset proposals and offsets found in Sections 9.1 and 9.2 of the CZA Regulations.
4. In issuing the Order and Permit, the Secretary erred as a matter of law in that the Secretary failed to require all the offsets necessary to comply with, and therefore acted in violation of, the requirements for offset proposals and offsets found in Sections 9.1 and 9.2 of the CZA Regulations.



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

**OFFICE OF THE
SECRETARY**

RICHARDSON & ROBBINS BUILDING
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

PHONE
(302) 739-9000

Secretary's Order No.: 2021-CZ-0019

RE: Application of FujiFilm Imaging Colorants, Inc., for a Coastal Zone Act Permit to construct and operate a new manufacturing plant to produce high-performance aqueous pigment dispersions at an existing building located at its facility at 233 Cherry Lane, New Castle, Delaware 19720

Date of Issuance: July 23, 2021

Effective Date: July 23, 2021

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 *Del.C.* §§6001 et seq., 7 *Del.C.*, Ch. 70, *Coastal Zone Act* ("CZA"), and 7 DE Admin. Code 101, *Regulations Governing Delaware's Coastal Zone* ("CZA Regulations"), the following findings of fact based on the Record, reasons, and conclusions are entered as an Order of the Secretary in the above-referenced CZA permitting proceeding. The CZA regulates new manufacturing activities, or the expansion of existing manufacturing uses, within Delaware's "Coastal Zone," which is a geographical area along the Delaware Bay and Atlantic Ocean Coastlines, as defined by the CZA.

Background and Findings of Fact

The Applicant, FujiFilm Imaging Colorants, Inc. (“FujiFilm” or “Applicant”), seeks a CZA Permit to construct and operate a new manufacturing plant to produce high-performance aqueous pigment dispersions within an existing building at its facility located at 233 Cherry Land, New Castle, Delaware (“Application”). FujiFilm is a printer ink manufacturing facility located within the State of Delaware’s Coastal Zone at 233 Cherry Lane, New Castle, Delaware. The Applicant holds a CZA permit for its current operations (Permit No. CZA-288P), however, this proposed expansion requires FujiFilm to obtain a new CZA Standard Permit from the Department, as the activity proposed is considered to be a new manufacturing facility, pursuant to CZA Regulations’ Section 6.1.3.

The Applicant submitted the initial Application to DNREC on February 23, 2021¹. Upon review, the Department’s CZA Program requested additional information from FujiFilm regarding its emission calculations and its offset proposal. The Applicant submitted a revised Application and offset proposal on March 24, 2021. FujiFilm’s Application was declared administratively complete with the execution of the Secretary’s Environmental Assessment Report on April 28, 2021. Accordingly, the Application was publicly noticed and made available for public comment on May 5, 2021.

It should be noted that FujiFilm also submitted to the Department a Request for Confidentiality, pursuant to 29 *Del.C.* §10002(1)(2), on April 15, 2021, requesting that certain portions of the Application be kept confidential for the purpose of financial security. The Applicant’s Request for Confidentiality was reviewed by a Deputy Attorney General within Delaware’s Department of Justice, pursuant to DNREC’s Freedom of Information Act (“FOIA”) Regulations (8 DE Admin. Code 900), and ultimately granted. As such, a redacted version of the Application was made available for public comment at the time of public noticing, as noted above.

¹ The receipt date does not determine when an application is deemed administratively complete, pursuant to CZA Regulations 8.5.1 and 8.5.5. The application was deemed administratively complete on April 28, 2021, as noted above.

The proposed new manufacturing plant, to be located within the Applicant's existing building at its New Castle County facility, would enable FujiFilm to increase manufacturing capacity for existing products and allow the manufacturing of new products. FujiFilm currently purchases and imports some of its raw materials. The new plant ("L44") would allow for the production of raw materials for high-performance aqueous pigment dispersions, which are currently manufactured at the company's Grangemouth, Scotland facility. L44 would use the same technology used at the Grangemouth site. The Applicant's proposed operations at L44 would involve the dispersion of pigment into polymer, the use of bead mills to reduce the particle size of the pigment, stabilization of the particles with the addition of a stabilizer, centrifugation of the stabilized material, purification of the material using membrane filtration, and sterilization of the final product.

The Department requires a CZA Applicant to set forth in its application the proposed project's possible environmental impacts, including, but not limited to, any increased air emissions of pollutants, water quality/water quantity/water use, and the disposal of solid and hazardous wastes. Furthermore, any application for a CZA permit for an activity or facility that will result in any negative environmental impact shall contain an offset proposal. Offset proposals must more than offset the proposed environmental impacts of any proposed project.²

Pursuant to Section 8.3.2 of Delaware's CZA Regulations, the Secretary shall, in assessing CZA permit applications, consider how a proposed project will affect the following six criteria, as set forth in 7 *Del.C. Ch. 70, Coastal Zone Act*: (1) Direct and cumulative environmental impacts; (2) Economic effects; (3) Aesthetic effects (4) Number and type of supporting facilities and their anticipated impacts; (5) Effect on neighboring land uses; and (6) Compatibility with local comprehensive plans. 7 *Del.C. §7004(b)*.

² 7 DE Admin, Code 101, *Regulations Governing Delaware's Coastal Zone*, Section 9.0, "Offsets"

In the present matter, the Applicant's proposed project would result in air emissions associated with the operation of two boilers and an HVAC system. Two high efficiency low nitrogen oxide ("NOx") direct fired hot water boilers would be installed in a new boiler building adjacent to L44. Each boiler is rated at 4.6 MMBTU/hour natural gas input. The boilers would recirculate hot water to the equipment inside L44 in a closed system for process heating. A new HVAC system would be installed for comfort heating and cooling of L44. The system has a natural fired heating system that is rated at 1.95 MMBTU/hour natural gas input. Additional equipment installed would not result in the generation of air emissions. A 30 HP air compressor and dryer would be installed in an existing room attached to L44.

There is no anticipated change in air emissions associated with mobile sources. The traffic increase associated with the delivery of raw ingredients to be used in the manufacture of raw materials onsite will be offset by the elimination of traffic delivering those raw materials from Scotland. Current emissions were calculated and compared to emissions associated with the proposed operation of L44 to demonstrate the net increase in emissions. Those calculations are set forth in detail on Page 3 of the Secretary's Environmental Assessment Report (April 28, 2021), which was expressly incorporated into the Hearing Officer's Report as Attachment "A."

With regard to anticipated water use and discharges associated with this project, the New Castle County Department of Public Works currently authorizes FujiFilm to discharge up to 200,000 gallons per day of treated wastewater to the New Castle County Sewer System. The addition of L44 would not result in any exceedance of the amount of wastewater permitted to be discharged onsite. Current discharges were calculated and compared to discharges associated with the proposed operation of L44 to demonstrate the net increase in discharges. Those calculations are set forth in detail on Page 4 of the aforementioned Secretary's Environmental Assessment Report as well.

The operation of L44 will produce both Non-Routine and Routine solid wastes. FujiFilm uses Waste Technology Services for its solid waste disposal services. FujiFilm is a registered Small Quantity Hazardous Waste Generator and employs licensed hazardous waste haulers for disposal needs. The proposed project has the potential to generate small amounts of flammable hazardous materials (acetone and methanol) and caustic waste materials such as sulfuric acid when raw materials are out of specification or out of shelf life. This waste generation would not exceed that which is allowed for a Small Quantity Hazardous Waste Generator.

Waste materials are collected in designated areas to hold until a load is generated for pickup. All waste storage complies with Hazardous Waste Regulations for storage and management. Waste would be disposed of at permitted hazardous waste treatment and disposal facilities outside of the Delaware Coastal Zone.

As the proposed project would operate within an existing building at the Applicant's facility, the new activity would not generate an increase in stormwater runoff, nor would there be adverse impacts to land erosion, wetlands, or habitat for flora and fauna. Industrial operations have taken place on this footprint since 1937, and there is no proposed filling, dredging, or draining of wetlands or waterways as part of this project. Furthermore, the proposed operation would not generate glare, heat, noise, vibration, radiation, electromagnetic interference, or obnoxious odors outside of the existing building. Additionally, the project location is not known by the Department's Division of Fish and Wildlife to have any threatened or endangered species present.

Lastly, regarding the potential to pollute, the proposed operations would be entirely inside an existing building. All vessels would be fitted with an overflow to prevent over or under pressurization of the tanks. Any liquid overflow would be collected in the L44 building sump where it would be pumped to the onsite wastewater pretreatment system.

Regarding the economic effects of FujiFilm's proposed project, improvements expended locally are estimated to be \$3,000,000 to \$5,000,000 with services such as engineering, general construction, electrical, plumbing, and HVAC upgrades. The proposed project would employ 75 to 100 total workers throughout the project construction life cycle, with 35 to 50 workers to be hired in Delaware. Total weekly construction payroll is estimated to be \$15,000 to \$75,000, depending on the construction phase. Additionally, 21 new employees are projected to be hired to directly support the operation of the new plant. Taxes attributable to this project are as follows: (1) State corporate income taxes: \$365,184; (2) County Tax Projection: \$32,603; and (3) School Tax Projection: \$93,083.

The Applicant's proposed operation within an existing warehouse will not impact the aesthetics of the area. Insofar as the number and type of supporting facilities impacts, one new boiler building is proposed. All other supporting infrastructure will be provided by the Applicant within the existing footprint of the property.

Regarding the potential effect on neighboring land uses, the project would be constructed on an existing industrial site zoned "Heavy Industrial," and would be compatible with neighboring uses. The nearest year-round residence to the FujiFilm site is the Collins Park neighborhood, with the first house in that neighborhood approximately 933 feet away from the FujiFilm site. There would be no interference with the public's use of existing public or private recreational facilities or resources. Lastly, insofar as the proposed project's compatibility with current New Castle County plans, the Secretary's Environmental Assessment Report (April 28, 2021) states that a New Castle County Building official has confirmed that the proposed project is consistent with both County and Municipal planning.

As noted previously, the Applicant's proposed project anticipates increased air emissions. Section 9.1.1 of the CZA Regulations states that any application for a CZA permit for an activity or facility that will result in a negative environmental impact shall contain an offset proposal. Moreover, such offset proposals must "...more than offset the negative environmental impact associated with the proposed project of activity requiring a permit." DNREC Policy stipulates that negative environmental impacts resulting from proposed projects associated with Title V permitted facilities requiring a CZA Permit be offset at a 1.3:1 ratio, and that proposed projects associated with minor source air quality facilities requiring a CZA Permit be offset at a 1.1:1 ratio. FujiFilm is categorized as a minor source air quality facility, thus, the Department has used the 1.1:1 ratio for this Applicant's offset calculations.

Regarding FujiFilm's offset proposal, the Applicant has proposed to purchase three tons of emission reduction credits ("ERCs") from the Delaware Division of Small Business and complete an offset project onsite to more than offset their 4.325 tons of annual emissions. The three tons of ERCs shall be comprised of two NO_x credits and one Volatile Organic Compound ("VOC") credit. ERCs originate from the *Emissions Banking and Trading Program* (7 DE Admin. Code 1134) and are parsed into ozone season and non-ozone season for NO_x and VOCs.

FujiFilm will offset 1.392 tons per year of Carbon Monoxide ("CO") emissions by eliminating the use of five existing propane-operated forklifts. These forklifts would be removed from service and from the premises by the commencement of L44 operations. FujiFilm would instead utilize two electric forklifts and three electric powered pallet jacks for onsite operations.

The total emissions offset by the purchase of three ERCs and the completion of the above referenced offset project is 4.392 tons per year, which is more than the required 4.325 tons per year.

Procedural History

The Department provided sufficient public notice of this CZA Application's submission, and the determination of an administratively complete Application, as referenced above, on May 5, 2021. Thereafter, the Department held a virtual public hearing on May 26, 2021, which was attended by Department staff, representatives of the Applicant, and members of the public. Proper notice of the hearing was provided as required by law.

The only comments received by the Department in this matter were those offered by Martin Willis at the time of the public hearing. Mr. Willis expressed gratitude toward the Applicant for going through the CZA Permit Application process to bring its manufacturing process to Delaware from Scotland and wished the Applicant success in this endeavor. Further, Mr. Willis noted that he is hopeful FujiFilm secures a local Delaware contractor to construct their building, should the Secretary approve this pending CZA Application. The Record remained open for receipt of public comment through June 10, 2021, however, no other comments were received by the Department from the public regarding this matter. Subsequently, Hearing Officer Lisa A. Vest prepared her Hearing Officer's Report ("Report") dated July 12, 2021.

Reasons and Conclusions

This CZA Application requests permission for the Applicant, FujiFilm Imaging Colorants, Inc., to construct and operate a new manufacturing plant to produce high-performance aqueous pigment dispersions within an existing building at its facility located at 233 Cherry Lane, New Castle, Delaware. I find that this proposed project requires the Applicant to obtain a CZA Permit. I further find that the Applicant's proposed project is subject to various statutory and regulatory requirements, including, but not limited to, 7 *Del.C.*, Ch. 70, Coastal Zone Act, and 7 DE Admin. Code 101, *Regulations Governing Delaware's Coastal Zone*.

In reviewing the applicable statutes and regulations, as well as weighing public benefits of this proposed project against potential detriments, the Department's experts within the Coastal Zone Program have concluded that this Application complies with all statutory and regulatory requirements. While FujiFilm's proposed project will result in increased air emissions, the Department's experts have certified the proposed offsets are more than sufficient, as required per Section 9.1.1 of the CZA Regulations. As set forth in detail above, the Applicant has proposed to acquire three (3) tons of ERCs to be used as their offset at a ratio of 1.1:1, in order to more than offset the increased emissions that would result from the proposed operation.

I find and conclude that the Applicant has adequately demonstrated its compliance with all requirements of the applicable statutes and regulations, as noted herein, and that the Record supports approval of this CZA Permit Application, as consistent with the intent of the CZA and its regulations, which is to balance the economic and environmental interests of the State of Delaware. Accordingly, the recommendations of the Hearing Officer are hereby adopted, and this Order approves the pending CZA Permit Application of FujiFilm Imaging Colorants, Inc., to construct and operate a new manufacturing plant to produce high-performance aqueous pigment dispersions within an existing building at its facility located at 233 Cherry Lane, New Castle, Delaware,

Further, I direct that a CZA permit be issued to FujiFilm Imaging Colorants, Inc., and that the following reasons and conclusions are entered:

1. The Department has jurisdiction under its statutory authority, as noted above, to issue a CZA Permit to the Applicant, subject to reasonable permit conditions deemed appropriate and consistent with the CZA's purposes;

2. The Department provided adequate and lawful public notice of the CZA Application of FujiFilm Imaging Colorants, Inc., and of the public hearing held on May 26, 2021, and held said hearing to consider any public comment that may be offered on the application, in a manner required by the law and regulations;
3. The CZA permit applied for by the Applicant, FujiFilm Imaging Colorants, Inc., is for production/manufacturing activities that will take place within the defined Coastal Zone of Delaware, specifically, to construct and operate a new manufacturing plant to produce high-performance aqueous pigment dispersions within an existing building at its facility located at 233 Cherry Lane, New Castle, Delaware.
4. The Department has carefully considered the factors required to be weighed in issuing a CZA permit, and finds that the proposed use is appropriate for the Coastal Zone at the proposed location, and that it should be permitted as set forth in the Application;
5. The Department shall issue a permit to the Applicant, FujiFilm Imaging Colorants, Inc., and said permit shall include all conditions consistent with the final Order and any other reasonable conditions that the Department includes in a CZA permit, to ensure that Delaware's environment will be protected from harm, consistent with the CZA and its regulations;
6. The Department has carefully considered all the statutory factors to be considered in making a decision on a CZA permit, and those required to be considered under the CZA and its regulations;
7. The issuance of the aforementioned CZA permit does not relieve FujiFilm Imaging Colorants, Inc., of the legal obligation of compliance with all building permits, subdivision, and other applicable code requirements of the county or municipality wherein the permitted project is located;

8. If there are deviations from the Applicant's proposed plan and operations previously approved by the Secretary, FujiFilm Imaging Colorants, Inc., shall notify the Secretary as soon as possible. If the Secretary receives information which he or she believes may alter the scope of the project, the Secretary may revoke the permit or require the Applicant to submit a new application to reflect the altered nature of the project;
9. The aforementioned CZA permit will allow the Applicant to operate its business while reducing the overall environmental impacts to the Coastal Zone area, in furtherance of the purposes of 7 Del. C. Ch. 70;
10. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
11. The Department shall serve and publish its Order on all affected persons in a manner consistent with the service and publication of the Secretary's Order.


Shawn M. Garvin
Secretary