

Public Hearing on Coastal Zone Conversion Permit Proposed Regulations

List of Exhibits – June 24, 2019

6:00 p.m., 391 Lukens Drive, New Castle, DE

Exhibit 1. Coastal Zone Conversion Permit Act of 2017

Exhibit 2. Start Action Notice # 2017-17

Exhibit 3. Regulatory Flexibility Act Analysis and Impact Statement-February 22, 2019

Exhibit 4. Final Report and Recommendations of the CZCPA Regulatory Advisory Committee 4/17/19
2019

Exhibit 5. Proof of publication of notice, Delaware State News – 6/2/19

Exhibit 6. Proof of publication of notice, News Journal – 6/2/19

Exhibit 7. Notice of public hearing as it appeared on Delaware's Statewide Calendar on 6/3/19

Exhibit 8. Notice of public hearing as it appeared on DNREC's public notices website on 6/3/19

Exhibit 9. Copy of public notice for hearing as emailed to the list of interested parties for Coastal Zone issues on 6/2/19

Exhibit 10. Register notice and proposed, amended Regulations Governing Delaware's Coastal Zone, as they appeared in the June 1, 2019 Delaware Register of Regulations.

Exhibit 11. DNREC Hearing Presentation Powerpoint

Exhibit 1. Coastal Zone Conversion Permit Act

CHAPTER 120

FORMERLY

HOUSE BILL NO. 190

AS AMENDED BY

HOUSE AMENDMENT NO. 1

AND HOUSE AMENDMENT NO. 4

AND HOUSE AMENDMENT NO. 6

AND HOUSE AMENDMENT NO. 3

AND HOUSE AMENDMENT NO. 5

AND HOUSE AMENDMENT NO. 7

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO THE COASTAL ZONE ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §§7001, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7001. Purpose.

It is hereby determined that the coastal areas of Delaware are the most critical areas for the future of the State in terms of the quality of life in the State. It is, therefore, the declared public policy of the State to control the location, extent and type of industrial development in Delaware's coastal areas. In so doing, the State can better protect the natural environment of its bay and coastal areas and safeguard their use primarily for recreation and tourism. Specifically, this chapter seeks to prohibit ~~entirely~~ the construction of new heavy industry in its coastal areas, ~~which industry~~ beyond the heavy industry use sites defined in this chapter. The expansion of heavy industry beyond those sites is determined to be incompatible with the protection of that natural environment in those areas. While it is the declared public policy of the State to encourage the introduction of new industry into Delaware, the protection of the environment, natural beauty and recreation potential of the State is also of great concern. In order to strike the correct balance between these 2 policies, careful planning based on a thorough understanding

of Delaware's potential and the State's needs is required. Therefore, control of industrial development ~~other than that of heavy industry~~ in the coastal zone of Delaware through a permit system at the state level is called for. It is further determined that offshore bulk product transfer facilities represent a significant danger of pollution to the coastal zone ~~and generate pressure for the construction of industrial plants in the coastal zone, which construction is declared to be against public policy.~~ For these reasons, prohibition against bulk product transfer facilities in the coastal zone is deemed imperative, therefore bulk product transfer facilities are prohibited in the coastal zone, unless approved through a conversion permit at a heavy industry use site that had a docking facility or pier for a single industrial or manufacturing facility on or before June 28, 1971.

Section 2. Amend § 7002, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline and redesignating accordingly:

§ 7002. Definitions.

(b) "Bulk product transfer facility" means any port or dock facility, whether an artificial island or attached to shore by any means, for the transfer of bulk quantities of any substance from vessel to onshore facility or vice versa. Not included in this definition is a docking facility or pier for a single industrial or manufacturing facility for which a permit is granted or which is a nonconforming use. Likewise, docking facilities for the Port of Wilmington are not included in this definition.

(g) "Heavy industry use site" means those 14 sites depicted in Appendix B of the Regulations Governing Delaware's Coastal Zone, § 101, Title 7 of the Delaware Administrative Code in effect on [the effective date of this Act], including those sites which have been abandoned in fact or have been the subject of an abandonment proceeding.

Section 3. Amend § 7003, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7003. Uses absolutely prohibited in the coastal zone.

~~Heavy~~ Except as provided by § 7014 of this title, heavy industry uses of any kind not in operation on June 28, 1971, are prohibited in the coastal zone and no permits may be issued therefor. In addition, offshore gas, liquid or solid bulk product transfer facilities which are not in operation on June 28, 1971, are prohibited in the coastal zone, and no permit may be issued therefor, except as provided in § 7014. Provided, that The prohibitions in this section shall not apply to public sewage treatment or recycling plants. A basic steel manufacturing plant in operation on June 28, 1971, may continue as a heavy industry use in the coastal zone notwithstanding any temporary discontinuance of operations after said date, provided that said discontinuance does not exceed 2 years. An incinerator is neither "public sewage treatment" nor a "recycling plant" for the purpose of this chapter.

Section 4. Amend § 7004, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7004. Uses allowed by permit only; nonconforming uses.

(a) Except for heavy industry uses, as defined in § 7002 of this title, manufacturing uses not in existence and in active use on June 28, 1971, are allowed in the coastal zone by permit only, as provided for under this section. Any nonconforming use in existence and in active use on June 28, 1971, shall not be prohibited by this chapter and all expansion or extension of nonconforming uses, as defined herein, and all expansion or extension of uses for which a permit is issued pursuant to this chapter, are likewise allowed only by permit. Expansions or extensions shall be subject to the permit requirements outlined in this section and the process outlined in § 7005 of this title. The conversion of a heavy industry use site to an alternative or additional heavy industry use is allowed only by a conversion permit issued pursuant to § 7014 of this title. The conversion of a heavy industry use site to a bulk product transfer facility is allowed only through a conversion permit issued under § 7014 of this title. Provided, that no permit may be granted under this chapter unless the county or municipality having jurisdiction has first approved the use in question by zoning procedures provided by law.

Section 5. Amend § 7005, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7005. Administration of this chapter.

(a) The Department of Natural Resources and Environmental Control shall administer this chapter. All requests for conversion permits under § 7014 of this title for a heavy industry use site seeking an alternative or additional heavy industry use or for a bulk product transfer facility, and all requests for permits for manufacturing land uses and for the expansion or extension of nonconforming uses as herein defined under § 7004 of this title in the coastal zone shall be directed to the Secretary of the Department of Natural Resources and Environmental Control. Such requests must be in writing and must include:

- (1)a. Evidence of approval by the appropriate county or municipal zoning authorities;
- b. A detailed description of the proposed construction and operation of the use; and
- c. An environmental impact statement.

(2) The Secretary of the Department of Natural Resources and Environmental Control shall hold a public hearing and may request further information of the applicant. The Secretary of the Department of Natural Resources and Environmental Control shall first determine whether the proposed use is, according to this chapter and regulations issued pursuant thereto:

- a. A heavy industry use or bulk product transfer facility prohibited under §7003 of this title;

b. A use allowable only by permit under § 7004 of this title; or

c. A use requiring no action under this ~~chapter~~ chapter; or

d. A heavy industry use or bulk product transfer facility allowable by conversion permit under § 7014 of this title.

The Secretary of the Department of Natural Resources and Environmental Control shall then, if he or she determines that § 7004 or § 7014 of this title applies, reply to the request for a permit within 90 days of receipt ~~of the said request for permit~~ of an administratively complete permit, either granting the request, denying same, or granting the request but requiring modifications; the Secretary shall state the reasons for his or her decision.

(b) The Secretary of the Department of Natural Resources and Environmental Control may issue regulations including, but not limited to, regulations governing disposition of permit requests, and setting forth procedures for hearings before himself or herself and the Board. Provided, that all such regulations shall be subject to approval by the Board.

(c) The Secretary of the Department of Natural Resources and Environmental Control shall develop and propose a comprehensive plan and guidelines for the State Coastal Zone Industrial Control Board concerning types of manufacturing uses deemed acceptable in the coastal zone and regulations for the further elaboration of the definition of "heavy industry" and for further elaboration of conversion permits under § 7014 of this title in a manner consistent with the purposes and provisions of this chapter. Such plan and guidelines shall become binding regulations upon adoption by the Board after public hearing. The Board may alter said regulations at any time after a public hearing. Provided, that any such regulations shall be consistent with §§ 7003 and 7004, 7004, and 7014 of this title.

Section 6. Amend § 7007, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7007. Appeals to State Coastal Zone Industrial Control Board.

(a) The State Coastal Zone Industrial Control Board shall have the power to hear appeals from decisions of the Secretary of the Department of Natural Resources and Environmental Control made under ~~§ 7005~~ §§ 7005 and 7014 of this title. The Board may affirm or reverse the decision of the Secretary of the Department of Natural Resources and Environmental Control with respect to applicability of any provisions of this chapter to a proposed use; it may 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. Provided, however, that the Board may grant no permit for uses prohibited in § 7003 herein.

(b) Any person aggrieved by a final decision of the Secretary of the Department of Natural Resources and Environmental Control under § 7005(a) or § 7014 of this title may appeal same under this

section. Appellants must file notice of appeal with the State Coastal Zone Industrial Control Board within 14 days following announcement by the Secretary of the Department of Natural Resources and Environmental Control of his or her decision. The State Coastal Zone Industrial Control Board must hold a hearing and render its decision in the form of a final order within 60 days following receipt of the appeal notification.

Section 7. Amend Chapter 70, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7014. Conversion permit.

(a) An owner, operator, or prospective purchaser of a heavy industry use site, including a site that has been abandoned in fact or has been the subject of an abandonment proceeding, may submit an application to the Secretary of the Department of Natural Resources and Environmental Control for a conversion permit under this section for an alternative heavy industry use or an additional heavy industry use that will operate simultaneously with any existing use on that heavy industry use site.

(b) An owner, operator, or prospective purchaser of a heavy industry use site that had a docking facility or pier for a single industrial or manufacturing facility on or before June 28, 1971, including a site that has been abandoned in fact or has been the subject of an abandonment proceeding, may submit an application to the Secretary of the Department of Natural Resources and Environmental Control for a conversion permit to operate a bulk product transfer facility that may be operated simultaneously with other heavy industry uses, industrial uses or manufacturing uses. Provided, however, that a conversion permit may be issued only for a bulk product transfer facility used to receive shipments of bulk products to the extent they are necessary for and fully utilized in the operation of a facility or facilities within the coastal zone, or that is used for the shipment of bulk products to the extent they are produced by a facility or facilities within the coastal zone, unless the product is a grain, as that term is defined in § 1601 of Title 3, in which case it may be transferred without regard to origin or destination. A conversion permit may not be issued for bulk transfer of liquefied natural gas.

(c) An application for a conversion permit made under subsection (a) or (b) of this section must be in writing on a form approved by the Secretary and must include the items listed in § 7004(b) and § 7005(a)(1) of this title, the items required by regulation promulgated under this chapter, and all of the following items to be considered in assessing a conversion permit application:

(1) The environmental impact and economic effect of the existing or previous use. If the application is for a subsequent conversion permit, the Secretary of the Department of Natural Resources and Environmental Control has the discretion to direct the applicant to provide information on the environmental impact and economic effect of any of the previous uses at the site.

(2) The environmental impact and economic effect of the alternative or additional heavy industry use or bulk product transfer activity.

(3) The net environmental improvement or economic improvement, or both, inherent in the alternative or additional heavy industry use or bulk product transfer activity as compared to the most recent heavy industry use engaged in at that site.

(4) Evidence that the owner, prospective owner, or applicant for the conversion permit under this section has complied with, and will continue to comply with, the requirements of the Delaware Hazardous Substance Cleanup Act, Chapter 91 of this title, and any other relevant state or federal environmental statutes, and shall agree to pay all costs of such compliance.

(5) A plan to prepare the site for potential impacts of sea-level rise and coastal storms over the anticipated useful life of the facility and infrastructure in connection with the applied-for use.

(6) An offset proposal that meets the requirements established by and includes the contents specified in regulations promulgated under this chapter and more than offsets the facility's negative environmental impacts on an annual basis. Such proposal shall favor offsets that directly benefit Delaware.

(7) A timeframe for the conversion to an additional or alternative heavy industry use or bulk product transfer facility.

(8) Evidence of financial assurances in sufficient form and amount necessary to ensure that (i) there are sufficient resources for all costs of compliance with the Delaware Hazardous Substances Control Act and other relevant state and federal environmental statutes concerning contamination on the site at the time of application; and (ii) upon the event of an incident resulting in environmental contamination, or upon termination, abandonment, or liquidation of all activities at the site of any heavy industry use, all means will be taken to minimize environmental damage and stabilize and secure the heavy industry use site in accordance with a concept plan that will be approved by the Department of Natural Resources and Environmental Control as part of the conversion permit. A final plan approved by the Department of Natural Resources and Environmental Control is required prior to the initiation of operation of the activity being authorized under the conversion permit.

a. Evidence under paragraph (c)(8) of this section must be in accordance with any regulations promulgated by the Secretary of the Department of Natural Resources and Environmental Control under Chapter 92 of this title and any regulations promulgated under this chapter.

b. If, on the date of an application filed under this section, the Secretary has not promulgated regulations under Chapter 92 of this title or under this chapter, the Secretary shall assess the evidence presented by the applicant under paragraph (c)(8) of this section as follows:

1. By taking into consideration the size of the site of the heavy industry use and the quantities of chemicals maintained and generated as wastes on the site of the heavy industry use.

2. By taking into consideration, and giving due credit for, financial assurances established through other programs operated by the Department of Natural Resources and Environmental Control.

3. By allowing evidence of financial assurance to include insurance, guarantee, surety bond, letter of credit, proof of assets, qualification as a self-insurer, or other agreements acceptable to the Secretary.

(d) For purposes of paragraphs (c)(1) and (c)(2) of this section, "environmental impact" and "economic effect" have the same meanings as in § 7004(b) of this title.

(e) In making a decision on a conversion permit application under this section, the Secretary of the Department of Natural Resources and Environmental Control, in the first instance, and the State Coastal Zone Industrial Board, on appeal, shall consider all of the following:

(1) The factors listed in § 7004(b) of this title.

(2) The items listed in paragraphs (c)(1) through (c)(8) of this section.

(3) Compliance with any regulations promulgated under § 7005(b) § 7005(c) of this title.

(f) The Secretary of the Department of Natural Resources and Environmental Control may not grant a conversion permit under this section for any of the following heavy industry uses that were not in existence on June 28, 1971:

(1) An oil refinery.

(2) A basic cellulosic pulp paper mill.

(3) An incinerator.

(4) A basic steel manufacturing plant.

(5) A liquefied natural gas terminal.

(g) The Secretary of the Department of Natural Resources and Environmental Control must hold a public hearing prior to issuing a conversion permit under this section. All public hearings must be noticed as required by this chapter, regulations promulgated under this chapter, or applicable law.

(h) Notwithstanding the 90 day response time for a decision by the Secretary of the Department of Natural Resources and Environmental Control on a permit application under § 7005(a) of this title, the Secretary and an applicant under this section may, by mutual agreement, extend such time for a decision.

(i) The Secretary of the Department of Natural Resources and Environmental Control shall publish, on the Department of Natural Resources and Environmental Control's website, all decisions made under this section including the reasons therefor.

§ 7015. Biennial report.

(a) Beginning on January 1, 2019, and every two years thereafter the Delaware Economic Development Office shall provide a comprehensive report to the General Assembly and the Governor detailing economic development that has been enabled by the Coastal Zone Conversion Permit Act. Such report shall include but is not limited to an assessment of how many jobs were created and track any increase in infrastructure investment and total additional economic activity.

(b) Within 30 days of the passage of the Coastal Zone Conversion Permit Act, the Department of Natural Resources and Environmental Control shall provide to the General Assembly and the Governor a baseline report summarizing the contamination and remediation status of each of the 14 heavy industry use sites as of July 1, 2017. Beginning on January 1, 2019, and every two years thereafter the Department of Natural Resources and Environmental Control shall provide a comprehensive report to the General Assembly and the Governor summarizing the status of contamination and remediation for all fourteen heavy

industry use sites compared to the status of the sites on July 1, 2017 and summarizing the environmental status at each site issued a Coastal Zone Act Conversion Permit. Such report for sites issued a Coastal Zone Act Conversion Permit shall include, but is not limited to, a list of remediation and site improvement activities underway, a list of offsets and the status of implementation, a list of environmental enforcement actions, a list of any emergency response incidents, a summary of Toxic Release Inventory submissions, and a summary of any air or water quality monitoring if required by another environmental permit.

Section 8. When regulations governing the Coastal Zone Act are updated in accordance with this Act, the provisions governing abandoned uses and abandonment decisions by the Secretary as they pertain to heavy industry and bulk product transfer shall be removed.

Section 9. The Department of Natural Resources and Environmental Control shall start the public workshop process to promulgate revised regulations consistent with this bill no later than October 1, 2017 and shall promulgate the revised regulations by October 1, 2019. Prior to promulgation of final revised regulations, conversion permits may be issued following the statutory and existing regulatory framework.

Section 10. This Act shall be known as the Coastal Zone Conversion Permit Act.

Approved August 2, 2017

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APPROVED BY ALM

DATE 9/28/17

START ACTION NOTICE # 2017-17

1. TYPE OF ACTION:

Amend 7 DE Admin. Code 101, *Regulations Governing Delaware's Coastal Zone*.

2. PURPOSE OF ACTION:

On August 2, 2017, Governor John Carney signed into law House Bill 190, the Coastal Zone Conversion Permit Act. This Act established a procedure to allow for the productive reuse of the 14 existing sites of heavy industry use within the coastal zone. Specifically, the Act allows for the issuance of a Conversion Permit that would allow for the construction and operation of an alternative or additional heavy industry use at any of 14 existing heavy industry use sites in the Coastal Zone. It also allows for the issuance of a Conversion Permit for bulk transfer of products produced within or destined for a facility within the Coastal Zone, and for the bulk transfer of agricultural products without regard to origin or destination. Prior to the signing of this bill, all heavy industry and bulk product transfer activities not in operation in 1971 were prohibited in the state's Coastal Zone.

The Act directs the Department of Natural Resources and Environmental Control (DNREC) to promulgate revised Regulations Governing Delaware's Coastal Zone consistent with the Act by October 1, 2019. New regulations must also be approved by the Coastal Zone Industrial Control Board, after a hearing, pursuant to 7 Del.C. §7005(b) and (c).

To comply with this requirement, the Office of the Secretary (OTS) is proposing to amend 7 DE Admin. Code 101, *Regulations Governing Delaware's Coastal Zone*, to be consistent with House Bill 190, the Coastal Zone Conversion Permit Act (81 Del. Laws Ch. 120).

3. STATUTORY BASIS:

7 Del.C. Chapter 70, Coastal Zone Act

4. IS THIS PROPOSED REGULATORY ACTION REQUIRED AS A RESULT OF FEDERAL STATUTE OR REGULATION? IF SO, PROVIDE LINK TO FEDERAL MANDATE.

No

5. DATE OF MOST RECENT REVIEW/AMENDMENT:

(Please indicate if review was pursuant to EO-36 OR HB 147)

Date of last amendment: October 1, 2001

6. LIKELY AFFECTED PUBLIC:

Revised regulations will apply to anyone seeking to develop a heavy industrial use or conduct bulk product transfer on any of the 14 existing sites of heavy industry use within the Coastal Zone, as well as members of the public potentially affected by such facilities.

7. PROPOSED SCHEDULE OF ACTIVITIES:

Stakeholder Interviews:	October – November, 2017
Regulatory Advisory Committee Meetings:	December, 2017 – completion
Public Workshops:	March, 2018 (multiple locations) September, 2018 (multiple locations)
Public Hearing:	January, 2019
Effective Date:	October 1, 2019, as required by HB 190

8. REVIEW COMMITTEE:

A Regulatory Advisory Committee will be formed to assist the OTS with drafting the revised regulations. The Advisory Committee will also provide recommendations and feedback to the OTS regarding the public outreach and engagement efforts. All Regulatory Advisory Committee meetings will be posted on the state's Public Meeting Calendar and a website and list-serv will be established to help ensure an open and transparent regulatory development process.

9. RESPONSIBLE STAFF MEMBER:

(name, physical address, phone and fax numbers, and e-mail address)

Kevin F. Coyle, AICP CEP
Division of Energy and Climate
100 W. Water Street, Suite 5A
Dover, DE 19904
Phone: 302-735-3480
Fax: 302-739-1840
Kevin.Coyle@state.de.us

10. APPROVALS:

 28 SEP 17

Kevin Coyle
Responsible Staff Member

Date

 9-28-17

Robert Underwood
Acting Director
Division of Energy and Climate

Date

(Rev. March 2017)

Regulatory Flexibility Analysis and Impact Statement Form

For Proposed New and Amended Regulations Affecting Small Businesses or Individuals

Introduction

Beginning January 1, 2016, agencies submitting proposed new or amended regulations that affect small businesses or individuals are required, under the new Regulatory Transparency and Accountability Acts of 2015 (see 80 Del. Laws, c. 112 and 113), to submit a Regulatory Flexibility Analysis (RFA) and a Regulatory Impact Statement (RIS) with the proposed regulation to the Registrar of Regulations (see **29 Del.C. Ch. 104**).

This RFA and RIS form is intended to benefit the small businesses and individuals impacted by proposed regulations by ensuring a reasonable level of consistency in the formatting of RFAs and RISs across different agencies and regulations.

State agencies proposing new or amended regulations that are substantially likely to impose additional costs or burdens on small businesses¹ or individuals² must submit a Regulatory Flexibility Analysis (RFA) and a Regulatory Impact Statement (RIS) to the Registrar of Regulations, with the proposed regulation. For agencies proposing amendments to existing regulations, the promulgating agency shall only be required to complete the RFA and RIS for the proposed amended portion of the existing regulation, and not for the entire existing regulation.

What is a Regulatory Flexibility Analysis (RFA)?

In each RFA, an agency must consider, where applicable, lawful, feasible and desirable, specific methods of reducing the burdens of the regulation on individuals and/or small businesses, including: (1) establishing less stringent requirements and deadlines; (2) establishing performance standards to replace design standards; (3) exempting individuals and small businesses from all or part of the regulation; and (4) examining other ways to accomplish the regulation's purpose, while minimizing the impact upon individuals and/or small businesses.

What is a Regulatory Impact Statement (RIS)?

Among other things, each RIS must (1) describe the purpose of the regulation; (2) identify the individuals and/or small businesses subject to it; (3) provide an estimate of the potential costs of compliance; and (4) describe any less intrusive or less costly alternative methods of achieving the purpose of the regulation. In addition, the Act further enhances transparency by requiring the Registrar of Regulations to transmit regulatory impact statements to the appropriate standing committee of the General Assembly.

¹"Small business" means any not-for-profit enterprise, sheltered workshop or business enterprise which is engaged in any phase of manufacturing, agricultural production or personal service, regardless of the form of its organization, when such enterprise or workshop employs fewer than 50 persons, has gross receipts of less than \$10,000,000 and is not owned, operated or controlled by another business enterprise.

²"Individual" means any natural person, including any sole proprietorship. The term "individual" does not include any natural person affected by a regulation in his/her capacity as an officer, director, or employee of an organization that is not a "small business"; e.g. the CEO of a large business.

Agencies, Boards, and Commissions: please fill out this form when proposing new or amended regulations for the purpose of informing the public and business community. All proposed regulations, even if an exemption applies, must have this form attached when submitting to the Registrar of Regulations.

Date 2/22/19 Agency DNREC Division/Office Climate, Coastal & Energy
Contact Name Judy Jordan
Contact Email (or mailing address for comments) judith.jordan@delaware.gov
Regulation # 101 Title Amendments to Regulations Governing Delaware's Coastal Zone

Exemptions

- ☐ **Exemption A:** This proposed regulation is **not subject to Chapter 104, Title 29 of the Delaware Code**, because it will not apply to small businesses or individuals at all.
- ☐ **Exemption B:** The agency, board, or commission is exempt from completing the RFA and Impact Statement due to the nature of the proposed regulation.

Choose the reason for exemption:

- ☐ **B1.** This proposed regulation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Explain this conclusion:
- ☐ **B2.** This is an emergency regulation pursuant to **29 Del.C. §10119**.
- ☐ **B3.** This proposed regulation is exempt from the procedural requirements of the Administrative Procedures Act, **29 Del.C. §10113(b)**. Choose which reason:
- ☐ **B3a.** Descriptions of agency organization, operations and procedures for obtaining information
- ☐ **B3b.** Rules of practice and procedure used by the agency
- ☐ **B3c.** Delegations of authority to subordinates
- ☐ **B3d.** Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors
- ☐ **B3e.** Amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations
- ☐ **B3f.** Codifications of existing agency or judicial principles of decision derived from previous decisions and rulings

- ☐ B4. This proposed regulation defines standard of conduct or qualifications of individuals applying for licensure or as licensed professionals. Identify which professional license or professional qualification this would apply to:

- ☐ B5. Regulations that are required by federal law and/or have already complied with the federal Regulatory Flexibility Act, 5 U.S.C. § 601 et seq. *(If this is checked, the agency, board, or commission shall cite the federal law, regulation, directive, or guidance strictly mandating such state regulation and shall attach any applicable Federal RFA related to the regulation, if available. Attach the Federal RFA statement to this form, or provide the URL):*

End of Exemption Section

Regulatory Flexibility Analysis

State agencies, boards, and commissions proposing to adopt or amend a regulation that is substantially likely to impose additional costs or burdens upon individuals and/or small businesses shall consider, where **applicable, lawful, feasible and desirable**, the following methods of reducing the additional costs and burdens of proposed regulations **on individuals and small businesses**:

1. The establishment of less stringent compliance or reporting requirements;
2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements;
3. The consolidation or simplification of compliance or reporting requirements;
4. The establishment of performance standards to replace design or operational standards required in the proposed regulation;
5. The exemption of certain individuals or small businesses from all or part of the requirements contained in the proposed regulation; and
6. Such other alternative regulatory methods that will accomplish the objectives of the proposed regulation while minimizing the adverse impact upon individuals and small businesses.

Explain whether each of the above methods would be applicable, lawful, feasible, and desirable to reduce the costs or burdens of the proposed regulation:

1. The regulations are being revised in accordance with the requirement in the Coastal Zone Conversion Permit Act, Sections 7014(c) and 7015(b)(9). We have considered whether it would be possible to establish less stringent compliance and reporting requirements for small businesses and determined that it would not be lawful for the regulatory terms to be relaxed for small businesses. The Act did not allow for
2. The regulations are being revised in accordance with the requirement in the Coastal Zone Conversion Permit Act, Section 7015(b)(9). We have considered whether it would be possible to establish less stringent schedules and deadlines for small businesses and determined that it would not be lawful for the regulatory terms to be relaxed for small businesses. The Act did not allow for
3. The regulations are being revised in accordance with the requirement in the Coastal Zone Conversion Permit Act, Section 7015(b)(9). We have considered whether it would be possible to consolidate or simplify compliance and reporting requirements for small businesses and determine
4. The regulations are being revised in accordance with the requirement in the Coastal Zone Conversion Permit Act, Section 7015(b)(9). We have considered whether it would be possible to establish performance standards to replace design or operational standards to lessen the burden
5. The regulations are being revised in accordance with the requirement in the Coastal Zone Conversion Permit Act, Section 7015(b)(9). We have considered whether it would be possible to establish less stringent compliance and reporting requirements for small businesses and determined that it would not be lawful because the Act did not allow for the imposition of different
6. In empaneling a Regulatory Advisory Committee (RAC) to advise the Department on the development of regulations, the Secretary sought input from a wide range of interests, including the environmental community, labor, local communities and business. He requested that the RAC

If the above RFA section does not address each of the six methods and there is not an exemption that applies, explain why the agency, board, or commission decided it was not applicable, lawful, feasible, and desirable to complete the RFA section above:

End of Regulatory Flexibility Analysis Section

Regulatory Impact Statement

Any agency, board, or commission that proposes to adopt or amend a regulation that is substantially likely to impose additional costs or burdens upon individuals and/or small businesses must submit the below Regulatory Impact Statement (RIS).

- Reference the statutory provision that allows for the adoption or amendment of the regulation and the statutory provisions that address the subject matter of the regulation. In addition, provide the URL to the specific section of the Delaware Code to allow the public easy access to view the provision.
 - Statutory Citation: 7 Del. C. Chapter 70
 - URL: <http://delcode.delaware.gov/title7/c070/index.shtml>
 - Subject Matter Statutory Citation: Coastal Zone Conversion Permit Act
 - URL: <https://delcode.delaware.gov/sessionlaws/ga149/chp120.shtml>

- Describe the purpose of the proposed regulation (what is the need for the proposed regulation?):

HB 190 of 2017 was signed by the Governor on August 2 and required the Department of Natural Resources and Environmental Control (DNREC) to "promulgate the revised regulations by October 1, 2019" to implement the Coastal Zone Conversion Permit Act.

- What are the anticipated benefits of the proposed regulation? (Describe the benefits that are expected to accrue as a result of the implemented regulation). Please quantify such benefits, as feasible:

The anticipated benefits of the proposed regulation include the improvement of the environmental quality of Delaware's coastal zone, safeguarding of the Delaware Bay and coastal areas for use primarily for tourism and recreation, and the introduction of new industry for an improved economy.

- Identify the types of individuals and/or small businesses that would be subject to compliance under the regulation:

The Coastal Zone Act and regulations require any business, whether small or not, to comply if they engage in a new heavy industry use or bulk product transfer in the coastal zone.

- Provide a **good-faith estimate** of the potential cost of compliance for individuals and/or small businesses, which at minimum shall include the projected reporting, recordkeeping, and other administrative costs required to comply with the proposed regulation. Use the below space for a free-text response (*Cost Estimate Option 1*) or, use the questionnaire below to guide the response (*Cost Estimate Option 2*):

Cost Estimate Option 1:

Cost Estimate

Costs to comply range from low to substantial, depending on the type of business that will be operated and the condition of the property when acquired. All conversion permittees will have to develop, and if granted a permit, implement a Sea Level Rise and Coastal Storms plan that will prevent negative effects on human health and the environment that could result from facility damage from sea level rise and storms. Because of the wide range of property conditions that permittees could deal with, it is not possible to precisely estimate the potential costs of compliance. However, some properties could require substantial investment to avoid such damage. These investments could involve earth moving, construction of new roadways and pipelines, relocation of power lines, elevation of equipment and structures, which would partly be normal site preparation costs that the entity would encounter regardless of the CZCPA program. But the compliance costs would add incrementally to what we anticipate could cost in the range of tens of thousands to tens of millions of dollars in site preparation. The incremental cost of the CZCPA compliance could reasonably account for 0 to over \$1MM.

In addition to facility upgrades, permittees will be required to prepare plans and permit applications that may require that they retain engineering, scientific and legal experts. We estimate that a permit application, including the development of required environmental impact statements, offset plans, and an Environmental Remediation and Stabilization plan, are likely to require six months to one year of work, cumulatively, by a team of consultants and attorneys. At an average billing rate of \$150/hour, this could cost between approximately \$150,000 and \$300,000.

Permittees may have to keep certain records and submit reports, depending on the kind of facility they operate:

Bulk Product Transfer Facilities (BPTFs) will be required to maintain records of the materials they receive as well as ship out at the facility. The proposed regulations do not require the records to be maintained in any particular fashion, and it is expected that any business would have to keep records of raw materials and product shipments for accounting and logistical purposes, aside from the Coastal Zone (CZ) program. Therefore, whatever cost is associated with compliance is expected to be mostly associated with compiling and submitting reports. This is required to be done annually, and could be done by an entry level bookkeeper or administrative personnel, assumed to earn approximately \$30/hour.

At most, it should take approximately one week for a worker to compile the total types and quantities of materials received and shipped, the dates and destinations associated with the shipments, and submit the report to the Department. The associated cost would be \$1200 (40 hours x \$30/hour).

BPTFs and permittees that are not BPTFs will be required to maintain and sustain nominal reporting costs for financial assurance, using bonds, insurance premiums, trust funds or other instruments.

	Cost Estimate Option 2	Yes	No	Unknown
1	Is this regulation being proposed to implement a state or federal program that provides funds to Delaware?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2	If this regulation is not implemented, will individuals, businesses, or programs lose federal funding?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3	Does this regulation implement a plan that has already been approved by the federal government, after an opportunity for public comment?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
4	Does this regulation follow industry standards and best practices?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
5	Are there potential costs in not establishing these standards?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
6	Does the regulation require capital costs (building costs, material costs, upgrades to property or structures, retrofitting of systems, etc.)?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
7	Does the regulation require additional recurring costs on small businesses or individuals?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
8	Does the regulation impose additional administrative burden for a small business or individual?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
8a	If answering yes to #8, is it ongoing reporting or one time? (Choose answer) <input type="radio"/> Ongoing <input type="radio"/> One Time <input type="radio"/> Unknown			
8b	If answering yes to #8, generally, how much administrative effort will be required to comply with the regulation? <input type="radio"/> Large Amount <input type="radio"/> Small Amount <input type="radio"/> Unknown			
9	Does the regulation require new or changed record keeping that will create new processes or change processes already in place for small businesses or individuals?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

	Cost Estimate Option 2 (continued)	Yes	No	Unknown
10	Would a small businesses or individual be required to hire an outside professional to comply with the proposed regulation (such as an attorney, accountant, tax advisor, environmental consultant, engineering firm, etc.)?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
10a	If answering yes to #10, estimate how many hours an outside professional may be needed to assist 			
10b	If answering yes to #10, will a small business or individual be required to retain the services of the outside professional on an ongoing basis?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
11	Does the regulation require small businesses to purchase goods or services that are unusual or not commercially reasonable?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
12	Does the regulation require that small businesses exceed commercially reasonable data storage and transmission standards?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
13	Will small businesses have to hire additional employees in order to comply with the proposed regulation?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
14	Does the regulation require small businesses to cooperate with audits, inspections, or other regulatory enforcement activities?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
15	Does the regulation have the effect of creating additional licenses, taxes and/or fees for small businesses?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
16	Does the regulation require small businesses to obtain additional education to keep up to date with regulatory requirements?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
17	Please further explain any additional costs or burdens, which at a minimum shall include the projected reporting, recordkeeping, and other administrative costs required to comply with the proposed regulation. 			

- Provide a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation, and why these methods were not preferred to a regulation:

There are no less intrusive or less costly methods of achieving the purpose of the proposed regulation.

- *(Optional)* Estimate the amount of agency, board, or commission staff hours it took to prepare this RFA and RIS statement:

Staff hours to prepare this RFA and RIS statement were over 1 week or 40 hours.

- *(Optional)* Agencies are encouraged to list trade or industry groups, small businesses, or other stakeholders such as currently regulated parties that were consulted by the agency, board, or commission in preparing this RFA and RIS. The agency, board, or commission is further encouraged to send them a copy of the RFA and RIS upon completion:

End of Regulatory Impact Statement Section

**Delaware Coastal Zone Conversion Permit Act
Regulatory Advisory Committee**

**Final Report and Recommendations
to the
Secretary of the Delaware Department of Natural Resources and Environmental
Control**

17 April 2019

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1. EXECUTIVE SUMMARY

Delaware's Coastal Zone Act (CZA) was passed in 1971 and prohibited "heavy industry uses of any kind not in operation on June 28, 1971" within the Coastal Zone. The Secretary of the Department of Natural Resources and Environmental Control (DNREC) and the Coastal Zone Industrial Control Board (CZICB) were given authority to implement the Act and promulgate regulations. The Act required a Coastal Zone Permit for any new or expanded manufacturing activity that would have an impact on the environment, the economy, the aesthetics of the surrounding area, and/or neighboring land uses. The fourteen (14) large heavy industry use sites in operation at the time of the CZA's passage were allowed to continue operations. The geographic footprints of these 14 operations are referred to, statutorily, as "heavy industry sites" and, colloquially, as the "grandfathered sites". At that time, the Act further prohibited the expansion of these existing non-conforming heavy industry uses beyond their original physical footprints.

In 2017, during the 149th General Assembly, the Delaware legislature passed Chapter 120 (Formerly House Bill No. 190): An Act to Amend Title 7 of the Delaware Code Relating to the Coastal Zone Act. This Act, also known as the Coastal Zone Conversion Permit Act (CZCPA), continued to prohibit new industrial activity outside of the 14 heavy industry use sites. However, it allowed for redevelopment of these 14 sites under certain conditions, including the requirement to obtain a Coastal Zone Conversion Permit.

Under the CZCPA, DNREC was required to develop regulations for Conversion Permits by October 1, 2019. DNREC decided, in order to be responsive to the statute and the diversity of interests around the Coastal Zone, to convene a regulatory advisory committee (RAC) to develop, by consensus to the greatest degree possible, the conceptual framework and approach to these new regulations. This same process was successfully used in the 1990s to create the framework for the then first and new CZA regulations. To ensure an effective and efficient process, DNREC appointed a RAC Chair and retained the services of facilitator, Patrick Field, from the Consensus Building Institute. The RAC Chair was Justice Randy J. Holland, who served on the Delaware Supreme Court for over 30 years and retired in March 2017.

Given strong public interest in the passage of the CZCPA and the development of new regulations, DNREC and the RAC engaged the public in a number of ways in addition to the RAC itself. A brief summary of these activities is included below. A summary of specific public comments received on the RAC's preliminary recommendations are included in the Recommendations section in the body of this report. The activities were:

- **Public Workshops** – DNREC held two public workshops in November 2017, involving some 80 attendees, to obtain feedback on the statutory changes to the CZA and the convening process for the Regulatory Advisory Committee
- **Fenceline Community Meetings** – DNREC staff engaged with various neighborhood groups and associations during the early work of the RAC. The goal of such engagement was to help fenceline communities, which are communities near or adjacent to a heavy industry use site, to understand the regulatory development process and inform them of ways to provide input
- **Open Houses** – The RAC and DNREC held three Open Houses in late February 2019 to obtain feedback from the public on the RAC's preliminary recommendations. The Open Houses were

held in Claymont, Delaware City, and Wilmington on different nights. The Open Houses included an overview presentation of the legislative changes and the RAC process in video form, as well as information stations, staffed by DNREC employees, on the RAC's preliminary recommendations. During and after the Open Houses, the public was offered the opportunity to provide focused, written feedback on the RAC's preliminary recommendations, with the purpose of informing future RAC discussions and final recommendations

- **RAC Meetings** – All RAC meetings were publicly noticed, open to the public and included a time for public comment
- **Work Group Meetings** – All Work Group meetings were publicly noticed and open to the public
- **Website** – The RAC's publicly available website served as a repository of information relating to the RAC and the CZA, including background information, meeting materials, public comment information, and information about the stakeholder engagement process.
- **Public Comment Process** – Public comments were welcomed throughout the RAC process, including during the RAC meetings, at the three public Open Houses, and via a written form available online.

SUMMARY OF THE CZCPA RAC'S FINAL RECOMMENDATIONS

Per the DNREC Secretary's direction, the CZCPA RAC was the official body charged with providing recommendations to DNREC on the regulatory approach and content of new CZA regulations that will govern Conversion Permits. The RAC developed recommendations on several key topics. These topics included:

- Bulk Product Transfer Facilities
- Plans for Potential Impacts of Sea Level Rise and Coastal Storms
- Economic Effect
- Environmental Impact
- Offsets
- Financial Assurance
- Cross-Cutting Issues

Below is a table that provides a brief background on each topic and a summary of the RAC's final recommendations.

Background		Summary of the CZCPA RAC's Final Recommendations
Bulk Product Transfer Facilities	<p>A bulk product transfer facility is any port or dock facility that is used to transfer bulk quantities of any substance between ships or between a ship and an onshore facility. The CZA allows for bulk product transfer facilities to operate on heavy industry use sites under certain conditions.</p> <p>Recent projections by Delaware's Sea Level Technical Advisory Committee indicate that sea levels are continuing to rise, as a result of global climate change. By 2050, sea levels could rise between 0.7 and 1.9 feet in the state. Sea level rise, coupled with coastal storms, is increasing the risk of flood damage to shorelines, infrastructure, and structures in coastal areas statewide. The CZA requires Conversion Permit applicants to prepare a site plan that accounts for potential impacts of sea level rise and coastal storms over the anticipated life of the facility and related infrastructure.</p>	<ul style="list-style-type: none"> Record keeping conditions should apply (e.g., quantity of bulk products transfer, final destination of products, dates of product exports) Conversion Permits should be granted for "bulk product categories" to minimize the need for permit modifications or new permits for minor or related changes. Additions of a new bulk product category may require a permit modification or a new permit Plans should detail risk, likely impacts, and mitigation measures for specific geographic areas of a site Plans should address potential negative impacts to adjacent parcels from development and flood mitigation activities Plans should address hazards over the anticipated useful life of the facility, specifically related to flooding, shoreline erosion, and wind Plans should address measures necessary to evacuate, suspend operation(s), and secure the facility, when necessary, due to significant coastal storm events When Plans are updated, they should be posted publicly and subject to written public comment
Plans for Potential Impacts of Sea Level Rise and Coastal Storms		
Economic Effect	<p>Economic effect is the economic benefit a development project brings to Delaware.</p> <p>Economic effect has three components: direct effect, indirect effect, and induced effect. The CZA states that economic effect must account for jobs created, income generated by the wages or salaries of new jobs (in relation to the land required for development), and potential tax revenues accrued to state and local government.</p>	<ul style="list-style-type: none"> Economic effect and net economic improvement metrics should address the most recent heavy industry use or the current use (if not a heavy industry use) on a heavy industry use site The State of Delaware should prepare a "baseline report" to ensure a commonly understood baseline for economic effect across the 14 heavy industry use sites Conversion Permit regulations should require that Permit applicants submit economic metrics on project cost, tax revenue, employment, state- and community-level effect, and other costs to the state when reporting on economic effect and net economic improvement The DNREC Secretary should consider potential negative economic effect from the activity or facility set forth in the Conversion Permit DNREC should verify all economic information submitted by Conversion Permit applicants The CZCPA RAC emphasizes the CZCPA's intent and goal of local and robust hiring

Environmental Impact	<p>Environmental impacts are caused by the construction or operation of an industrial facility or infrastructure project, or the release of a substance into (or a disturbance to) the environment. Environmental impacts may affect air, water, land, or living organisms, starting from where the impact originates. Impacts can be positive, negative, or neutral. The CZA provides a detailed list of environmental impacts that must be addressed by applicants for a Coastal Zone Permit or a Conversion Permit.</p>	<ul style="list-style-type: none"> • DNREC should prepare a “baseline report” to ensure a commonly understood baseline on the current uses and existing environmental conditions, impacts, and risks across the 14 heavy industry use sites • Environmental impacts should be characterized in the same way they are currently characterized in the current CZA permit program • Environmental impacts should continue to encompass direct and cumulative impacts
Offsets	<p>Offsets are actions used to counteract negative environmental impacts. The CZA requires Conversion Permit applicants to carry out offset “projects” that “more than offset” the negative environmental impacts caused by their proposed development “on an annual basis.” Offsets are most effective when the project counteracts the impacts as closely as possible in type, location, timing, and affected community. Offsets are intended to be undertaken only after all reasonable steps have been taken to avoid the negative impact in the first place.</p>	<ul style="list-style-type: none"> • Offsets should match, as closely as possible, the location, medium, duration, timing, and pollutant of the environmental impact • The CZCPA RAC put forth a sequential process for a Conversion Permit applicant to determine an appropriate offset project • Minimizing environmental impacts should remain a priority, as the offset process is only intended to address environmental impacts that cannot be avoided or further minimized • The CZCPA RAC affirms the DNREC Secretary’s authority to reject Conversion Permit applications with environmental impacts deemed too severe, even with an offset proposal
Financial Assurance	<p>Financial Assurance is a way for an owner or operator of an industrial site to guarantee that a certain amount of money will be available to address environmental contamination on the site. Financial assurance comes into play when the owner or operator of the site is unable or unwilling to address the contamination. When this happens, the environmental regulator is able to access the money guaranteed by the financial assurance to address the contamination.</p> <p>The CZA requires Conversion Permit applicants to provide financial assurance for three scenarios:</p>	<ul style="list-style-type: none"> • The CZCPA RAC recommends financial assurance for a fourth scenario: Maintenance or repair of the project site or infrastructure improvements to address sea level rise or coastal storms • The CZCPA RAC put forth a table of information that details: (1) event categories of expected financial risk due to Conversion Permit activity; (2) the process used in establishing financial assurance for each risk event; (3) the way to determine the amount of financial assurance necessary to meet the requirements of the CZA; (4) the range of financial assurance instruments potentially applicable to Conversion Permit activity; (5) each instrument’s ability to both adapt to the time horizon of a risk event and to ensure funds are available in the time and amount necessary • Financial assurance should be commensurate with the use (and associated risks) proposed by the Conversion Permit applicant and reviewed at appropriate periodic intervals for the life of the permit

	<ul style="list-style-type: none"> Contamination on the project site at the time of application Termination, liquidation, or abandonment of heavy industry or bulk product transfer activities on the project site Future incidents that result in environmental contamination on the project site 	<ul style="list-style-type: none"> The DNREC Secretary should clarify the definition of “environmental damage,” as used in the CZA Self-insurance instruments should not be preferred for providing financial assurance to minimize environmental damage, and stabilize and secure the site upon termination, abandonment, or liquidation of site activities, due to the potentially “far into the future” timescale of such an event The CZCPA RAC encourages the DNREC Secretary, upon periodic financial assurance review, to ensure s/he has the authority to require those utilizing self-insurance-only instruments to move towards third-party-only instruments or a blend of self-insurance and third-party instruments
Cross-Cutting Issues	<p>There are a number of issues that are relevant to the other six topic areas. These “Cross-Cutting Issues” include:</p> <ul style="list-style-type: none"> Definition of “Project Site,” which determines the physical boundaries of the project subject to a Conversion Permit Definition of “Useful Life,” which may affect such issues as plans for potential impacts of sea level rise and coastal storms, as well as financial assurance Permit Duration, Modification, Renewal, and Revocation, given the scale, complexity, and potential impacts of Conversion Permits, these may require a permit term (unlike existing Coastal Zone Permits, which are granted once with no duration) Permit Monitoring and Reporting Post-Approval, again, given the complex nature of the Conversion Permits 	<ul style="list-style-type: none"> “Useful life” should equal thirty (30) years unless the Secretary allows otherwise Conversion Permit duration (both for the initial permit and any renewed permit) should be twenty (20) years Conversion Permit monitoring and reporting post-approval: <ul style="list-style-type: none"> For Site Plans for Sea Level Rise and Coastal Storm Impacts: Plan updates should occur at least every ten (10) years For Offsets: Applicant should provide a monitoring schedule that describes a process for third-party verification of an offset project’s operation and completion For Financial Assurance: A Conversion Permittee should annually, within ten (10) days of the anniversary date of issuance of its permit, submit to DNREC evidence that the financial assurance required by the permit is in effect in the amount required by the permit For Bulk Product Transfer: The permittee should submit an annual report For Site Inspections: DNREC should have access to the site at reasonable times and on a regular basis, with reasonable times generally meaning operating hours Conversion Permit revocation: The Secretary may revoke a permit for significant or repeated violations Conversion Permit modifications: Modifications to an existing permit should be allowed. If the Secretary grants a request for a modification, only the conditions subject to modification are reopened. Modifications would be classified as either minor (e.g., administrative changes) or major (e.g., changes that affect substantive requirements of the Conversion Permit)

<ul style="list-style-type: none"> • Conversion Permit renewal should be allowed. The application for permit renewal should be submitted no fewer than 180 days prior to expiration. The renewal process should be streamlined, as compared to the original application, and focused on environmental impacts and offsets, financial assurance, and sea level rise and coastal storm planning and should take into account the applicant's compliance record. • "Project Site" means the physical location at which a permitted facility operates or the location where a proposed project, that is the subject of a Conversion Permit application, will operate. A project site may comprise an entire tax parcel, or parcels, or part(s) of any tax parcel(s); however, its preliminary boundary shall be defined prior to the issuance of a permit in the application for a permit, and its final boundary, after a permit is granted by the Secretary, shall be defined in the permit. <ul style="list-style-type: none"> ○ NOTE: <i>One member objected to this definition of Project Site because they are concerned that heavy industry use sites will be subdivided, leading to multiple permittees, numerous smaller uses, greater risks across the site as a whole, high monitoring costs to DNREC, and the potential of "high grading" the site so some portions are left contaminated and not remediated nor restored to industrial use.</i> 	
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2. BACKGROUND ON THE COASTAL ZONE ACT AND ITS CURRENT REGULATIONS AND THE COASTAL ZONE CONVERSION PERMIT ACT

Delaware's Coastal Zone Act (CZA) was passed in 1971 and prohibited "heavy industry uses of any kind not in operation on June 28, 1971" within the Coastal Zone. The CZA also preceded the passage of federal environmental legislation such as the Clean Water Act (CWA) (1972), significant amendments to the Clean Air Act (CAA) (passed in 1970 and amended in 1977 and 1990), the Resource Conservation and Recovery Act (RCRA) (passed in 1977), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (passed in 1980).

The Secretary of the Department of Natural Resources and Environmental Control (DNREC) and the Coastal Zone Industrial Control Board (CZICB) were given authority to implement the Act and promulgate regulations to carry out the requirements contained within the Act. The Act required a Coastal Zone Permit for any new or expanded manufacturing activity that would have an impact on the environment, the economy, the aesthetics of the surrounding area, and/or neighboring land uses. The fourteen (14) heavy industry use sites in operation at the time of the CZA's passage were allowed to continue operations. The geographic footprints of these 14 operations are referred to, statutorily, as "heavy industry sites" and, colloquially, as the "grandfathered sites". The Act further prohibited the expansion of these existing, nonconforming, heavy industry uses beyond their original physical footprints.

In 1999, regulations under the CZA were promulgated to provide clarity and consistency in the applications for and review of Coastal Zone Permits. These regulations were informed by the recommendations of a multi-stakeholder regulatory advisory committee. Under the CZA, an applicant must request a Coastal Zone Permit in writing and it must include:

- (1) Evidence of approval by county or municipal zoning authorities
- (2) Detailed description of the proposed construction and operation of the use
- (3) An Environmental Impact Statement (EIS)
- (4) Such further information requested by the Secretary

As required by the regulations, and codified in the CZCPA for Conversion Permits, the applicant must propose an environmental "offset" to more than offset the environmental impact of the proposed use. Under the original CZA, manufacturing uses and "expansion or extension of nonconforming uses" within the original heavy industry use site footprints were allowed by permit only, while new heavy industry uses, or bulk product transfer facilities were prohibited. A number of other uses, as outlined in the regulations, such as commercial or residential activities, are not regulated under the CZA.

In 2017, during the 149th General Assembly, the Delaware legislature passed Chapter 120 (Formerly House Bill No. 190): An Act to Amend Title 7 of the Delaware Code Relating to the Coastal Zone Act. This Act, also known as the Coastal Zone Conversion Permit Act (CZCPA), continued to prohibit new industrial activity outside of the 14 heavy industry use sites. However, an additional or alternative heavy industry use can now be permitted on a heavy industry use site, under certain conditions. Some heavy industry uses remain prohibited, including liquefied natural gas terminals, oil refineries, basic cellulosic paper mills, basic steel manufacturing plants, and incinerators. Under certain circumstances, the Act also now allows a heavy industry use site to operate as a bulk product transfer facility for loose materials fully produced or fully utilized by one or more facility within the Coastal Zone.

3. BRIEF SITE DESCRIPTIONS OF THE 14 HEAVY INDUSTRY USE SITES

The following provides a brief summary of the 14 heavy industry sites that are subject to the Coastal Zone Conversion Permit Act (CZCPA). See *Appendix B: Heavy Industry Use Site Maps and Descriptions* for more detailed information.

Site Name in 1999	Other Names for the Site	Pre-1971 Heavy Industry Use	Current Use	Status of Remediation	Site Address	Acres Within Footprint
Chloramone	Kuehne Chemical Company	Chemical Processing Plant (Chlorine Production)	Manufactures chlorine used primarily for water treatment.	Site not currently under any active remediation.	1645 River Road, New Castle	5.1
Citi Steel	Claymont Properties LLC, Evraz Steel	Steel Plant	Not currently in active use.	Active remediation under the state's HSCA Voluntary Cleanup Program	4001 Philadelphia Pike, Claymont	165.2
Delaware Storage and Pipeline	None	Bulk Product Transfer Facility	Above ground storage tank farm with bulk product transfer of fuel from dock. This site brings in and stores jet fuel for the Dover Air Force Base.	Site not currently under any active remediation.	987 Port Mahon Road, Little Creek	36.8
DuPont Edgemoor	Chemours Edgemoor	Chemical Processing Plant	Not currently in active use. Current owner is Diamond State Port Corporation.	Active remediation under a state-led RCRA Corrective Action program	4600 Hay Road, Edgemoor	128.6
Formosa Plastics	Delaware City PVC, Stauffer Chemical Company	Chemical Processing Plant (PVC Production)	Not currently in active use. Formosa shut down operations on the site in late 2018.	Active remediation under the EPA-lead Superfund program	780 School House Road, New Castle	53.1
General Chemical	Allied Chemical, Chemtrade, Delaware Valley Works "South Plant"	Chemical Processing Plant (Hydrofluoric Acid)	Not currently in active use. Current owner is D2.	Active remediation under an EPA-lead RCRA Corrective Action program.	6300 Philadelphia Pike, Claymont	92.3

Site Name in 1999	Other Names for the Site	Pre-1971 Heavy Industry Use	Current Use	Status of Remediation	Site Address	Acres Within Footprint
Kanaka Delaware	Delaware City Plastics	Chemical Processing Plant (Resins)	Corporate headquarters for 1715 River Road LLC (operating as Tri-Supply & Equipment), which uses the site for materials and equipment storage. The company sells and rents materials and equipment for the construction industry.	Active remediation under the state's HSCA Voluntary Cleanup Program	1685 River Road, New Castle	24.5
Ocean Port Industries	Evergreen Property Holdings LLC	Bulk Product Transfer Facility	Transfers bulk goods including cement, clinker, coal, ferrous sulfate, graded aggregate, gypsum, limestone, magnesium oxide, pelletized wood, scrap iron, pumic, soil, stone, titanium, urea, and wood chips.	Active remediation under the state's Above Ground Storage Tank Program	6200 Philadelphia Pike, Claymont	71.2
Oxy Chemicals	Occidental Chemical Corporation ("Oxy Chem"), Diamond Alkali Company	Chemical Processing Plant (Chlorine, Caustic Soda, Potash, Hydrogen)	Not currently in active use.	Active remediation under an EPA-lead RCRA Corrective Action program, with state support	1657 River Road, Delaware City	58.9
Port of Wilmington	None	Port	Commercial shipping port	Active remediation under the state's HSCA Voluntary Cleanup Program	1 Hausel Road, Wilmington	1234.3
Standard Chlorine	Metachem	Chemical Processing Plant (Chlorinated Benzenes)	Not currently in active use.	Active remediation under the EPA-led Superfund program, with state support	745 Governor Lea Road, New Castle	23.3

Site Name in 1999	Other Names for the Site	Pre-1971 Heavy Industry Use	Current Use	Status of Remediation	Site Address	Acres Within Footprint
Star Enterprise	Delaware City Refining Company LLC, Motiva Enterprises, PBF Energy	Oil Refinery	Oil refinery. Current owner is Delaware City Refining Company, LLC, a subsidiary of PBF Energy.	Active remediation under a state-led RCRA Corrective Action program	Numerous parcels, New Castle and Delaware City	1852.3
Sun Oil	Sunoco Partners Marketing and Terminals LP	Refinery Operations	Sun Oil has property that spans area in both Delaware and Pennsylvania. Only the Delaware portion is subject to the CZA, and that portion is only used for rail staging. A former flare on the site ceased operations in early 2019.	Active remediation under an EPA-lead RCRA Corrective Action program	6400 Philadelphia Pike, Claymont	62.1
Uniqema	Croda, Fujifilm, Imperial Chemical Industries (ICI) Atlas Point	Chemical Processing	There are three uses on the site. Croda manufactures surfactants primarily for the cosmetics and personal care industry. Croda also has a bio-based ethylene oxide production plant on site. Fujifilm Imaging Colorants manufactures inks and colorants used primarily for ink-jet printers. They also have an ink technology research lab on site. Sobieski utilizes part of the site for offices and a training center.	Active remediation under the state's HSCA Voluntary Cleanup Program	233 and 315 Cherry Lane and 900 Uniqema Blvd, New Castle	179.6

4. ORIGINS AND DESCRIPTION OF THE RAC

Under the CZCPA, the Delaware Department of Natural Resources and Environmental Control (DNREC) must develop regulations for Conversion Permits by October 1, 2019. DNREC decided, in order to be responsive to the statute and the diversity of interests around the Coastal Zone, to convene a regulatory advisory committee (RAC) to develop, by consensus to the greatest degree possible, the conceptual framework and approach to these new regulations. This same process was successfully used in the 1990s to create the framework for the then first and new CZA regulations.

To convene the RAC, DNREC:

- Sponsored an assessment to obtain the range of views on the new CZCPA and potential regulations (*see Appendix C: Coastal Zone Conversion Permit Act Process Recommendations Report*)
- Held two public workshops in November 2017 involving some 80 attendees to obtain feedback on the statutory changes to the CZA and the convening process for the regulation drafting (*see Appendix C: Coastal Zone Conversion Permit Act Process Recommendations Report*)
- Held a nomination process for members of the RAC
- Reviewed nominations and selected a range of RAC members to represent a diversity of interests and views, including environmental organizations, business and industry, affected communities, government planners, public health, and other diverse backgrounds (*see Appendix E: CZCPA RAC Membership List*)

The first meeting of the RAC took place in June 2018. The RAC then proceeded to convene over eleven half-to-full day meetings from June 2018 through April 2019. The RAC's purpose was to provide consensus recommendations, to the extent possible, to the Secretary of DNREC regarding the content, form, and scope of regulations for Conversion Permits. The RAC was asked to focus solely on the creation of additional regulations necessary to implement the intent of the CZCPA. The RAC was not charged with addressing the existing Regulations Governing Delaware's Coastal Zone.

DNREC developed, and the RAC reviewed and approved, a set of Procedures for RAC Operations (*see Appendix D: Procedures for RAC Operations*). In these procedures, the RAC set out roles and responsibilities for members, DNREC, a Chair, and a facilitator; established expectations for engagement in the RAC; and identified a decision rule for how decisions would be made regarding recommendations. The decision rule was defined as the consent of all or most committee members on the final recommendations issued by the RAC. The Procedures also allowed for the RAC to create work groups to help advise the RAC on various technical issues.

To ensure an effective and efficient process, DNREC appointed a RAC Chair and retained the services of a facilitator. The RAC Chair was Justice Randy J. Holland, who previously served on the Delaware Supreme Court for more than 30 years, retiring in March 2017. In agreeing to serve as Chair, Justice Holland requested that he serve as a non-voting member of the RAC to encourage consensus-based decision-making by the RAC. Facilitation was provided by Patrick Field with the not-for-profit, Consensus Building Institute (CBI).

5. SUMMARY OF WORK GROUPS

Per the DNREC Secretary's direction, the CZCPA RAC was the official body charged with providing recommendations to DNREC on the regulatory approach and content of new CZA regulations that will govern Conversion Permits. In addition, the RAC created and tasked four (4) Work Groups to provide the RAC with a range of technically feasible options or alternatives for consideration. The RAC asked that each Work Group develop the pros and cons of the various options developed. Work Groups were not to determine or recommend a specific option the RAC *should* pursue unless there was only one viable option. The Work Groups were established to address the following topics:

- Economic Effect
- Environmental Impact
- Offsets
- Risk Evaluation and Financial Assurance

The Work Groups were first convened in August 2018, and individual Work Groups completed their work between November 2018 and January 2019. Each Work Group's charge and membership are included in *Appendix H: Work Group Membership Lists, Meeting Summaries, and Products*.

The Work Groups labored extensively to produce a host of options for the RAC to consider. They were supported by both DNREC staff and an independent consultant with expertise in these fields, Industrial Economics of Cambridge, Massachusetts. Work Group outputs included an in-depth exploration of the range of financial assurance instruments and their appropriateness for different risk events, a set of options and a process flow for determining offsets to environmental impacts, and economic effect metrics to consider for Conversion Permit applications (please see *Appendix H: Work Group Membership Lists, Meeting Summaries, and Products*).

6. SUMMARY OF PUBLIC ENGAGEMENT

Given strong public interest in the CZCPA and the development of new regulations, DNREC and the RAC engaged the public in a number of ways. A brief summary of these activities is noted below. Public comments were welcomed throughout the RAC process via mail, email, and fax; during all RAC and Work Group meetings; and at the three public Open Houses. A summary of public input received on the RAC's preliminary recommendations is included in *Section 7: Final RAC Recommendations*.

- As noted above, DNREC held two public workshops in November 2017, involving some eighty (80) attendees, to obtain feedback on the statutory changes to the CZA and the convening process for the regulation drafting
- All RAC meetings were publicly noticed, open to the public, and included a time for public comment, including all Work Group meetings.
- DNREC staff engaged with various neighborhood groups and associations during the early work of the RAC. The goal of such engagement was to help fenceline communities, who are communities near or adjacent to a heavy industry use site, understand the regulatory development process and inform them of ways to provide input. DNREC attended meetings held by the following groups and communities:
 - Wilmington Neighborhood Planning Council Leadership (Sept. 5)
 - Edgemoor Coalition (Sept. 17)
 - Little Creek Town Council (Oct. 1)
 - Delaware City (Oct. 11)
 - Wilmington Neighborhood Planning Council, District 3 (Oct. 16)
 - Route 9 All Civic Associations (Oct. 24)
 - Wilmington Neighborhood Planning Council, District 1 (Nov. 20)
 - Claymont Renaissance Development Corporation (Dec. 5)
- The RAC and DNREC held three Open Houses in late February 2019 to obtain feedback from the public on the RAC's preliminary recommendations. The Open Houses were held in Claymont, Delaware City, and Wilmington on different nights. Each Open House ran from 5pm-8pm with the public able to attend at their convenience during those hours. The Open Houses included an overview presentation of the legislative changes and the RAC process in video form, as well as information stations, staffed by DNREC employees, on the RAC's preliminary recommendations (see *Appendix I: Public Open Houses Documents and Public Feedback Summary*). Seventy-four (74) members of the public attended the Open Houses across the three nights; some RAC members were also present at each Open House.
- During and after the Open Houses, the public was offered the opportunity to provide written feedback on the RAC's preliminary recommendations, with the purpose of informing future RAC discussions and final recommendations. These comments were collected by DNREC via feedback forms, made available at the Open Houses as well as online via the DNREC website. DNREC received a total of twenty-seven (27) individual comment form submissions (see *Appendix I: Public Open Houses Documents and Public Feedback Summary*). The RAC reviewed and deliberated upon public feedback received as it developed its final recommendations.
- The RAC's publicly available website served as a repository of information relating to the RAC and the CZA, including background information, meeting materials, public comment information, and information about the stakeholder engagement process.

7. FINAL RAC RECOMMENDATIONS

A. BULK PRODUCT TRANSFER FACILITIES

Background

A bulk product transfer facility is any port or dock facility that is used to transfer bulk quantities of any substance between ships or between a ship and an onshore facility. Bulk product transfer only applies to the transfer of loose materials like liquids, salt, or grain. The transfer of goods stored in containers, in crates, or on palettes is not considered to be bulk product transfer.

For regulatory purposes, the CZA (and existing regulations) excludes three types of Coastal Zone facilities from the definition of “bulk product transfer facility”:

- Bulk product transfer facilities in operation on June 28, 1971
- Docking facilities or piers used for a single, permitted industrial or manufacturing facility in which the bulk product being transferred is raw material used to manufacture other products, or is a finished product being transported for delivery
- Port of Wilmington docking facilities

Otherwise, the CZA prohibits bulk product transfer facilities in the Coastal Zone unless granted a Conversion Permit to build such a facility on one of the 14 heavy industry use sites. To apply for a Conversion Permit, two conditions specific to bulk product transfer facilities must be met, in addition to the other requirements of the CZA:

- (1) The site must have had a docking facility or pier used for a single industrial or manufacturing facility on or before June 28, 1971
- (2) The facility must only be used to import products necessary for and fully utilized in the operation of one or more Coastal Zone facilities *and/or* export products produced by one or more Coastal Zone facilities

The only exceptions to the two conditions above are:

- (1) Grain can be transferred anywhere, regardless of origin or destination
- (2) A Conversion Permit cannot be granted for bulk transfer of liquefied natural gas

Public Feedback provided on the RAC's Preliminary Recommendations

The public made the following general comments on the RAC's preliminary recommendations on bulk product transfer facilities. For a full summary of all public feedback, please see *Appendix I: Open Houses Documents and Public Feedback Summary*.

- Request that grain be treated the same as other bulk products and that all products bear the same requirements
- Concern that the details to be included in the required annual summary are not delineated specifically enough in the preliminary recommendations
- Concern about bulk transfer of natural gas liquids
- Request to add disaster planning in the event of a spill of bulk products

RAC Final Recommendations on Bulk Product Transfer Facilities

After deliberations, including reviewing public feedback, the RAC reached consensus among all its members on the following final recommendations regarding bulk product transfer facilities.

Conversion Permit regulations should require that:

- The following record keeping conditions apply to Conversion Permits:
 1. Records of specified bulk product transfer information (e.g., quantity of bulk product transfer, final destination of the product, date of product export) be kept on site at the bulk product transfer facility
 2. Bulk product transfer of grain only be required to keep records on the quantities and dates of imports and exports
 3. A summary of the specified information be submitted to DNREC on an annual basis
- Conversion Permits should, where practicable, be written to incorporate product categories so as to minimize the need for permit modification, or new permits for minor or related changes, in bulk products imported or exported
- Addition of a new bulk product category, not included in the existing permit, may require a permit modification or new permit due to potential impacts on financial assurance or environmental offsets

B. PLANS FOR POTENTIAL IMPACTS OF SEA LEVEL RISE AND COASTAL STORMS

Background

Sea levels in Delaware have risen by more than a foot over the past 100 years. Recent projections by Delaware's Sea Level Technical Advisory Committee indicate that sea levels are continuing to rise, as a result of global climate change. By 2050, sea levels could rise between 0.7 and 1.9 feet in the state. Sea level rise causes inundation of normally dry land, wetlands, and infrastructure. It also causes saltwater intrusion into groundwater and can decrease the depth to groundwater.

Coastal storms, like nor'easters and tropical storms, are a common occurrence in Delaware. Coastal storms often feature heavy rain, high winds, and higher than normal tides. High waves are also normally associated with coastal storms.

Sea level rise, coupled with coastal storms, is increasing the risk of flood damage to shorelines, infrastructure, and structures in coastal areas statewide. Delaware has comprehensively studied this issue and there are many publicly available resources to help landowners reduce their risk. Per the CZCPA, all Conversion Permit applicants must provide "A plan to prepare the site for potential impacts of sea-level rise and coastal storms over the anticipated useful life of the facility and infrastructure in connection with the applied-for use."

Public Feedback provided on the RAC's Preliminary Recommendations

The public made the following general comments on the RAC's preliminary recommendations on plans for potential impacts of sea level rise and coastal storms. For a full summary of all public feedback, please see *Appendix I: Open Houses Documents and Public Feedback Summary*.

- Concern that the default, 30-year planning horizon for the useful life of the facility is too short, given the long-term impacts of sea level rise and coastal flooding
- Concern that the 10-year plan update will lead to potential costly changes for a permitted facility
- Concerns about the quality and up-to-date nature of FEMA floodplain maps
- Concerns that Category 1 hurricanes and 95 mph wind speeds are insufficient standards for coastal storms planning

- Requests that sea level rise and coastal storm plans include details on safe shutdown in the event of storms, containment of hazardous materials in a storm or flood, disaster planning, and resilient design practices

RAC Final Recommendations on Plans for Potential Impacts of Sea Level Rise and Coastal Storms

After deliberations, including reviewing public feedback, the RAC reached consensus among all its members on the following final recommendations regarding plans for potential impacts of sea level rise and coastal storms.

- The Plan should detail risk, likely impacts, and mitigation measures for the following geographic areas:
 - The site's shoreline
 - Docks, piers, and offshore pipelines
 - All remediation areas on-site (including completed remediation areas and those in progress)
 - All structures on-site
 - Ingress/egress routes
- The Plan should include a discussion of any potential negative impacts to adjacent parcels resulting from development and flood mitigation activities
- The Plan should address the following hazards over the anticipated useful facility life:
 - Flooding, including the:
 - 1% chance flood (the current 100-year floodplain as defined by the effective FEMA maps)
 - 0.2% chance flood (the current 500-year floodplain as defined by the effective FEMA maps)
 - High sea level rise scenario (as defined by the effective Delaware Sea Level Rise Technical Committee recommendations)
 - Combined effect of sea level rise and 1% chance flood
 - Shoreline erosion
 - Wind speeds up to 95 mph, sustained
- The Plan should address measures necessary to evacuate, suspend operation(s), and secure the facility, when necessary, due to significant coastal storm events
- Any update to a permittee's Sea Level Rise and Coastal Storm Plan should be posted on the DNREC website for the public and be subject to written public comment for 30 days

C. ECONOMIC EFFECT

Background

Economic effect is the economic benefit a development project brings to Delaware. Economic effect has three components:

- Direct Effect – Jobs and revenue (such as taxes) generated by the site preparation, construction, and operation of the developed facility
- Indirect Effect – Jobs and revenue generated by the suppliers of goods and services for the developed facility (such as raw goods or cleaning services). In other words, the indirect workforce generates jobs and revenue by providing goods and services to the direct workforce

- **Induced Effect** – Jobs and revenue generated by industries that benefit from the wages of employees of the developed facility being “re-circulated” into the local economy. In other words, the direct workforce earns wages, and those wages are spent locally on other things (like food, entertainment, or healthcare), which generates jobs and revenue

The CZA states that economic effect must account for:

- Jobs created
- Income generated by the wages or salaries of new jobs (in relation to the land required for development)
- Potential tax revenues accrued to state and local government

Conversion Permit applicants must do the following in their application:

- Provide economic effect information for two scenarios:
 - Their development project
 - The most recent heavy industrial use on the site
- Compare the economic effect of the two scenarios above

Public Feedback provided on the RAC’s Preliminary Recommendations

The public made the following general comments on the RAC’s preliminary recommendations on economic effect. For a full summary of all public feedback, please see *Appendix I: Open Houses Documents and Public Feedback Summary*.

- Concern that DNREC cannot compel an outside party to prepare the baseline economic impact report
- Concerns that by limiting the phrase “existing or previous use” to only heavy industry uses, the Secretary would not be required (under 7014(c)(1)) to consider the environmental impact and economic effect of a site’s existing use if it is not heavy industry (i.e., the Secretary should consider whether the proposed new heavy industry use would supplant an existing, less harmful and possibly more economically beneficial use of the site by non-heavy industry)
- Concerns that the recommendations do not require the Secretary to consider the potential negative economic effect of a given project; for example, lower property taxes due to reduced property values for nearby residential or commercial properties; harm to tourism and recreation-related businesses; harm to local fisheries; financial impacts regarding the health of residents; livability/viability of communities; resale/property values; residents’ willingness to invest/maintain/improve properties; and the stability of communities/businesses whose taxes support Delaware towns, counties, schools, and the state itself
- Concern that under Section 7014(c)(3), the RAC does not spell out how environmental or economic improvement is analyzed or measured
- Concerns that environmental justice and public health concerns are not accounted for in the permitting process
- Requests that the “Employment” category of economic metrics specify the number of jobs and the expected duration and type of each job or category, including whether the job is permanent/temporary, full time/part time, contractor/permanent
- Requests that only outside, independent analysts conduct (or at least verify) economic effect assessments

RAC Final Recommendations on Economic Effect

After deliberations, including reviewing public feedback, the RAC reached consensus among all its members on the following final recommendations regarding economic effect.

- Conversion Permit regulations should define “existing or previous use” to mean the same as “most recent heavy industry use” or current use (if not a heavy industry use). Regulations should also hold that “economic effect” and “net economic improvement” use the same economic metrics
- In order to ensure a commonly understood baseline for economic effect, the State of Delaware will prepare a “baseline report” that will detail the economic effect of the most recent heavy industry use and current use (if not a heavy industry use) of the 14 sites. The applicant may use this baseline report, plus additional information they want to include, to prepare their Conversion Permit application
- Conversion Permit regulations should require that the applicant submit economic metrics for the following categories when reporting economic effect and net economic improvement:

Category	Specific Project Information Requested
Project Cost	Remediation, demolition, construction, operations, and capital costs; total investment costs
Tax Revenue	Property tax, gross receipts tax, personal income tax, corporate income tax, and other taxes; Conversion Permit applicants could be asked to take into account tax incentives or credits received or anticipated, as well as income tax write-offs in the tax numbers provided
Employment	Number of jobs and the expected duration and type of each job or category (such as whether the job is permanent/temporary, full-time/part-time, contractor/permanent); wages; and occupation distribution for all jobs expected to be created for site preparation, construction, and facility operations
State- and Community-Level Effect	Identification of local hiring preferences; local purchasing preferences; and investments in community benefit agreements, workforce development programs, or educational programs
Other Costs to the State	Tax incentives and credits; required infrastructure investment

- The RAC recommends that the Secretary consider any potential negative economic effect from the activity or facility set forth in the Conversion Permit
- The RAC agreed that DNREC should verify the economic information submitted by the applicant. DNREC may use any number of options for verifying the applicant’s submitted economic effect data and conclusions. These options could include, but are not limited to, applicant-provided data and case studies, state agency review by the appropriate agencies and staff, retention of an expert academic or consulting economist or economics firm, or the establishment of a more formal panel of experts from across the state (such as state employees and/or others)
- The RAC emphasizes that local, robust hiring is an intent and goal of the CZCPA. Thus, the RAC recommends that the Secretary, to the degree his or her role and authorities allow, seek to encourage and ensure such local hiring preferences and actions

D. ENVIRONMENTAL IMPACT

Background

Environmental effects or impacts are caused by things such as:

- The construction or operation of an industrial facility or infrastructure project
- The release of a substance into (or a disturbance to) the environment

Environmental impacts may affect air, water, land, or living organisms, starting from where the impact originates. Impacts can be positive, negative, or neutral. The original CZA provides a detailed list of environmental impacts that must be addressed by applicants for a Coastal Zone Permit or a Conversion Permit. These include but are not limited to: probable air and water pollution likely to be generated by the proposed use under normal operating conditions, as well as during mechanical malfunction and human error; likely destruction of wetlands, flora, and fauna; impact of site preparation on drainage of the area in question (especially as it relates to flood control); impact of site preparation and facility operations on land erosion; effect of site preparation and facility operations on the quality and quantity of surface, ground and subsurface water resources, such as the use of water for processing, cooling, effluent removal, and other purposes; in addition, but not limited to, likelihood of generation of glare, heat, noise, vibration, radiation, electromagnetic interference and obnoxious odors.

Conversion Permit applicants must do all of the following in their application:

- Develop an Environmental Impact Statement (EIS) for their proposed development
- Provide information on the environmental impacts of two scenarios:
 - Their proposed development
 - The most recent heavy industrial use on the site
- Compare the impacts of the two scenarios above

Public Feedback provided on the RAC's Preliminary Recommendations

The public made the following general comments on the RAC's preliminary recommendations on environmental impact. For a full summary of all public feedback, please see *Appendix I: Open Houses Documents and Public Feedback Summary*.

- Concern that proposing a "baseline" of "current use and existing conditions" does not meet the required comparison to the "most recent heavy industry use" for either net environmental improvement or offset determination purposes
- Concerns that assessment of public health, community and environmental justice impacts are not called for, nor clearly spelled out
- Request that environmental impacts include all potential impacts to all flora and fauna, not just those listed at the state and federal level, as well as estimating the potential direct and indirect impacts to flora and fauna as a result of accidental release or malfunction
- Concern that the recommendations are not explicit about including carbon dioxide emissions as a pollutant
- Concern that the required environmental impacts are not delineated as clearly and specifically as the economic impacts
- Concern that the RAC does not address how environmental or economic improvement is determined or measured

RAC Final Recommendations on Environmental Impact

After deliberations, including reviewing public feedback, the RAC reached consensus among all its members on the following final recommendations regarding environmental impact.

- DNREC should produce a baseline report of current use and existing environmental conditions, impacts, and risks on the 14 heavy industry use sites (including but not limited to those items described in CZA Section 7015). In his or her Conversion Permit application, the applicant may describe any proposed changes from that baseline, further elaborating on the DNREC baseline report as they wish (including providing additional information on the environmental history of the site, if necessary, to explain how the existing environmental conditions came about)
- For CZCPA purposes, environmental impacts should be characterized in the same manner used to characterize environmental impacts under the current CZA permit program, consistent with the existing CZA statutory definition of “environmental impact” (Section 7004(b)(1))
- Direct and cumulative impacts should continue to be considered for Conversion Permits, per the existing Regulations Governing Delaware’s Coastal Zone, Section 8.3.2

E. OFFSETS

Background

Offsets are actions used to ameliorate negative environmental impacts. Certain environmental laws require developers to carry out offset “projects” to counteract the negative environmental impacts caused by their proposed development. Offset projects need to take into account:

- Type – What the impact is (for example, air vs. water pollution)
- Location – Where the impact originates, how far the impact reaches
- Timing – How long the impact lasts, how often the impact is generated
- Affected Community – What people or other living organisms are impacted

Offsets are most effective when the project ameliorates the impacts as closely as possible in Type, Location, Timing, and Affected Community. Offsets are intended to be undertaken only after all reasonable steps have been taken to avoid the negative impact in the first place.

Conversion Permit applicants must, in their application, propose an offset project that both:

- “More than offsets” the impacts of their proposed development “on an annual basis,” and
- Favors offsets that directly benefit Delaware

Public Feedback provided on the RAC’s Preliminary Recommendations

The public made the following general comments on the RAC’s preliminary recommendations on offsets. For a full summary of all public feedback, please see *Appendix I: Open Houses Documents and Public Feedback Summary*.

- Request that the RAC modify the recommendations to make clear that the steps in Recommendations #3-8 be sequential. As such, an applicant must first engage in Step #3 and not move to Step #4 unless they demonstrate to DNREC’s satisfaction that a “Step #3” offset is not feasible
- Concerns that offsets do not address the cumulative impacts over time from both existing and new multiple facilities

- Request that minimizing or avoiding impacts should be the first and clearly stated priority, not offsetting them
- Concern that the recommended offsets process allows for offsets that do not directly relate to environmental impact (e.g., donation to a bird rescue and/or rehabilitation organization)
- Request that the offset proposal cover environmental impacts over the expected life of the facility rather than the duration of the permit
- Request that offset proposals offset more than the expected adverse impacts by a quantified number (e.g., at least 50% more)

RAC Final Recommendations on Offsets

After deliberations, including reviewing public feedback, the RAC reached consensus among all its members on the following final recommendations regarding offsets.

- Note that under 7 Del. C. § 7014 all offset proposals shall favor offsets that directly benefit Delaware
- The offset proposal must more than offset all environmental impacts, including, but not limited to, one-time impacts and annual environmental impacts
- An offset project should be located as close as possible to the site and, to the greatest extent possible be consistent with the negative impact in medium, duration, timing, and pollutant
 - For example, if “adverse impact” is the emission of 10lbs of NOx annually, the most suitable offset is to reduce another source of NOx on the site by more than the new emission
 - Or, if a new process will emit 90 decibels of noise, 12 hours per day, over some specified time period, the offset could focus on reducing other sources of noise in the community (e.g., building structures to reduce noise from a nearby highway or facilitating a change in truck routes to reduce truck-related noise in the local community)
- If the applicant is unable to identify an offset for the same pollutant in the same medium on or close to the site, then they should offset a similar pollutant or environmental impact. “Similar” means a pollutant that has the same type of effect on the environment when it is released (e.g., offset a benzene (a Volatile Organic Compound [VOC]) emission that would affect ozone with a different VOC (xylene))
- If it is not possible to offset a particular environmental impact on or near the site, then the applicant should identify an offset project for the pollutant in the same medium somewhere else in the Coastal Zone, but as close as possible to the site
- If it is not possible to offset the same pollutant or impact somewhere else in the Coastal Zone, then the applicant should search for another location in Delaware, with preference given to potential projects closer to the Coastal Zone
- If the applicant is not able to identify an appropriate offset project through the previous steps, they should consider:
 - The environmental effect and attempt to identify an offset as close to the site as possible that will counter that negative effect
 - An offset for the same pollutant in a different medium as close to the site as possible
- If the applicant is not able to identify an appropriate offset project through the previous steps, the applicant may propose an alternative environment improvement project of commensurate value to Delaware’s coastal resources, as close to the site as possible. Such projects might

include recreational access opportunities, waterfront community engagement, or other community benefits, with a nexus to net ecological improvement

- Related considerations and recommendations:
 - To the extent feasible, the offset process should encourage concurrent permitting or consultation to provide administrative efficiencies, and to facilitate coordination among the applicant and regulators
 - With respect to the location of offset projects, local impacts should be offset locally and the applicant should directly and meaningfully engage the community in consideration of offsets
 - Minimizing environmental impacts is a priority in the CZCPA process. The offset process is intended to address environmental impacts that cannot be avoided or further minimized
 - The existence of an offset process does not in any way limit DNREC's authority to reject Conversion Permit applications with environmental impacts determined to be too severe, or for which potential offset projects have insufficient nexus
 - The Secretary should provide greater clarity on the process and procedures for demonstrating offset consistency with these rules and priorities

F. FINANCIAL ASSURANCE

Background

Financial Assurance is a way for an owner or operator of an industrial site to guarantee that a certain amount of money will be available to address environmental contamination on the site. Certain environmental laws require financial assurances; though exact requirements differ based on the:

- Type of industrial operation
- Type of contamination
- Scenario that causes the contamination
- Timescale for providing financial assurance
- Amount of money required to be guaranteed
- "Tools" allowed to be used for financial assurance

Financial assurance comes into play when the owner or operator of the site is unable or unwilling to address the contamination. When this happens, the environmental regulator is able to access the money guaranteed by the financial assurance to address the contamination.

Various "tools" are used for financial assurance. Some tools are provided by a third party, like a bank or insurance company. Example third-party tools include a trust fund, letter of credit, insurance policy, or surety bond. Other tools, called self-insurance, are provided by the owner or operator itself. Example self-insurance tools include a corporate financial test, corporate guarantee, or captive insurance.

The CZA requires Conversion Permit applicants to provide financial assurance for three scenarios:

- (1) Contamination on the project site at the time of application
- (2) Termination, liquidation, or abandonment of heavy industry or bulk product transfer activities on the project site
- (3) Future incidents that result in environmental contamination on the project site

For Scenario (1), financial assurance must guarantee sufficient funds to comply with the Delaware Hazardous Substance Cleanup Act and any other laws that relate to existing contamination on the project site.

For Scenarios (2) and (3), financial assurance must guarantee sufficient funds to minimize environmental damage and stabilize and secure the project site in either of these situations. The applicant must submit a “concept” financial assurance plan with their permit application. If the permit is issued, a “final” plan must be approved by DNREC before operations on the project site can begin.

Public Feedback provided on the RAC’s Preliminary Recommendations

The public made the following general comments on the RAC’s preliminary recommendations on financial assurance. For a full summary of all public feedback, please see *Appendix I: Open Houses Documents and Public Feedback Summary*.

- Concern that the duration of financial assurance needs to be more clearly prescribed. For example, by linking it to the duration of the permit
- Concern that the recommendations do not cover how to determine the required dollar amount of financial assurance, leaving too much discretion to DNREC
- Concerns about self-insurance being allowed as a financial assurance instrument, and the Secretary’s discretion to allow its use
- Concerns that the time period of financial assurance review is not clearly specified
- Request that contamination events be covered by financial assurance tools
- Request that the terms “environmental damage” (or “environmental contamination”) be more clearly defined by the Secretary under financial assurances

RAC Final Recommendations on Financial Assurance

After deliberations, including reviewing public feedback, the RAC reached consensus among all its members on the following table of recommendations per financial assurance (see below). This table provides information on: (1) event categories of expected financial risk, (2) the process used in establishing financial assurance for each risk event, (3) the way to determine the amount of financial assurance necessary to meet the requirements of the CZA, (4) the types of financial assurance instruments available, and (5) each instrument’s ability to both adapt to the time horizon of a risk event and to ensure funds are available in the time and amount necessary.

In addition to this table, the RAC offered the following final recommendations:








- Financial assurances, in general, must be commensurate with the use (and associated risks) proposed by the Conversion Permit applicant
- The form and amount of financial assurances should be reviewed at appropriate periodic intervals, since financial conditions can change once a Conversion Permit is in place. Such review should occur for the life of that permit
- The Secretary should define more clearly “environmental damage,” as outlined in the statute. Does such damage include natural resources damages, public health damages, or economic loss associated with natural resource-related activities such as fishing, swimming, boating, and beach-going?
- The RAC supports providing a range of financial assurance instruments, from trust funds to captive insurance, as described in the table below. However, because the time frame until

potential termination, abandonment, or liquidation of site activities is potentially several decades out and the potential that bankruptcy could cause such closure, self-insurance instruments are not preferred as actions to minimize environmental damage, and stabilize and secure the site upon termination, abandonment, or liquidation of site activities. Thus, the RAC recommends the following:




- The Secretary should consider either offering expedited or less complex review for applicants who use third-party instruments, or a clearly described, sequential process where the applicant has to explain why, how, and what protections are in place should they utilize self-insurance options
- Like all instruments, self-insurance instruments will need to be reviewed at the appropriate periodic intervals
- DNREC's review of self-insurance options will likely require expertise beyond DNREC's current staffing and expertise. Thus, the Secretary should ensure that, for any applicant utilizing self-insurance, DNREC is able to cover the additional administrative costs of reviewing and considering such financial instruments, and that such costs be taken into account when determining the application fee
- The RAC encourages the Secretary to ensure that he or she has the authority, in the periodic review of self-insurance instruments, to require those who self-insure to carry a blended approach of third-party and self-insurance instruments and/or to move to only third-party instruments, as circumstances merit

CZCPA FINANCIAL ASSURANCE (FA) RISK CATEGORIES, PROCESSES, AMOUNTS, AND TYPES OF INSTRUMENTS
RAC FINAL RECOMMENDATIONS

Risk Event Category	FA Process	FA Amount	Types of FA Instruments						
			Third-Party Instruments			Self-Insurance			
			Trust Fund	Letter of Credit	Insurance Policy	Surety Bond	Corporate Financial Test	Corporate Guarantee	Captive Insurance
<p>Actions to address existing site contamination.</p> <p>Time Horizon: Short to Medium Term</p>	<p>CZCPA applications should identify actions, and associated FA, to address current site contamination. DNREC conducts application-specific evaluations of the sufficiency of existing FA, coordinating with other state and federal personnel familiar with the site.</p>	<p>The need for and amount of Conversion Permit FA should be determined on an application-specific basis. Such determination should be based on the degree to which existing FA at the site is sufficient to meeting existing site needs. Amount of FA should be incremental to all existing site FA.</p>	●	●	●	●	●	●	● <i>Funds Availability</i>
<p>Actions to minimize environmental damage, stabilize and secure the site 'upon termination, abandonment or liquidation of site activities'</p> <p>Time Horizon: Medium to Long Term</p>	<p>A "concept plan" of action(s) must be submitted with the Conversion Permit, along with a proposal for associated FA. Upon DNREC approval of a "final plan", the permit applicant should be required to procure the approved FA and evince such FA to DNREC prior to site operation.</p>	<p>Face value should be equal to the estimated cost of completing the activities in the DNREC-approved plan, including DNREC oversight/administration costs. The face value should be downward adjusted to the degree existing FA covers activities identified in the DNREC-approved plan.</p>	●	●	●	●	● <i>Not Adaptive to Long Time Horizons</i>	● <i>Funds Availability</i>	● <i>Not Adaptive to Long Time Horizons</i>
<p>Actions to address future incidents resulting in environmental contamination</p> <p>Time Horizon: Short, Medium, or Long Term</p>	<p>Any approved permit should include language stating that FA will be required to address site-specific actions to address environmental contamination incidents if/when they occur. DNREC should be mindful that other existing state/federal requirements may affirmatively require FA for such actions pursuant to other regulatory authorities.</p>	<p>The Secretary should consider a two-pronged approach for future possible but unknown incidents. First, the Secretary should evaluate the potential use and availability of insurance or similar mechanisms to ensure availability of some funding in advance of the occurrence of a future triggering event. Second, following an incident, DNREC should ensure that sufficient FA is put in place such that the face value should be equal to the estimated cost of specified actions to minimize environmental damage, including DNREC oversight/administration costs. The face value should be downward adjusted to the degree existing FA covers such actions.</p>	●	●	●	●	● <i>Short Term</i>	● <i>Short Term</i>	● <i>Short Term</i>
							● <i>Medium to Long Term</i>	● <i>Medium to Long Term</i>	● <i>Medium to Long Term</i>

Maintenance or repair of site or infrastructure improvements to address sea level rise or coastal storms	CZCPA applications should identify any site or infrastructure improvements that will be undertaken to address sea level rise or coastal storms. DNREC conducts application-specific evaluation of the extent to which FA is needed to ensure sufficient funds to address associated maintenance and/or potential future repair.	Face value should be equal to the estimated cost to maintain and/or repair relevant infrastructure and site improvements, including DNREC oversight/ administration costs. The face value should be downward adjusted to the degree existing FA covers such actions.							
Time Horizon: Short to Long Term							Short Term	Short Term	Short Term
							Medium to Long Term	Medium to Long Term	Medium to Long Term

KEY:

-  FA instrument is adaptive to the time horizon of the risk event and provides reasonable assurance of funds availability in the timing and amounts necessary assuming the instrument is structured correctly.
-  FA instrument is not easily adapted to the time horizon of the risk event or may not provide reasonable assurance of funds availability in the timing and amounts suggested by the risk event category.
-  FA instrument is not easily adapted to the time horizon of the risk event and does not provide the regulator with reasonable assurance of funds availability.

G. CROSS-CUTTING ISSUES

Background

There are a number of issues that are relevant to the other six topic areas. These “Cross-Cutting Issues” include:

- *Definition of “Project Site,”* which determines the physical boundaries of the project subject to a Conversion Permit
- *Definition of “Useful Life,”* which may affect such issues as plans for potential impacts of sea level rise and coastal storms, as well as financial assurance
- *Permit Duration, Modification, Renewal, and Revocation,* for, unlike the current Coastal Zone Permits, which are granted “one and done” much like a land use permit, the Conversion Permit, given its scale, complexity, and potential impacts, may require a permit term.
- *Permit Monitoring and Reporting Post-Approval,* again, given the complex nature of the Conversion Permits

Public Feedback provided on the RAC’s Preliminary Recommendations

The public made the following general comments on the RAC’s preliminary recommendations on the aforementioned cross-cutting issues. For a full summary of all public feedback, please see *Appendix I: Open Houses Documents and Public Feedback Summary*.

- Request that there be a time period defined within which DNREC must act on permit renewals so that the permit cannot continue indefinitely
- Concern that there is a presumption that a permit will be renewed
- Concern about the permit duration, particularly that it should be shorter (10 or 5 years were mentioned)
- Concern that permit renewal does not include a review of “Environmental Impacts” listed specifically as a focus in the second paragraph
- Request that inspections occur annually
- Concern that the 14 heavy industry use sites can be subdivided, potentially resulting in more than 14 Conversion Permits over time. Request that only one type of heavy industrial use be allowed on each of the 14 sites
- Concern that the permit modification language should be differently defined or may not be necessary since new activities should require a new permit application
- Question about how CZA applies to possible expansion into properties adjacent to the 14 grandfathered CZA sites

RAC Final Recommendations on Cross-Cutting Issues

After deliberations, including reviewing public feedback, the RAC reached consensus among all its members on the following final recommendations for the aforementioned cross-cutting issues.

- *“Useful life”* means the period of time that an applicant or permittee expects to operate a facility that requires a Coastal Zone Conversion Permit. The useful life equals thirty (30) years unless the Secretary allows an application for, or issues a permit for, a different time period. This definition is potentially pertinent to sea level rise planning, financial assurances, and offsets

- *Conversion Permit duration* (both for the initial permit and any renewed permit) should be 20 years
- Regarding *Conversion Permit monitoring and reporting post-approval*:
 - *For Site Plans for Sea Level Rise and Coastal Storm Impacts*: At least every 10 years, the permittee should update their Sea Level Rise and Coastal Storm Plan for the project site
 - *For Offsets*: Applicant should provide a monitoring schedule that describes a process for third-party verification of an offset project's operation and completion
 - *For Financial Assurance*: A Conversion Permittee should annually, within ten (10) days of the anniversary date of issuance of its permit, submit to DNREC evidence that the financial assurance required by the permit is in effect in the amount required by the permit and that the permittee has taken all necessary measures to ensure that the financial assurance will remain in effect throughout the relevant time periods for each type of financial assurance required
 - *For Bulk Product Transfer*: The permittee should submit an annual report (as previously recommended by the RAC)
 - *For Site Inspections*: DNREC access to the site should be allowed at reasonable times and on a regular basis, with reasonable times generally meaning operating hours
- Regarding *Conversion Permit revocation*, the Secretary may revoke a permit for significant or repeated violations, including but not limited to:
 - A lapse in financial assurance
 - Failure to complete or maintain an offset
 - Denial of DNREC access to the permitted site or to records related to (or required to be kept by) a permittee
 - Making any false statement, representation, or certification in an application, record, report, plan, or other document filed (or required to be maintained by) the permit
- *Modifications to an existing Conversion Permit* would be allowed. If the Secretary grants a request for a modification, only the conditions subject to modification are reopened. The remainder of the permit remains as is. Modifications would occur in two forms:
 - *Minor modifications* would be for administrative changes and would not require public notice. Administrative changes include, but are not limited to, corrections of spelling or grammatical errors, a change in only the name of the owner or operator of a permittee, or other administrative matters that do not affect the substantive requirements prescribed by the permit. DNREC should post minor modifications on its website and listservs
 - *Major modifications* would be changes that affect the substantive requirements of the permit and would require public notice and review. A modification of the ownership or operating entity in a permit shall be granted only in the event that the prospective permittee satisfies all the applicable requirements under these regulations
- *Conversion Permit renewal* should be allowed. The application for permit renewal should be submitted no fewer than 180 days prior to expiration. So long as there is a timely renewal application, the permit should continue until the renewal application is acted upon by DNREC. The RAC notes that DNREC already has permitting review timelines required under the Coastal Zone Act. The renewal process should be streamlined, as compared to the original application,

and focused on environmental impacts and offsets, financial assurance, and sea level rise and coastal storm planning and should take into account the applicant's compliance record.

- *"Project Site"* means the physical location at which a permitted facility operates or the location where a proposed project, that is the subject of a Conversion Permit application, will operate. A project site may comprise an entire tax parcel, or parcels, or part(s) of any tax parcel(s); however, its preliminary boundary shall be defined prior to the issuance of a permit in the application for a permit, and its final boundary, after a permit is granted by the Secretary, shall be defined in the permit. For nonconforming uses, if a project site's boundary is not defined in a permit, the boundary is the footprint in Appendix B of the Regulations Governing Delaware's Coastal Zone. A Conversion Permit may not be granted for a heavy industry use or bulk product transfer facility outside a heavy industry use site depicted in Appendix B
 - **NOTE:** *One member objected to this definition of Project Site because they are concerned that heavy industry use sites will be subdivided, leading to multiple permittees, numerous smaller uses, greater risks across the site as a whole, high monitoring costs to DNREC, and the potential of "high grading" the site so some portions are left contaminated and not remediated nor restored to industrial use. All members did agree that the Secretary should provide greater clarification on how changing project site boundaries, such as through subdivision, would be a major permit modification*

8. APPENDICES (electronically available)

The appendices of this report list and link to meeting summaries and key documents that were part of the CZCPA RAC's deliberation and recommendation-making process. Copies of these documents are also available upon request from the DNREC Coastal Zone Act Program.

Additional documents that were part of the CZCPA RAC process can be found at de.gov/czcparac.

Appendix A: Statutes and Existing Regulations

The hyperlinks below link to the listed documents. These documents can also be accessed via de.gov/conversionpermits.

- [Coastal Zone Act \(7 Del. C. §§ 7001-7015\)](#)
- [Coastal Zone Conversion Permit Act \(81 Del. Laws, c. 120\)](#)
- [Regulations Governing Delaware's Coastal Zone \(Effective May 11, 1999\)](#)

Appendix B: Heavy Industry Use Site Maps and Descriptions

The hyperlinks below link to the listed documents. These documents can also be accessed via de.gov/czcparac, unless otherwise noted.

Maps and Spatial Information

- [Maps of the Delaware Coastal Zone and the 14 Heavy Industry Use Sites](#)
- [Interactive Map Viewer of Delaware's Coastal Zone and the 14 Heavy Industry Use Sites](#) (accessible via de.gov/czamap)
- [Spatial Data and Information for Areas Surrounding the 14 Heavy Industry Use Sites](#)
- [Flood and Sea Level Rise Risk at the 14 Heavy Industry Use Sites](#)

Contamination and Remediation Information

- [Remediation Status Baseline Report on Existing Heavy Industry Use Sites \(September 2017\)](#)
- [Remediation Status Baseline Report on Existing Heavy Industry Use Sites \(December 2018 Update\)](#)
- [14 Heavy Industry Use Sites Fact Sheets](#)

Appendix C: CZCPA Process Recommendations Report

The hyperlinks below link to the listed document. This document can also be accessed via de.gov/czcparac.

Final Coastal Zone Conversion Permit Act Process Recommendations Report with Appendices

Appendix D: Procedures for RAC Operations

The hyperlink below links to the listed document. This document can also be accessed via de.gov/czcparac.

Final Procedures for RAC Operations

Appendix E: CZCPA RAC Membership List

Listed below are the members of the CZCPA RAC as of April 16, 2019. Each RAC member, with the exception of the Chair, has an organization or constituency to which he or she was affiliated when the CZCPA RAC was convened. These affiliations are also listed below.

RAC Chair: Justice Randy J. Holland, retired

RAC Members:

- Jennifer Adkins – Partnership for the Delaware Estuary
(designated alternate Joshua Moody)
- William Ashe – International Longshoremen’s Association 1694
(designated alternate Ronald “Kimoko” Harris)
- Neeraj Batta – Batta Environmental
- Brenna Goggin – Delaware Nature Society
(designated alternate Mary Peck)
- Michael Hackendorn – Delaware Building and Construction Trades Council
- Ronald Handy, Sr. – Boys & Girls Club of Delaware
(designated alternate Dora Williams)
- S. Douglas Hokuf, Jr. – New Castle County
(designated alternate Mark Wolanski)
- Herb Inden – City of Wilmington
(designated alternate Tim Lucas)
- Tim Konkus – Delaware City Marina & Main Street Delaware City, Inc.
(designated alternate Jeffrey Gordon)
- Larry Lambert¹ – Claymont Renaissance Development Corporation
(designated alternate Frances West)
- Awele N. Maduka-Ezeh – Public Health Representative
- James Maravelias – AFL-CIO
- Jerry Medd – Pilots’ Association for the Bay and River Delaware
(designated alternate Jack Hanley)
- Jeffrey Richardson – Imani Energy
- Robert Whetzel – Richards, Layton & Finger Law Firm
(designated alternate James DeChene)
- Delores Whildin – Resident of Claymont
(designated alternate Brett Saddler)
- Marian Young – BrightFields, Inc.
(designated alternate Kathy Stiller)

¹ Effective at the October 9, 2018 RAC Meeting, Larry Lambert replaced V. Eugene McCoy, Jr., as a member of the CZCPA RAC. Dr. McCoy passed away during the RAC’s early proceedings. Dr. McCoy represented the Council of Civic Organizations of Brandywine Hundred, Inc.

Appendix F: RAC Meeting Agendas

The hyperlinks below link to the listed documents. These documents can also be accessed via de.gov/czcparac.

- [June 14, 2018 Meeting Agenda](#)
- [July 12, 2018 Meeting Agenda](#)
- [August 21, 2018 Meeting Agenda](#)
- [September 12, 2018 Meeting Agenda](#)
- [October 9, 2018 Meeting Agenda](#)
- [November 7, 2018 Meeting Agenda](#)
- [December 11, 2018 Meeting Agenda](#)
- [January 22, 2019 Meeting Agenda](#)
- [February 19, 2019 Meeting Agenda](#)
- [March 12, 2019 Meeting Agenda](#)
- [April 16, 2019 Meeting Agenda](#)

Appendix G: RAC Meeting Summaries

The hyperlinks below link to the listed documents. These documents can also be accessed via de.gov/czcparac.

- [June 14, 2018 Meeting Summary](#)
- [July 12, 2018 Meeting Summary](#)
- [August 21, 2018 Meeting Summary](#)
- [September 12, 2018 Meeting Summary](#)
- [October 9, 2018 Meeting Summary](#)
- [November 7, 2018 Meeting Summary](#)
- [December 11, 2018 Meeting Summary](#)
- [January 22, 2019 Meeting Summary](#)
- [February 19, 2019 Meeting Summary](#)
- [March 12, 2019 Meeting Summary](#)
- [April 16, 2019 Meeting Summary](#) (*link will be provided when available*)

Appendix H: Work Group Membership Lists, Meeting Summaries, and Products

The hyperlinks below link to the listed documents. These documents can also be accessed via de.gov/czcparac or de.gov/czcpaworkgroups.

Economic Effect Work Group

- Membership List (with affiliations)
 - Patty Cannon – Department of State, Division of Small Business, Development and Tourism
 - Vince D’Anna – Self
 - Bill Freeborn – KBF Advisors, LLC
 - Michael Gould – Department of Insurance

- Jennifer Hudson – Department of Finance, Division of Revenue
- Paul Morrill – The Committee of 100
- Tamarra Morris – New Castle County, Economic Development
- Ed Ratledge – University of Delaware, Center for Applied Demography & Survey Research
- Brett Saddler – Claymont Renaissance Development Corporation
- George Sharpley – Department of Labor, Office of Occupational and Labor Market Information
- Meeting Summaries
 - [September 11, 2018 Meeting Summary](#)
 - [September 25, 2018 Meeting Summary](#)
 - [October 9, 2018 Meeting Summary](#)
 - [October 23, 2018 Meeting Summary](#)
- Products
 - [Economic Effect Work Group Charge](#)
 - [DNREC Clarification on the Economic Effect Work Group Charge](#)
 - [Economic Effect Work Group Initial Scope of Work](#)
 - [Economic Effect – Revised Options for RAC Review](#)
 - [Example Economic Effect Questions for RAC Review](#)

Environmental Impact Work Group

- Membership List (with affiliations)
 - Tim Cooper – Department of Health and Social Services, Office of Preparedness
 - Jay Cooperson – Sierra Club
 - David DeCaro – Chesapeake Utilities
 - Tom Godlewski – Delaware City Refinery / PBF Energy
 - Simeon Hahn – National Oceanic and Atmospheric Administration, Office of Response and Restoration
 - Jackie Howard – DNREC Division of Waste and Hazardous Substances
 - Angela Marconi – DNREC Division of Air Quality
 - Ellie Mortazavi – New Castle County, Department of Public Works
 - Bob Palmer – DNREC Division of Watershed Stewardship
 - Ian Park – DNREC Division of Fish & Wildlife
 - Craig Rhoads – DNREC Division of Fish & Wildlife
 - Matt Sarver – Delaware Ornithological Society
 - Kari St. Laurent – DNREC Division of Climate, Coastal, & Energy
 - Kristen Thornton – DNREC Division of Waste and Hazardous Substances
 - Ping Wang – DNREC Division of Water
- Meeting Summaries
 - [September 12, 2018 Meeting Summary](#)
- Products
 - [Environmental Impact Work Group Charge](#)
 - [Environmental Impact Work Group Initial Scope of Work](#)

Offsets Work Group

- Membership List (with affiliations)
 - Jeremy Ashe – DNREC Division of Fish & Wildlife
 - Matt Brill – Self
 - James Brunswick – DNREC Community Ombudsman
 - Patty Cannon – Department of State, Division of Small Business, Development and Tourism
 - Sarah Cooksey – The Nature Conservancy
 - Gene Donaldson – DelDOT
 - Tom Godlewski – Delaware City Refinery / PBF Energy
 - Simeon Hahn – National Oceanic and Atmospheric Administration, Office of Response and Restoration
 - Doug Janiec – Sovereign Consulting
 - Todd Keyser – DNREC Division of Waste and Hazardous Substances
 - Vikram Krishnamurthy – Delaware Center for Horticulture
 - Rita Landgraf – University of Delaware, College of Health Sciences
 - Susan Love – DNREC Division of Climate, Coastal, & Energy
 - Ellie Mortazavi – New Castle County, Department of Public Works
 - Bob Palmer – DNREC Division of Watershed Stewardship
 - Mark Prettyman – DNREC Division of Air Quality
 - Craig Rhoads – DNREC Division of Fish & Wildlife
 - Peggy Schultz – League of Women Voters
 - Derrick Schweitzer – Croda
 - Ping Wang – DNREC Division of Water
 - Martin Willis – Self
- Meeting Summaries
 - [September 11, 2018 Meeting Summary](#)
- Products
 - [Offsets Work Group Charge](#)
 - [Offsets Work Group Initial Scope of Work](#)
 - [Offsets – Draft Options for RAC Review](#)
 - [Draft Coastal Zone Act Offsets Rules and Priorities](#)

Risk Evaluation and Financial Assurance Work Group

- Membership List (with affiliations)
 - Eileen Butler – DNREC Division of Waste and Hazardous Substances, Tank Management Section
 - Patty Cannon – Department of State, Division of Small Business, Development and Tourism
 - 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 Hupp² – 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
- Robert Whetzel – Richards, Layton & Finger / CZCPA RAC Member
- Jill Williams-Hall – DNREC Division of Waste and Hazardous Substances, Site Investigation and Restoration Section
- Meeting Summaries
 - [September 5, 2018 Meeting Summary](#)
 - [September 19, 2018 Meeting Summary](#)
 - [October 3, 2018 Meeting Summary](#)
 - [October 16, 2018 Meeting Summary](#)
 - [October 30, 2018 Meeting Summary](#)
- Products
 - [Risk Evaluation and Financial Assurance Work Group Charge](#)
 - [DNREC Clarification on the Risk and Financial Assurance Work Group Charge](#)
 - [Risk Evaluation and Financial Assurance Initial Scope of Work](#)
 - [Financial Assurance Technical Background Paper](#)
 - [Example Financial Assurance Regulations \(Louisiana\)](#)
 - [Federal Environmental Laws with Financial Assurance Requirements](#)
 - [Delaware Environmental Regulations with Financial Assurance Requirements](#)
 - [Risk Evaluation and Financial Assurance – Revised Options for RAC Review](#)
 - [Summary Table of Financial Assurance by Risk Event Category](#)
- All-Hands Joint Work Groups Meeting
 - [August 21, 2018 Meeting Summary](#)

Appendix I: Public Open Houses Documents and Public Feedback Summary

The hyperlinks below link to the listed documents. These documents can also be accessed via de.gov/czcparac or de.gov/czcpaopenhouses.

- [CZCPA RAC Open Houses Informational Video](#)
- [CZCPA RAC Preliminary Recommendations Packet](#)
- [Maps of the Delaware Coastal Zone and the 14 Heavy Industry Use Sites](#)
- [Overview Posters](#)
- [Topic #1: Economic Effect Posters](#)
- [Topic #2: Sea Level Rise and Coastal Storms Posters](#)

² Effective at the October 3, 2018 Risk Evaluation and Financial Assurance Work Group Meeting, Renee Hupp replaced Ed Tyczkowski, as a member of the Work Group. Mr. Tyczkowski had represented the Delaware Emergency Management Agency but left his position at the Agency partway through the Work Group’s proceedings.

- [Topic #3: Environmental Impacts and Offsets Posters](#)
- [Topic #4: Financial Assurance Posters](#)
- [Topic #5: Bulk Product Transfer Facilities Posters](#)
- [Topic #6: Cross-Cutting Issues Posters](#)
- [CZCPA RAC Open Houses Public Feedback Summary](#)


Appendix J: Other Key Documents

The hyperlinks below link to the listed documents. These documents can also be accessed via de.gov/czcparac.

- [Bulk Product Transfer Facilities – Draft Recommendations for RAC Review](#)
- [Sea Level Rise and Coastal Storms – Draft Goals and Questions for Discussion](#)
- [Sea Level Rise and Coastal Storms – Draft Recommendations](#)
- [Cross-Cutting Issues – Revised Proposals for Regulatory Approaches](#)

Coastal Zone Conversion Permit Act Regulatory Advisory Committee

We, the undersigned members of the Coastal Zone Conversion Permit Act Regulatory Advisory Committee, acting as individuals, submit this Final Report relating to the development of regulations governing the administration of Delaware's Coastal Zone Conversion Permit Act.


Jennifer Adkins

Partnership for the Delaware Estuary
(designated alternate Joshua Moody)


Larry Lambert

Claymont Renaissance Development Corporation
(designated alternate Frances West)


William Ashe*

International Longshoremen's Association 1694
(designated alternate Ronald "Kimoko" Harris)


Neeraj Batta

Batta Environmental


Awele Maduka-Ezeh*


Public Health Representative


James Maravellas

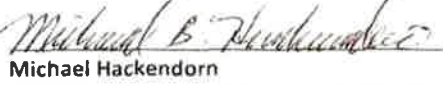
AFL-CIO


Brenna Goggin

Delaware Nature Society
(designated alternate Mary Peck)


Jerry Medd

The Pilots' Association for the Bay & River Delaware
(designated alternate Jack Hanley)


Michael Hackendorn

Delaware Building and Construction Trades Council


Jeffrey Richardson

Imani Energy


Ronald Handy, Sr.

Boys & Girls Clubs of Delaware
(designated alternate Dora Williams)


Robert Whetzel

Richards, Layton & Finger Law Firm
(designated alternate James DeChene)


S. Douglas Hokuf, Jr.

New Castle County
(designated alternate Mark Wolanski)


Delores Whildin


Resident of Claymont
(designated alternate Brett Saddler)


Herb Inden

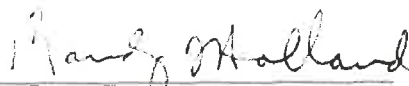
City of Wilmington
(designated alternate Tim Lucas)


Marian Young

BrightFields, Inc.
(designated alternate Kathy Stiller)


Tim Korkus

Delaware City Marina and Main Street Delaware City, Inc.
(designated alternate Jeffrey Gordon)


Hon. Randy J. Holland
Chair, CZCPA RAC

Date: April 16, 2019

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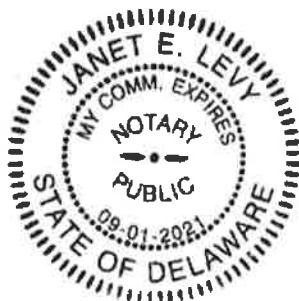
County of Kent:

Before me, a Notary Public, for the County and State aforesaid. Darel LaPrade, known to me to be such, who being sworn according to law deposed and says that he is the Publisher of **Delaware State News**, a daily newspaper published at Dover, County of Kent, and State of Delaware, and that the notice, a copy of which is hereto attached, as published in the **Delaware State News** in its issue of 06/02/19.

Darel LaPrade

Publisher
Independent Newsmedia Inc. USA

Sworn to and subscribed before me this 2nd Day of June, A.D., 2019



Janet Levy

Notary Public

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		Fax	
AD #	338377	Requested By	DNREC COASTAL ZONE JUDY JORDAN
Account#	400017	PO #	Public Hearing
Class	5500	Created By	JLEVY
Start Date	06/02/19	Creation Date	05/17/2019
End Date	06/02/19	Dimensions	3 X 4.181
Run Dates	2	Price	\$80.84
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LEGAL NOTICE
DNREC, Office of the Secretary
Coastal Zone Industrial Control Board

Notice of Public Hearing

In accordance with the Coastal Zone Conversion Permit Act, the Department of Natural Resources and Environmental Control and the Coastal Zone Industrial Control Board will jointly conduct a public hearing on the proposed amendments to the Regulations Governing Delaware's Coastal Zone, 7 DE Admin. Code 101.

The public hearing will be held June 24, 2019 at 6:00 P.M. at the Department of Natural Resources and Environmental Control office at 391 Lukens Drive, New Castle, DE 19720.

If you wish to comment on the proposed amendments, you may do so orally or in writing at the public hearing. The hearing record will remain open for receipt of comments through close of business on July 9, 2019. Written comments may also be submitted to Lisa Vest via USPS or email at:

Lisa Vest
Regulatory Specialist
DNREC – Office of the Secretary
89 Kings Highway, Dover, DE 19901
lisa.vest@delaware.gov

Commenters should be specific and should include references to relevant parts of the regulations.

The proposed amendments can be reviewed at
<https://dnrec.alpha.delaware.gov/coastal-zone-act/>.

This is the only time this notice will appear.
338377 DSN 6/2/2019



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Ad No.: 0003588603

Pymt Method Invoice

Net Amt: \$196.70

Run Times: 1

No. of Affidavits: 1

Run Dates: 06/02/19

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LEGAL NOTICE
DNREC, Office of the Secretary
Coastal Zone Industrial Control Board

Notice of Public Hearing

In accordance with the Coastal Zone Conversion Permit Act, the Department of Natural Resources and Environmental Control and the Coastal Zone Industrial Control Board will jointly conduct a public hearing on the proposed amendments to the Regulations Governing Delaware's Coastal Zone, 7 DE Admin. Code 101.

The public hearing will be held June 24, 2019 at 6:00 P.M. at the Department of Natural Resources and Environmental Control office at 391 Lukens Drive, New Castle, DE 19720.

If you wish to comment on the proposed amendments, you may do so orally or in writing at the public hearing. The hearing record will remain open for receipt of comments through close of business on July 9, 2019. Written comments may also be submitted to Lisa Vest via USPS or email at:

Lisa Vest
Regulatory Specialist
DNREC – Office of the Secretary
89 Kings Highway, Dover, DE 19901
lisa.vest@delaware.gov

Commenters should be specific and should include references to relevant parts of the regulations. The proposed amendments can be reviewed at http://regulations.delaware.gov/services/current_issue.shtml

This is the only time this notice will appear.
6/2-NJ



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06/02/19 A.D 2019

Sworn and subscribed before me, this 2 day of June,
2019

Ad Number: 0003588603

Legal notification printed at larger size for affidavit.





LEGAL NOTICE
DNREC, Office of the Secretary
Coastal Zone Industrial Control Board

Notice of Public Hearing

In accordance with the Coastal Zone Conversion Permit Act, the Department of Natural Resources and Environmental Control and the Coastal Zone Industrial Control Board will jointly conduct a public hearing on the proposed amendments to the Regulations Governing Delaware's Coastal Zone, 7 DE Admin. Code 101.

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Public Hearing on Proposed Amendments to Regulations Governing Delaware's Coastal Zone (Updated)

06:00 PM - 06:00 PM Monday June 24, 2019

DNREC Division of Climate, Coastal, & Energy / Climate, Coastal, & Energy / DNREC

MEETING DESCRIPTION

In accordance with the Coastal Zone Conversion Permit Act, the Department of Natural Resources and Environmental Control and the Coastal Zone Industrial Control Board will jointly conduct a public hearing on the proposed amendments to the Regulations Governing Delaware's Coastal Zone, 7 DE Admin. Code 101.

If you wish to comment on the proposed amendments, you may do so orally or in writing at the public hearing. The hearing record will remain open for receipt of comments through close of business on July 9, 2019. Written comments may also be submitted to Lisa Vest via USPS or email at: Lisa Vest Regulatory Specialist DNREC Office of the Secretary 89 Kings Highway, Dover, DE 19901 lisa.vest@delaware.gov Commenters should be specific and should include references to relevant parts of the regulations. The proposed amendments will be posted at http://regulations.delaware.gov/services/current_issue.shtml

[Proposed Regulations Governing Delaware's Coastal Zone](#)

CONTACT INFORMATION

Judy Jordan

302-735-3480

judith.jordan@delaware.gov

[Website](#)

ADDRESS

Department of Natural Resources & Environmental Control

391 Lukens Dr

New Castle DE 19720

Pat Ellis Conference Room and Conference Room B

All members of the public must enter through the door at the BACK of the building. The front entrance will be locked.

VIRTUAL MEETING INFORMATION

None

DOCUMENTS

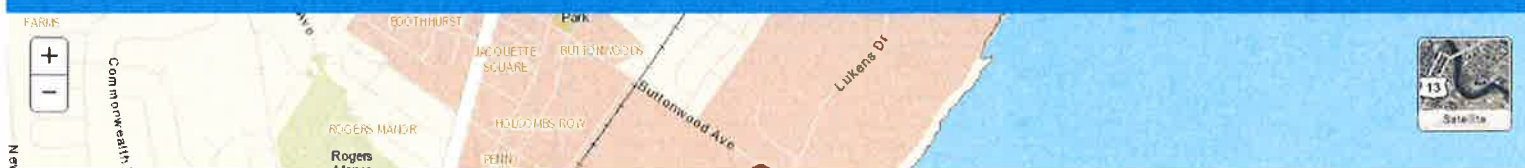
None

CHANGE HISTORY

Date	Reason
06/03/2019	Schedule change - Start Date Time, End Date Time
06/03/2019	New

Meeting Location

Get Directions [↗](#)





Delaware.gov

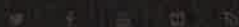
GOVERNMENT

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- Tax Center
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- Export Assistance
- Start a Small Business





Public Hearing: Coastal Zone Regulations



DATE & TIME:

Monday, June 24, 2019
6:00 pm

LOCATION:

[DNREC Lukens Drive Offices](#)
391 Lukens Dr.
New Castle, Delaware

DETAILS:

DNREC and the Coastal Zone Industrial Control Board will jointly conduct a public hearing on proposed amendments to the Regulations Governing Delaware's Coastal Zone in accordance with the mandate of the Coastal Zone Conversion Permit Act of 2017 (CZCPA).

The Coastal Zone Conversion Permit Act amends the Coastal Zone Act to allow the reuse of 14 existing sites of heavy industry use within Delaware's Coastal Zone. It calls for creation of a permit process to meet that goal.

If you wish to comment on the proposed amendments, you may do so orally or in writing at the public hearing. The hearing record will remain open for receipt of comments through close of business on July 9, 2019. Written comments may also be submitted to Lisa Vest via USPS or email.

Public Hearing Officer:

[Lisa A. Vest](#)
DNREC Office of the Secretary
89 Kings Highway
Dover, DE 19901

Docket #2019-R-CZ-0013

Public Hearing Materials

[Start Action Notice #2017-17](#)

[DNREC Public Notice](#)

[Delaware Register of Regulations](#) (22 DE Reg. 993 - 06/01/19)

[Draft of the Proposed Regulations](#)

Related Links

[Delaware Coastal Zone Act Program](#)

[Coastal Zone Industrial Control Board](#)

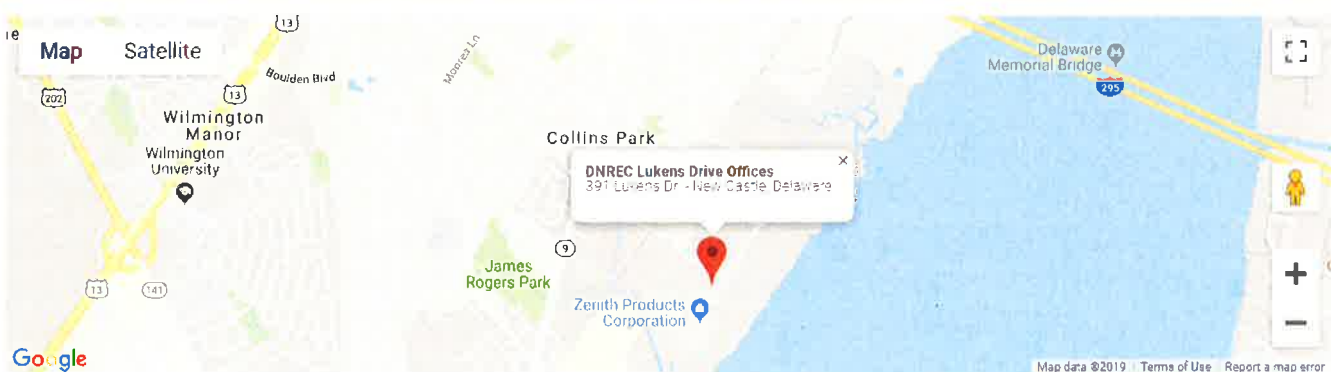
[Coastal Zone Conversion Permits web page](#)

[Coastal Zone Conversion Permit Act \(CZCPA\)](#)

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MAP & DIRECTIONS:



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June 2, 2019

Dear Concerned Citizen:



LEGAL NOTICE

DNREC, Office of the Secretary
Coastal Zone Industrial Control Board

Notice of Public Hearing

In accordance with the Coastal Zone Conversion Permit Act, the Department of Natural Resources and Environmental Control and the Coastal Zone Industrial Control Board will jointly conduct a public hearing on the proposed amendments to the Regulations Governing Delaware's Coastal Zone, 7 DE Admin. Code 101.

The public hearing will be held June 24, 2019 at 6:00 P.M. at the Department of Natural Resources and Environmental Control office at 391 Lukens Drive, New Castle, DE 19720.

If you wish to comment on the proposed amendments, you may do so orally or in writing at the public hearing. The hearing record will remain open for receipt of comments through close of business on July 9, 2019. Written comments may also be submitted to Lisa Vest via USPS or email at:

Lisa Vest

Regulatory Specialist

DNREC – Office of the Secretary

89 Kings Highway, Dover, DE 19901

lisa.vest@delaware.gov

Commenters should be specific and should include references to relevant parts of the regulations. The proposed amendments will be posted at http://regulations.delaware.gov/services/current_issue.shtml

This is the only time this notice will appear.

Judy Jordan
Principal Planner
Division of Climate, Coastal & Energy
100 W. Water Street
Dover, DE 19904
(302) 735-3480

judith.jordan@state.de.us

Judith.jordan@delaware.gov (from January 25, 2019 on)

www.De.gov/dcce

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Wilson, Erin E. (DNREC)

From: Jordan, Judith (DNREC) <Judith.Jordan@delaware.gov>
Sent: Sunday, June 02, 2019 12:00 PM
To: DNREC Coastal Zone List
Cc: Vest, Lisa A. (DNREC); Mahaffie, Mike (DNREC); Globetti, Michael J. (DNREC); Polo, Michael V. (DNREC); Jacobs, Michelle V. (DNREC)
Subject: Public Hearing on Proposed Amendments to Regulations Governing Delaware's Coastal Zone

June 2, 2019

Dear Concerned Citizen:



LEGAL NOTICE

DNREC, Office of the Secretary
Coastal Zone Industrial Control Board

Notice of Public Hearing

Under the Coastal Zone Management Act, the Department of Natural Resources and Environmental Control and the Coastal Zone Industrial Control Board will jointly conduct a public hearing on the proposed amendments to the Regulations Governing Delaware's Coastal Zone, 7 DE Admin. Code 101.

The public hearing will be held June 24, 2019 at 6:00 P.M. at the Department of Natural Resources and Environmental Control office at 391 Lukens Drive, New Castle, DE 19720.

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Division of Climate, Coastal & Energy
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(302) 735-3480
judith.jordan@state.de.us
Judith.jordan@delaware.gov (from January 25, 2019 on)
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DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

OFFICE OF THE SECRETARY

Statutory Authority: 7 Delaware Code, Chapter 70 (7 Del.C. Ch. 70)
7 DE Admin. Code 101

PROPOSED

REGISTER NOTICE

SAN # 2017-17

101 Regulations Governing Delaware's Coastal Zone

1. TITLE OF THE REGULATIONS:

Regulations Governing Delaware's Coastal Zone

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

House Bill 190, the Coastal Zone Conversion Permit Act of 2017 (CZCPA), amended the Coastal Zone Act of 1971 and required DNREC to revise its Regulations Governing Delaware's Coastal Zone (7 DE Admin. Code 101). Prior to the passage of the CZCPA, all heavy industry and bulk product transfer activities not in operation on June 28, 1971 were prohibited in the coastal zone. The CZCPA allows for the permitting of these activities under certain conditions. The proposed regulations specify these conditions in accordance with the CZCPA.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

This is required under 7 Del.C. Chapter 70. There is no sunset provision.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. Chapter 70.

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

N/A

6. NOTICE OF PUBLIC COMMENT:

Public comments on the proposed regulations may be submitted to DNREC orally at the public hearing or in writing until close of business on July 9, 2019. The public hearing will be held jointly between the Department of Natural Resources and Environmental Control and the Coastal Zone Industrial Control Board at 6:00 P.M. on June 24, 2019 at the DNREC office located at:

391 Lukens Drive
New Castle, DE 19720

Written comments may be submitted via email to lisa.vest@delaware.gov (subject line: "CZCPA Regulation Comments") or via USPS at Lisa Vest, DNREC, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

Judy Jordan
Judith.jordan@delaware.gov
(302) 735-3480

101 Regulations Governing Delaware's Coastal Zone

May 11, 1999

Preamble

These regulations have been developed to accomplish two key goals. They have been designed to promote improvement of the environment within the Coastal Zone while also providing existing and new industries in Delaware's Coastal Zone with the flexibility necessary to stay competitive and to prosper – all while adhering to the edicts and nuances of one of the most original and innovative environmental and land use statutes in the world.

Delaware's Coastal Zone Act (the Act) was passed in 1971 and provides to the Secretary of the Department of Natural Resources and Environmental Control and the Coastal Zone Industrial Control Board the

authority to promulgate regulations to carry out the requirements contained within the Act. For numerous reasons, regulations were never adopted and implementation of Coastal Zone Act was left to an undefined and informal process that frustrated industry and environmentalist alike. That frustration further polarized the debate over the original intention of the Act and what the focus of any regulations should be.

Finally, 25 years after passage of the Act, the negative implications of not having regulations came to outweigh the contentiousness of the debate. An advisory committee of dedicated Delawareans was then convened and, after eighteen months of oftentimes difficult debate, came to consensus agreement on how to embody the linked goals of industry flexibility and environmental improvement. The committee's agreements were memorialized in a Memorandum of Understanding between all participants. That MOU was founded on consensus, respect and necessity and it was used as a basis for these regulations.

The regulations have been amended to update them in accordance with the mandate of the Coastal Zone Conversion Permit Act of 2017 (CZCPA). Section 9 of the CZCPA mandated that the Department start a public workshop process to draft revised regulations consistent with the CZCPA no later than October 1, 2017, and that the revised regulations be promulgated by October 1, 2019. The Secretary engaged in a public stakeholder process and convened a Regulatory Advisory Committee (RAC), which provided recommendations on a number of discretionary issues. The RAC, chaired by former Justice Randy Holland, formed workgroups to focus on issues of financial assurance, offsets, economic benefit, environmental impacts, and community involvement. The RAC deliberated on the workgroup findings and prepared comprehensive recommendations to the Secretary on revisions to the Regulations Governing Delaware's Coastal Zone. The RAC's work and recommendations were presented at open houses and public comments were received. The Secretary's draft regulations were also presented to the Coastal Zone Industrial Control Board for approval, as mandated by the Act. The Regulations were formally promulgated and a public hearing was held and comments received, consistent with the Administrative Procedures Act. The final version of the Regulations was published in the *Register of Regulations* on _____, 2019 and became effective on _____, 2019. The original purpose of the regulations continues and is enhanced through these regulations that provide for coastal zone conversion permits to return industrial sites to active use or more productive use while ensuring the protection of natural resources.

1.0 Authority

These regulations are promulgated pursuant to authority granted to the Secretary and the State Coastal Zone Industrial Control Board by Section 7005(b) and (c) of the Coastal Zone Act, 7 **Del.C.** Ch. 70 and Sections 8 and 9 of the Coastal Zone Conversion Permit Act, 81 Del. Laws Ch. 120 (August 2, 2017).

2.0 Applicability

- 2.1 The Coastal Zone Act program, as amended by the Coastal Zone Conversion Permit Act, and these regulations are administered by the Delaware Department of Natural Resources and Environmental Control pursuant to 7 **Del.C.** §7005(a) and 7014(b), (e), (f), and (g).
- 2.2 These regulations apply to areas within the Coastal Zone as defined by 7 **Del.C.** Ch. 70. A map of the coastal zone appears in Appendix A of these regulations. The 14 "heavy industry use site[s]" defined in 7 Del.C. Ch. 70, §7002(g) are depicted in Appendix B of these regulations.
- 2.3 These regulations specify the permitting requirements for existing non-conforming uses use sites already in the coastal zone, including for heavy industry use sites subject to conversion to an alternative or additional heavy industry use or bulk product transfer facility, and for new manufacturing uses proposing to locate within Delaware's coastal zone.

3.0 Definitions

Many terms which appear in these regulations are defined in the Coastal Zone Act and the Coastal Zone Conversion Permit Act as shown in Appendix E and Appendix F. Terms not defined in the Coastal Zone Act or the Coastal Zone Conversion Permit Act shall have the following meanings:

"Administratively Complete" means a coastal zone permit application or status decision request that is signed, dated, and contains, in the opinion of the Secretary, complete, substantive responses to each question, a sufficient offset proposal, if applicable, and includes the appropriate application fee and all enclosures the applicant has referenced in the application.

"Anticipated Useful Life" means the period of time that an applicant or permittee expects to operate a facility that requires a Coastal Zone conversion Permit.

"Applicant" means a person who is preparing to submit or who has submitted a Coastal Zone Act or Coastal Zone Conversion Permit Act application.

"Beneficiary" means the Department of Natural Resources and Environmental Control, not including individual employees.

"Board" means the State Coastal Zone Industrial Control Board.

"Bulk Product" means loose masses of cargo such as oil, grain, ~~gas gas~~, and minerals, which are typically stored in the hold of a vessel. Cargoes such as automobiles, machinery, bags of ~~salt salt~~, and palletized items that are individually packaged or contained are not considered bulk products in the application of this definition.

"Catastrophic Incident" means any occurrence that causes an unplanned shut down or process upset that causes an unplanned release of a "hazardous substance," as defined in the Comprehensive Environmental Response, Compensation and Liability Act Section 101(14), or hydrocarbon, whether the occurrence is natural, such as extreme weather, or resulting from human action, such as error, terrorism, vandalism, or other causes.

"Certify" means ~~the applicant is attesting, by affirmation,~~ that all the data and other information in ~~the application provided~~ is true and accurate.

"Conversion Permit" means a permit issued by the Secretary under 7 Del.C. §7014 and these regulations for an alternative or additional use or bulk product transfer facility on a heavy industry use site.

"CZCPA" means Coastal Zone Conversion Permit Act.

"Department" means the Delaware Department of Natural Resources and Environmental Control and its employees.

"Docking Facility" means any structures and/or equipment used to temporarily secure a vessel to a shoreline or another vessel so that materials, cargo, and/or people may be transferred between the vessel and the shore, or between two vessels together with associated land, equipment, and structures so as to allow the receiving, accumulating, safekeeping, storage, and preparation of cargoes for further ~~shipment, shipment~~ and administrative maintenance purposes directly related to such receiving, accumulating, safekeeping, storage, and preparation of cargoes for further shipment.

"Environmental Damage" means harm to human health and the environment, including wildlife and wildlife habitat, which can result from such occurrences as pollution, releases of substances to air, land, and water, soil disturbance and erosion, alterations to drainage, filling of wetlands, habitat disturbance from light and noise, radiation, and others.

"Environmental Indicator" means a numerical parameter which provides scientifically-based information on important environmental issues, conditions, trends, influencing factors and their significance regarding ecosystem health. Indicators inherently are measurable, quantifiable, ~~meaningful~~ meaningful, and understandable. They are sensitive to meaningful differences and trends, collectible with reasonable cost and effort over long time periods, and provide early warning of environmental change. They are selected and used to monitor progress towards environmental goals.

"Exposed" means, in the context of planning for Sea Level Rise and Coastal Storms, being in physical contact with water that inundates an area.

"Footprint" means the geographical extent of a non-conforming uses use as they it existed on June 28, 1974 1971, as depicted in Appendix B.

"NRSRO" means a Nationally Recognized Statistical Rating Organization that issues credit ratings and is registered with the United States Securities and Exchange Commission.

"Permit" means a permit issued under these regulations.

"Permittee" means an entity that has been issued a permit under these regulations.

"Port of Wilmington" means those lands contained ~~with~~ within the footprint labeled as "Port of Wilmington" and shown in Appendix B of these regulations.

"Potential to Pollute" means ~~the proposed use has the~~ potential to cause pollution or short and long term adverse impacts on human populations, air and water quality, wetlands, flora and fauna, or to produce dangerous or onerous levels of glare, heat, noise, vibration, radiation, electromagnetic interference and obnoxious odors ~~as determined in the applicant's Environmental Impact Statement accompanying the permit application.~~ The Department will consider mitigating controls and risk management analysis reports from the applicant in evaluating a proposed use's potential to pollute. The Department shall consider probability of equipment failure or human error, and the existence of backup controls if such failure or error does occur, in evaluating an applicant's potential to pollute.

"Pollution" means an environmental release, as defined at Title 7 §6002(19), or adverse impacts on human populations, air and water quality, land, wetlands, flora and fauna, or to produce dangerous or onerous levels of glare, heat, noise, vibration, radiation, electromagnetic interference and obnoxious odors.

"Project Site" means the physical location at which a permitted facility operates, or the location where a facility that is the subject of an application will operate. A project site includes the property, facilities, equipment and

infrastructure, and may comprise an entire tax parcel or parcels, or part of any tax parcel or parcels, however, its preliminary boundary shall be defined prior to the issuance of a permit, in the application for a permit, and its final boundary after a permit is granted by the Secretary, in the permit. For non-conforming uses, if a project site's boundary is not defined in a permit, the boundary is the footprint in Appendix B of these regulations.

"Public Recycling Plant" means any recycling plant or industrial facility whose primary product is recycled materials and which is owned and operated by any city, town, county, district or other political subdivision.

"Public Sewage Treatment Plant" means any device and/or system used in conveyance, storage, treatment, disposal, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature, which systems are under the jurisdiction of a city, town, county, ~~district~~ district, or other political subdivision.

"Recycle" means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from or otherwise diverted from the solid waste stream for use in the form of raw materials other than fuel for producing heat or power combustion.

"Research and Development Activity" means those activities in which research and development substances are used in quantities that are not greater than reasonably necessary for the purposes of scientific experimentation or product or process development. The research and development substances must either be the focus of research and development itself, or be used in the research and development activity focusing on another chemical or product. Research and development includes synthesis, analysis, experimentation or research on new or existing chemicals or products. Research and development encompasses a wide range of activities which may occur in a laboratory, pilot plants or commercial plant, for testing the physical, chemical, production, or performance characteristics of a substance, conducted under the supervision of a technically qualified individual. Research and development is distinct from ongoing commercial activities which focus on building a market for a product rather than just testing its market potential. General distribution of chemical substances or products to consumers does not constitute research and development.

"Secretary" means the Secretary of the Department of Natural Resources and Environmental Control and the Secretary's delegates or representatives.

"Vessel" means any ship, boat or other means of conveyance that can transport goods or materials on, over, or through water.

"Voluntary Improvements" means improvements, for example, in emissions reductions, habitat creation and spill prevention -- provided that each is definite and measurable and which were made by a facility without any federal or state requirement to do so.

4.0 Prohibited ~~Uses~~ Uses. The following uses or activities are prohibited in the Coastal Zone:

- 4.1 Heavy industry use of any kind not in operation on June 28, 1971, unless such use is undertaken pursuant to a conversion permit under these regulations, however, no conversion permit shall be issued for:
 - 4.1.1 An oil refinery that is not one of the non-conforming uses that was operating on June 28, 1971;
 - 4.1.2 A basic cellulosic paper mill;
 - 4.1.3 An incinerator;
 - 4.1.4 A basic steel manufacturing plant;
 - 4.1.5 A liquefied natural gas terminal;
 - 4.1.6 A heavy industry use at a location that is not within the footprint of a non-conforming use as depicted in Appendix B of these regulations.
- 4.2 Expansion of any non-conforming uses beyond their footprint(s) as depicted in Appendix B of these regulations.
- 4.3 Offshore gas, liquid, or solid bulk product transfer facilities which were not in operation on June 28, 1971, unless such uses are undertaken pursuant to a conversion permit granted under these regulations.
- 4.4 The conversion of an existing unregulated, exempted, or permitted facility to a heavy industry use.
- 4.5 Bulk product transfer facilities and pipelines which serve as bulk transfer facilities that were not in operation on June 28, 1971, unless such uses or activities are undertaken pursuant to a conversion permit granted under these regulations.
- 4.6 The conversion or use of existing unregulated, exempt, or permitted docking facilities for the transfer of bulk products, unless such uses or activities are undertaken pursuant to a conversion permit granted under these regulations.
- 4.7 The construction, establishment, or operation of offshore gas, liquid, or solid bulk product transfer facilities which were not in operation on June 28, 1971.

- 4.8 Individual pipelines or sets of pipelines which are not associated with a use that obtains a permit but which meet the definition of bulk product transfer facilities.
- 4.9 Any new tank farm greater than 5 acres in size not associated with a manufacturing use is prohibited as a new heavy industry use.
- 4.10 Basic cellulosic pulp paper mills, incinerators, basic steel manufacturing plants, or liquefied natural gas terminals unless such facilities were operating on June 28, 1971.

5.0 Uses Not Regulated

- 5.1 The construction and/or operation of the following types of facilities ~~and/or~~ and activities shall be deemed not to constitute initiation, expansion or extension of heavy industry or manufacturing uses under these regulations:
 - ~~5.15.1.1~~ The raising of agricultural commodities or livestock.
 - ~~5.25.1.2~~ Warehouses or other storage facilities, not including tank farms.
 - ~~5.35.1.3~~ Tank farms of less than five acres.
 - ~~5.45.1.4~~ Parking lots or structures, health care and day care facilities, maintenance facilities, commercial establishments not involved in manufacturing, office buildings, recreational facilities and facilities related to the management of wildlife.
 - ~~5.55.1.5~~ Facilities used in transmitting, distributing, transforming, switching, and otherwise transporting and converting electrical energy.
 - ~~5.65.1.6~~ Facilities used to generate electric power directly from solar energy.
 - ~~5.75.1.7~~ The repair and maintenance of existing electrical generating facilities providing such repair or maintenance does not result in any negative environmental impacts.
 - ~~5.85.1.8~~ Back-up emergency and stand-by source of power generation to adequately accommodate emergency industry needs when outside supply fails.
 - ~~5.95.1.9~~ The continued repair, maintenance and use of any non-conforming bulk product transfer facility where that facility transfers the same products and materials, regardless of the amount of such products or materials, as those transferred on June 28, 1971.
 - ~~5.105.1.10~~ Bulk product transfer operations at dock facilities owned by the Diamond State Port Corp. (DSPC) or its successors, or acquired by the DSPC or its successors at any time in the future, and which are located within the Port of Wilmington as shown in Appendix B.
 - ~~5.115.1.11~~ Docking facilities used as bulk product transfer facilities located on privately owned lands within the Port of Wilmington which have been granted a status decision extending the bulk product transfer exemption prior to the effective date of these regulations.
 - ~~5.125.1.12~~ Docking facilities which are not used as bulk product transfer facilities.
 - ~~5.135.1.13~~ Any pipeline that originates outside the Coastal Zone, traverses the Coastal Zone without connecting to a manufacturing or heavy industry use and terminates outside the Coastal Zone.
 - ~~5.145.1.14~~ Maintenance and repair of existing equipment and structures.
 - ~~5.155.1.15~~ Replacement in-kind of existing equipment or installation of in-line spares for existing equipment.
 - ~~5.165.1.16~~ Installation and modification of pollution control and safety equipment for nonconforming uses within their designated footprint providing such installation and modification does not result in any negative environmental impact over and above impacts associated with the present use.
 - ~~5.175.1.17~~ Any facilities which have received, prior to the promulgation of these regulations, a status decision which provided an exemption for the activity in question.
 - ~~5.185.1.18~~ Research and development activities within existing research and development facilities.
 - ~~5.195.1.19~~ Any other activity which the Secretary determines, through the status decision process outlined in Section 7.0 of these regulations, is not an expansion or extension of a non-conforming use or heavy industry use.
 - ~~5.205.1.20~~ Public Sewage Treatment Plants and associated conveyance infrastructure including piping and pump stations, subject to regulation by the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et. seq. and/or the Delaware Environmental Protection Act, 7 Del.C., Chapter 60.

5 DE Reg. 930 (10/01/01)

6.0 Uses Requiring a Permit

- 6.1 The following uses or activities are permissible in the Coastal Zone by permit. Permits must be obtained prior to any land disturbing or construction activity.

~~6.16.1.1~~ The construction of pipelines or docking facilities serving as offshore bulk product transfer facilities if such facilities serve only one on-shore manufacturing or other facility. To be permissible under these regulations, the materials transferred through the pipeline or docking facilities must be used as a raw material in the manufacture of other products, or must be finished products being transported for delivery.

~~6.26.1.2~~ Any ~~A~~ recycling plant or sewage treatment plant not excluded by ~~Section~~ subsection 5.20 of the Regulations.

~~6.36.1.3~~ Any new activity, with the exception of those listed in Section 5.0 of these ~~regulations~~ regulations, proposed to be initiated after promulgation of these regulations, which constitutes an alternative or additional use or bulk product transfer facility on a heavy industry use site, or which is conducted by an existing heavy industry or a new or existing manufacturing facility that may result in any negative impact on the following factors as found in 7 Del.C. §7004 (b):

~~6.3.16.1.3.1~~ Environmental impact, including but not limited to, items 8.2.1 through 8.2.10 of these ~~regulations.~~ regulations:

~~6.3.26.1.3.2~~ Economic effect, including the number of jobs created and the income which will be generated by the wages and salaries of these jobs in relation to the amount of land required, and the amount of tax revenues potentially accruing to state and local ~~government.~~ government:

~~6.3.36.1.3.3~~ Aesthetic effect, such as impact on scenic beauty of the surrounding ~~area.~~ area:

~~6.3.46.1.3.4~~ Number and type of supporting facilities required and the impact of such facilities on all factors listed in this ~~subsection.~~ subsection:

~~6.3.56.1.3.5~~ ~~Effect on neighboring~~ Neighboring land uses including, but not limited to, effect on public access to tidal waters, effect on recreational areas and effect on adjacent residential and agricultural ~~areas.~~ areas; and

~~6.3.66.1.3.6~~ County and municipal comprehensive plans for the development and/or conservation of their areas of jurisdiction.

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7.0 Requests for Status Decisions

7.1 Any person wishing to initiate a new activity or facility may request a status decision to determine whether or not the activity ~~or facility is a heavy industry requires a permit, is exempt from permitting, or is prohibited.~~

7.2 ~~A person whose proposed activity is not exempted as specified in Section 5.0 above may request of the Secretary a status decision to determine whether or not the proposed activity requires a Coastal Zone permit under the Act or these regulations.~~

7.3 Status decision requests must be in writing on a form supplied by the Secretary and shall include, at a minimum, the following:

~~7.3.17.2.1~~ Name, address and contact person for the activity or facility under ~~consideration.~~ consideration:

~~7.3.27.2.2~~ Site Location of proposed activity marked on a map or site ~~plan.~~ plan:

~~7.3.37.2.3~~ A detailed description of the proposed activity under ~~consideration.~~ consideration:

~~7.3.47.2.4~~ An impact analysis of the proposed project on the six (6) criteria contained in ~~Section~~ subsection 6.3 (1-6) above.

~~7.47.3~~ Any new manufacturing facility or research and development facility proposed to be sited in the Coastal Zone shall apply for a status decision.

~~7.57.4~~ The Secretary may, if he has cause to suspect an activity within the confines of the Coastal Zone is prohibited or should receive a permit under these regulations, request of the person undertaking that activity to apply for a status decision as described in this section. Failure of the person to respond to the Secretary's request shall subject said person to enforcement procedures as contained in the Act and/or Section 18.0 of these regulations.

~~7.67.5~~ ~~Upon receipt of an administratively complete request for a status decision, After determining that a request for a status decision is administratively complete,~~ the Secretary shall publish a legal notice as prescribed in Section 14.0 of these regulations advising the public of the receipt of the request and allowing 10 business days for interested persons to review the request and provide the Secretary with input on whether a permit should be required of the applicant.

~~7.77.6~~ The Secretary shall ~~then, within an additional 15 business days, determine whether or not a permit will be required and notify of the close of the comment period in subsection 7.5, email~~ the applicant in writing of his that determination. The Secretary shall publish ~~that the~~ determination as a legal notice as prescribed in Section 14.0 of these regulations.

8.0 Permitting Procedures

- 8.1 ~~Permit Application Contents~~ Contents. The applicant shall complete and submit to the Secretary three (3) ~~identical copies of the Coastal Zone permit application in an electronic format. The application will be on a form supplied by the Secretary and will contain, at a minimum:~~ The applicant shall provide references and data to support any analyses, citing published, peer reviewed articles, models and modeling results, and data sources, and official government regulations, reports and studies, where available and relevant. The application shall be on a form supplied by the Department and shall contain:
- 8.1.1 A certification by the applicant, which shall include all entities that have or will have ownership or control of the project site, that the information contained with the application is complete, accurate and ~~truthful.~~ truthful;
 - 8.1.2 Evidence of local zoning approval as required by section 7004 (a) of the ~~Act.~~ Act;
 - 8.1.3 An Environmental Permit Application Background Statement as required under 7 ~~Del.C.~~ Ch. 79, if ~~applicable.~~ applicable;
 - 8.1.4 An Environmental Impact Statement as described in ~~Section~~ subsection 8.2 of these ~~regulations.~~ regulations;
 - 8.1.5 A description of ~~the economic effects of the proposed project, including the number of jobs created and the income which will be generated by the wages and salaries of these jobs and the amount of tax revenues potentially accruing to State and local government.~~ described in subsection 8.3 of these regulations;
 - 8.1.6 A description of the aesthetic effects of the proposed project, such as impact on scenic beauty of the surrounding ~~area.~~ area;
 - 8.1.7 A description of the number and type of supporting facilities required and the impact of such facilities on all factors listed in this ~~section.~~ section;
 - 8.1.8 A description of the effect on neighboring land uses including, but not limited to, effect on public access to tidal waters, effect on recreational areas and effect on adjacent residential and agricultural ~~areas.~~ areas;
 - 8.1.9 A statement concerning the project or activity's consistency with county and municipal comprehensive ~~plans.~~ plans; and
 - 8.1.10 An offset proposal if required under Section ~~9.4.4~~ 9.0 of these regulations.
 - 8.1.11 A statement as to the form of financial assurance to be proffered by the applicant, consistent with subsection 8.6.4.1 of these regulations.
- 8.2 Environmental Impact ~~Statement~~ Statement. An environmental impact statement, certified by a Delaware registered professional engineer or professional geologist, ~~must shall~~ be submitted with the Coastal Zone permit application and ~~must shall~~ contain, at a minimum, an analysis of each of the following:
- 8.2.1 Probable air, land and water pollution likely to be generated, on an annual basis and as a singular event, by the proposed ~~use~~ use, under normal operating conditions as well as during mechanical malfunction and human error. In addition, the applicant shall provide a statement concerning whether, in the ~~applicant's~~ certifier's opinion, the project or activity will in any way result in any negative environmental impact on the Coastal ~~Zone.~~ Zone;
 - 8.2.2 An assessment of the project's ~~likely~~ potential impact on the Coastal Zone environmental goals and indicators, when and if such indicators are made publicly available. Coastal Zone environmental goals and indicators ~~shall~~ may be developed by the Department after promulgation of these regulations and used for assessing applications and determining the long-term environmental quality of the Coastal Zone. In the absence of goals and indicators, applicants must meet all other requirements of this ~~section.~~ section;
 - 8.2.3 ~~Likely destruction~~ Destruction of wetlands and flora and ~~fauna.~~ fauna and their habitat that would result from project site construction and ongoing activity;
 - 8.2.4 Impact of site preparation on ~~drainage of the area in question, especially as it relates to flood control~~ the watershed in which the proposed project is located, including any changes in topography, erosion, ground cover and displacement by structures of floodwaters;
 - 8.2.5 ~~Impact of site preparation and facility operations on land erosion;~~ Effect of project site preparation and facility operation on the quality and quantity of surface and ground water resources, including withdrawals and discharges, identification of potentially affected water supply sources, and public and private wastewater treatment facilities;
 - 8.2.6 ~~Effect of site preparation and facility operation on the quality and quantity of surface and ground water resources;~~ A description of the need for the use of water for processing, cooling, effluent removal, and other purposes;

- 8.2.7 A description of the need for the use of water for processing, cooling, effluent removal, and other purposes; The likelihood and extent of generation of glare, heat, noise, vibration, radiation, electromagnetic interference and obnoxious odors;
- 8.2.8 The likelihood of generation of glare, heat, noise, vibration, radiation, electromagnetic interference and/or obnoxious odors. The effect of the proposed project on threatened and on endangered species as defined by the regulations promulgated by the State or pursuant to the Federal Endangered Species Act;
- 8.2.9 The effect of the proposed project on threatened or endangered species as defined by the regulations promulgated by the State or pursuant to the Federal Endangered Species Act, and; The raw materials, intermediate products, byproducts and final products and their characteristics from material safety data sheets (MSDSs), including carcinogenicity, mutagenicity and/or the potential to contribute to the generation of smog; and
- 8.2.10 The raw materials, intermediate products, byproducts and final products and their characteristics from material safety data sheets (MSDS's) if available, including carcinogenicity, mutagenicity and/or the potential to contribute to the formation of smog. For conversion permit applications only, the effect of the project site's proposed boundary on environmental remediation within the footprint of the heavy industry use site, including whether the project site boundary excludes areas known to be or potentially contaminated by past operations.

8.3 Economic Effects Analysis

- 8.3.1 An Economic Effects Analysis shall be submitted with the permit application and shall contain, at a minimum, an analysis of each of the following elements for the proposed project:
 - 8.3.1.1 The number of jobs created, their classification as part time or full time and temporary or permanent, and their wages and salaries;
 - 8.3.1.2 The amount of tax revenues that will accrue to state and local government of the proposed project, including property, gross receipts, personal income, and any others.
- 8.3.2 For conversion permits, the applicant shall also submit to the Secretary:
 - 8.3.2.1 An Economic Effects Analysis from the Delaware Division of Small Business of the elements described in subsection 8.3.1, for the most recent heavy industry use of the project site;
 - 8.3.2.2 The project costs, including for demolition, construction, capital costs, operations, remediation and total investment;
 - 8.3.2.3 A description of the costs of the proposed use to the State, including tax incentives and credits and infrastructure;
 - 8.3.2.4 A statement of the net economic benefit or loss from the proposed project in comparison with the most recent heavy industry use;
 - 8.3.2.5 A description of any local hiring or purchasing preferences, investments in community benefit agreements, workforce development or educational programs that the applicant has implemented; and,
 - 8.3.2.6 A statement from the Delaware Division of Small Business regarding the accuracy of the applicant's economic effects analysis under subsection 8.3.2 of these regulations.

8.4 Application Contents Exclusive to Conversion Permits. For conversion permits, in addition to the requirements of subsections 8.1 through 8.3, the applicant shall also provide:

- 8.4.1 A certification signed by the applicant or applicants that they agree to pay or ensure all costs of compliance with Delaware Hazardous Substance Cleanup Act and any other relevant State of Delaware or federal environmental statutes; and
- 8.4.2 A Sea Level Rise and Coastal Storm Plan to prepare for the potential impacts of sea level rise and coastal storms over the anticipated useful life of the project site, including infrastructure. At a minimum, the Sea Level Rise and Coastal Storm Plan shall:
 - 8.4.2.1 Be prepared by a Delaware-registered Professional Geologist or Professional Engineer;
 - 8.4.2.2 Use the anticipated useful life of the facility, which shall be 30 years unless the Secretary finds that the applicant's plans for the project site justify the use of a different time period;
 - 8.4.2.3 Provide a topographic map clearly identifying all of the following:
 - 8.4.2.3.1 All project site grounds, operation facilities, and infrastructure, including shoreline, docks and piers, pipelines, areas that are required to be remediated under federal or state laws, structures, routes of ingress and egress, and the boundary of the footprint of the heavy industry use site;
 - 8.4.2.3.2 Areas that have a 1.0% probability of being flooded in any given year;
 - 8.4.2.3.3 Areas that have a 0.2% probability of being flooded in any given year;

- 8.4.2.3.4 Areas that will be flooded during the High Sea Level Rise Scenario, as defined by the Delaware Sea Level Rise Advisory Committee, as it may be amended from time to time;
 - 8.4.2.3.5 Areas that have a 1.0% probability of being flooded by a storm in a given year combined with the effects of the High Sea Level Rise Scenario, as defined by the Delaware Sea Level Rise Advisory Committee, as the High Sea Level Rise Scenario may be amended from time to time.
 - 8.4.2.4 Describe measures, and the total cost of measures, including capital costs, that will be taken to ensure that the any facilities or infrastructure within the zone mapped as having a 1.0% probability of being flooded in a given year or exposed during the High Sea Level Rise Scenario do not sustain damage that may cause pollution through such events as, but not limited to, structural destabilization, electrical supply outage, collision with floating debris, inaccessibility, piercing of containment vessels, breaching of seals, valves, seams or wellheads by floodwater, erosion of or blockage of intakes.
 - 8.4.2.5 Describe any structural changes that have been made to the site to control erosion, and describe any actions that could and will be taken to prevent or control it if a permit is granted;
 - 8.4.2.6 Describe the potential effects of sustained winds as great as 95 miles per hour and any measures that could and will be taken to prevent damage to the project site;
 - 8.4.2.7 Describe the potential adverse impacts to upstream and adjacent properties that could result from efforts on the project site to prevent damage from flooding, erosion and high winds, and describe any measures that could and will be taken to prevent such adverse impacts to upstream and adjacent properties.
- 8.4.3 A timeframe that the applicant anticipates performing and completing the conversion to an additional or alternative heavy industry use or bulk product transfer facility, including milestones for financing, any other necessary environmental and land use permits and major construction or land disturbing and start up events.
- 8.4.4 A Department approved Environmental Remediation and Stabilization Plan that conforms to the following:
 - 8.4.4.1 The Environmental Remediation and Stabilization Plan may contain whole or parts of existing Department-approved contamination investigation reports, emergency response, spill response, remediation or other plans, private environmental site assessments, and the environmental baseline report that the Department prepares, pursuant to §7015(b) of the Coastal Zone Permit Act, and shall:
 - 8.4.4.1.1 Identify all past and ongoing sources, locations, and concentrations of contamination or environmental damage that require remediation under federal or state law, including the Hazardous Substance Cleanup Act, in all media on the heavy industry use site, and address such contamination and environmental damage on the project site;
 - 8.4.4.1.2 Address any security measures that may be necessary to stabilize and secure the project site during active operations, during potential emergency shut downs, and upon termination, abandonment or liquidation of project activities to prevent human and wildlife exposures to contaminants or pollutants or other site hazards, including but not limited to explosive gases, charged electrical lines, confined spaces, unsupported foundations, and other potential sources of injury;
 - 8.4.4.1.3 Identify potential sources of accidental releases at the project site and the containment and countermeasures that the permittee shall undertake to prevent, minimize and remediate the consequences of such an incident if it does occur;
 - 8.4.4.1.4 Include an estimate, provided by a third-party with experience in environmental remediation, of the cost to implement the Environmental Remediation and Stabilization Plan, including any actions that will have to be taken by the applicant to comply with remediation requirements under federal or state law, including the Hazardous Substance Cleanup Act, on an annual basis for the anticipated useful life of the facility if the applicant is granted the permit; and
 - 8.4.4.1.5 Include an estimate of the cost to implement the Environmental Remediation and Stabilization Plan for incidents ranging from a minor accidental release to a catastrophic incident.
- 8.4.5 Evidence of financial assurance for the Financial Assurance Amount calculated in subsection 8.4.7 and in a form that accords with subsection 8.6.4.1 of these regulations.
- 8.4.6 In addition to information submitted in the application in accordance with subsections 8.1 through 8.4, an applicant for a conversion permit for a bulk product transfer facility shall provide the type and quantity of all materials and products that will be transferred from shore to ship, from ship to ship, and from ship to shore, and, except for grains, the source and intended destination of the materials to be shipped.

8.4.7 A statement showing the Coastal Zone Financial Assurance Amount by subtracting the amount of the Environmental Remediation and Stabilization Plan that is covered by financial assurance provided under another federal or state environmental program for the project site from the sum of the total cost of implementing the Environmental Remediation and Stabilization Plan plus the capital cost of implementing the Sea Level and Coastal Storms Plan. The statement shall contain an itemized list of all active financial assurance for the project site, including the type and amount of active financial assurance for each regulatory program relevant to the project site.

8.38.5 Application Review Process

8.3.48.5.1 The Secretary shall consider information supplied in the application and make permitting decisions consistent with the purpose of the Act as specified in 7 Del.C. §7001. Greater weight shall be accorded to assessments that utilize objective, verifiable and up-to-date sources of data than to assessments that do not utilize objective, verifiable and up-to-date sources of data. The Department reserves the right to request further relevant information after receipt of an application and prior to the application being deemed administratively complete. The Secretary shall notify the applicant by ~~certified mail~~ email when the application is deemed administratively complete.

8.3.28.5.2 In assessing an application, the Secretary shall consider ~~how~~ the proposed project will affect the six criteria cited in the Act, including project's direct and cumulative environmental impacts, economic effects, aesthetic effects, number and type of supporting facilities and their anticipated impacts on these criteria, ~~effect on~~ neighboring land uses, and compatibility with county and municipal comprehensive plans. In addition, for conversion permits only, the Secretary shall also consider the proposed project's Sea Level Rise and Coastal Storms Plan, Environmental Remediation and Stabilization Plan and Financial Assurance, and the degree to which the project site boundary is compatible with the uses, remediation efforts and environmental goals for the heavy industry use site and Coastal Zone.

8.3.3 The Secretary shall also consider any impacts the proposed activity may have on the Department's environmental goals for the Coastal Zone and the environmental indicators used to assess long-term environmental quality within the zone.

8.3.48.5.3 Prior to public hearing, the Secretary shall provide a written assessment of the project's likely impact on the six criteria listed in Section subsection 8.1 above and make available the preliminary determination of the sufficiency of the offset project as required in Section 9.0 of these regulations. The Secretary's report will be provided to the applicant and interested citizens posted on the Department's website prior to the public hearing and made a part of the record.

8.3.58.5.4 Upon receipt of an administratively complete application and completion After the determination that an application is administratively complete and the completion of the Secretary's assessment as required in Section 8.3.4 subsection 8.5.3 above, the Secretary shall issue a public notice as prescribed in Section 14.0 of these regulations and hold a public hearing in accordance with hearing procedures described in Section ~~14.0~~ 14.0 of these regulations.

8.3.68.5.5 Within 90 days of receipt of an administratively complete application, not counting the day the application became administratively complete, the Secretary shall reply to the request for a Coastal Zone act permit either granting the permit, denying the permit or granting the permit but permit, with special conditions, or denying the permit. The Secretary shall state the reasons for his that decision.

8.3.78.5.7 The permit decision shall be sent to the applicant by ~~certified mail~~ email and shall be noticed as prescribed in Section 14.0 of these regulations. If no appeal is received within the 14-day appeal period following the date of publication of the legal notice, the decision becomes final and no appeal will be accepted.

8.6 Permits

8.6.1 Permit Duration. Any permit granted under these regulations shall be issued for no longer than 20 years. The Secretary may in his or her discretion issue a permit for a lesser duration and may grant an extension of a permit term for a period of no more than 180 days.

8.6.2 Permit Renewal. A permittee who has a record of compliance with its permit may submit a request for permit renewal. The applicant shall submit a renewal application on a form supplied by the Department and shall submit it no fewer than one hundred eighty (180) days prior to the expiration of the permit that the applicant is seeking to renew.

8.6.2.1 Applications for permit renewal shall be subject to the same procedural requirements, including those for public notice and comment, that apply to initial permit issuance under Section 14.0 of these regulations, except that an application for permit renewal may address only those portions of the permit that the Department determines require revising, supplementing, deleting, or incorporating the remaining permit terms by reference from the previous permit. The Department

- may similarly, in issuing a renewal permit, specify only those portions that will be revised, supplemented, or deleted, incorporating the remaining permit terms by reference.
- 8.6.2.2 In reviewing a renewal application, the Secretary will consider the applicant's performance under the existing permit, including compliance with permit terms and conditions, and any violations of the permit or applicable environmental laws, regulations, or other permits.
- 8.6.2.3 The Secretary may renew a permit with notice to the public as provided in Section 14.0 of these regulations. A public hearing on a permit renewal shall be held upon request.
- 8.6.3 Permit Modification. A permittee may submit a request for a minor or major permit modification to the Secretary. If the Secretary grants a request for modification, only the permit conditions subject to modification are reopened.
- 8.6.3.1 Minor Modification. The Secretary may modify a permit without public notice for administrative changes, including corrections of spelling or grammatical errors, a change in only the name of the permittee or other administrative matters that do not affect the ownership, control of the operations or other substantive requirements prescribed by the permit.
- 8.6.3.2 Major Modification. A permittee may submit a written request for a major permit modification to change ownership, control or any substantive term of a permit that would not constitute a minor modification. The Secretary shall provide public notice in accordance with Section 14.0 of these regulations for a major modification, shall provide 20 business days for the public to comment on the proposed modification, and shall schedule a public hearing on a major modification at his or her discretion. A modification of the ownership or operating entity in a permit shall be granted only in the event that the prospective permittee satisfies all the applicable requirements under these regulations.
- 8.6.4 Requirements Exclusive to Conversion Permits. All conversion permittees shall implement a written Department-approved Sea Level Rise and Coastal Storms Plan, a written Department-approved Environmental Remediation and Stabilization Plan, and shall implement Financial Assurance in accordance with subsection 8.6.4.1.
- 8.6.4.1 Financial Assurance. All conversion permittees shall establish and maintain financial assurance in the form of either a Fully Funded Trust Fund, a Letter of Credit, an Insurance Policy, a Surety Bond, or a combination of those instruments, or another form of financial assurance approved by the Secretary, for the Coastal Zone Financial Assurance Amount calculated in subsection 8.4.7.
- 8.6.4.1.1 Financial Assurance Instrument – Fully Funded Trust Fund. A permittee who is approved to use a Fully Funded Trust Fund to satisfy the financial assurance requirements under these regulations shall submit to the Department the executed trust fund agreement, which shall:
- 8.6.4.1.1.1 Be executed by an entity that is regulated by the United States Federal Deposit Insurance Corporation, is regulated and examined by the State of Delaware, and has the authority to act as Trustee;
- 8.6.4.1.1.2 Specify that it is fully funded in an amount equal to the Coastal Zone Financial Assurance Amount, or in an amount that, when combined with the face value of any other financial instrument executed in accordance with this subsection equals the Coastal Zone Financial Assurance Amount;
- 8.6.4.1.1.3 Specify that the fully funded Trust Fund cannot be revoked or terminated without the prior written approval of the Secretary;
- 8.6.4.1.1.4 Identify the Department as the sole Beneficiary of the Trust Fund.
- 8.6.4.1.1.5 Specify that the Trustee may only disburse funds at the direction of the Beneficiary, for costs identified in subsection 8.4.7, and with the written approval of the Secretary;
- 8.6.4.1.1.6 Be effective no later than the date of permit issuance, and prior to any land disturbing or construction activity;
- 8.6.4.1.1.7 Annually, at least 30 days prior to the anniversary date of permit issuance, have its value confirmed to the Secretary in a written statement, inclusive of any adjustments required of the permittee consistent with subsection 8.4.7.
- 8.6.4.1.2 Financial Assurance Instrument – Letter of Credit. A permittee who chooses to provide a Letter of Credit as financial assurance to guarantee the availability of funds, consistent with subsection 8.4.7, shall submit to the Department the originally signed and certified Letter of Credit. The Letter of Credit shall:
- 8.6.4.1.2.1 Be issued by a financial institution that is regulated by the United States Federal Deposit Insurance Corporation, is licensed to transact business in the State of Delaware, and that maintains a financial strength rating of at least BBB+ by a NRSRO;

- 8.6.4.1.2.2 Include the applicable permit number for which financial assurance is being provided and specify that the face value of the Letter of Credit is in an amount equal to the Coastal Zone Financial Assurance Amount, or in an amount that, when combined with the face value of any other financial instrument executed pursuant to this subsection equals the Coastal Zone Financial Assurance Amount;
- 8.6.4.1.2.3 Specify that the Letter of Credit is irrevocable and is issued for a period of not less than one year, and that it will be automatically renewed thereafter for a period of at least one year;
- 8.6.4.1.2.4 Specify that, if the issuer of the Letter of Credit decides not to extend the Letter of Credit beyond the then current expiration date, the issuer shall notify separately the permittee and the Secretary by certified mail at least 120 days before the current expiration date;
- 8.6.4.1.2.5 Specify that the Beneficiary may draw on the Letter of Credit to pay for costs identified in subsection 8.4.7;
- 8.6.4.1.2.6 Identify the Department as the sole beneficiary of the Letter of Credit.
- 8.6.4.1.2.7 Be effective no later than the date of permit issuance, and prior to any land disturbing or construction activity; and
- 8.6.4.1.2.8 Shall annually, at least 30 days prior to the anniversary date of permit issuance, submit to the Secretary an originally signed and certified amendment to the Letter of Credit confirming the face value of the Letter of Credit in the amount approved by the Department, inclusive of any adjustments required of the permittee consistent with subsection 8.4.7.
- 8.6.4.1.3 Financial Assurance Instrument – Insurance Policy. A permittee who chooses to provide an Insurance Policy as financial assurance to assure the availability of funds, consistent with subsection 8.4.7, shall submit to the Department a certificate of insurance along with a copy of the Insurance Policy, including all endorsements and attachments. The Insurance Policy shall:
- 8.6.4.1.3.1 Be issued by an insurance provider who is licensed to transact the business of insurance in the State of Delaware and who maintains a financial strength rating of at least BBB+ or equivalent assigned by a NRSRO;
- 8.6.4.1.3.2 Be issued for a limit of liability consistent with the requirements of subsection 8.4.7. The term “limit of liability” shall mean the Coastal Zone Financial Assurance Amount or the amount that, when combined with the face value of any other financial assurance instrument executed pursuant to this section equals the Coastal Zone Financial Assurance Amount;
- 8.6.4.1.3.3 Include the applicable permit number for which the Insurance Policy is being provided;
- 8.6.4.1.3.4 Provide coverage solely for implementation of the Environmental Remediation and Stabilization Plan, and capital costs of Sea Level Rise and Coastal Storms Plan.
- 8.6.4.1.3.5 Guarantee that funds will be made available to undertake the activities identified in subsection 8.4, up to an amount equal to the stated limit of liability of the Insurance Policy, solely upon the direction of the Secretary, to such party or parties as the Secretary specifies;
- 8.6.4.1.3.6 Be effective no later than the date of permit issuance, and prior to any land disturbing or construction activity;
- 8.6.4.1.3.7 Contain a provision allowing assignment of the Insurance Policy to a successor permittee. Such assignment may be conditional upon consent of the insurer, but such consent shall not be unreasonably withheld;
- 8.6.4.1.3.8 Explicitly provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the limit of liability of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the insurance policy by sending separate notices by certified mail to the permittee and the Secretary. The insurance provider shall not cancel, terminate, or fail to renew the insurance policy during the 120 days beginning from the date of receipt by the Secretary of the notice of cancellation as shown on the signed return receipt. The provider shall not cancel, terminate, or fail to renew, and the Insurance Policy shall remain in full force and effect, in the event that on or before the date of expiration:
- 8.6.4.1.3.8.1 The permittee abandons the project site;
- 8.6.4.1.3.8.2 The permit is terminated or revoked or a new permit or renewal is denied; or
- 8.6.4.1.3.8.3 The Secretary determines the permittee is in violation of these regulations; or
- 8.6.4.1.3.8.4 The permittee is named as a debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

8.6.4.1.3.8.5 The premium due is paid.

8.6.4.1.3.9 Be affirmed through the submission to the Secretary, at least 30 days prior to the anniversary date of permit issuance, of an originally signed and certified endorsement to the Insurance Policy affirming the limit of liability in the amount approved by the Department, inclusive of any adjustments required of the permittee, consistent with subsection 8.4.7.

8.6.5 Financial Assurance Instrument – Surety Bond. A permittee who chooses to provide a Surety Bond as financial assurance to guarantee the availability of funds, consistent with subsection 8.6.4.1, shall submit to the Department the originally signed and certified Surety Bond. The Surety Bond shall:

8.6.5.1 Be issued by an entity that is licensed to transact business in the State, is listed as an approved surety on Department Circular 570 of the U.S. Department of the Treasury, and maintains a financial strength rating of at least BBB+ by a NRSRO;

8.6.5.2 Include the applicable permit number for which Surety Bond is being provided;

8.6.5.3 Specify that if the issuer of the Surety Bond decides not to extend the Surety Bond beyond the then current expiration date of the bond, the issuer shall notify separately the permittee and the Secretary by certified mail of that decision at least 120 days before the current expiration date;

8.6.5.4 Specify that the Secretary may access the Surety Bond to pay for costs identified in subsection 8.4.7;

8.6.5.5 Identify the Department as the sole obligee of the Surety Bond;

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.

9.0 Offset Proposals Offsets

9.1 Offset Proposal Requirements

9.1.1 Any application for a ~~Coastal Zone~~ 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 proposals ~~must~~ 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~~. ~~It is the responsibility of the~~ The applicant to choose shall propose an offset project that is clearly and demonstrably more beneficial to the environment in ~~the Coastal Zone Delaware~~ than the harm done by the negative environmental impacts associated with the ~~permitting activities themselves~~ proposed project.

9.1.2 All ~~applicants~~, applicants are required to more than offset the negative impacts of the project or activity that is the subject of the application for a ~~Coastal Zone~~ 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 ~~The Secretary shall give preference to offset projects that are within the Coastal Zone, that occur in the same environmental medium as the source of degradation of the environment, that occur at the same site as the proposed activity requiring a permit and that occur simultaneously with the implementation of the proposed activity needing an offset.~~ 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 ~~should~~ shall be well-defined and contain measurable goals or accomplishments which can be ~~audited~~ verified by a third-party or the Department.

9.1.5 ~~Within 30 days of receipt of an application, the Secretary shall make a preliminary determination as to whether the proposed offset commitment is sufficient. If the offset commitment is deemed not to be sufficient, the applicant will be informed that his application is not administratively complete and the Secretary shall request another offset proposal. 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 Where an offset project in itself requires one or more permits from a program or programs within DNREC, the Secretary shall issue the Coastal Zone Permit only after all applicable permit applications for offsetting

projects have been received and deemed administratively complete by DNREG. 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 unable 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~~ Contents. The applicant may provide whatever materials or ~~evidence deemed appropriate 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 ~~from of the proposed project as provided by the applicant pursuant to Section 8.2.1 of these regulations project, including on an annual basis, if applicable.~~

9.2.2 How the offset project will be carried out and in what period of time permittee plans to perform or complete the offset, including a schedule for completion.

9.2.3 What the environmental benefits will be and when they will be achieved 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 the 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 ~~What scientific evidence there is~~ Scientific evidence, including, but not limited to 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 will be measured in the short term and long term.

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.

9.3 Enforcement Of Offset Proposals

9.3.1 ~~Coastal Zone permits shall be approved contingent upon the applicant carrying out the proposed offset in accordance with an agreed upon schedule for completion of the offset project. Said schedule will be included in the Coastal Zone permit as an enforceable condition of the permit.~~

9.3.2 ~~Should a Coastal Zone permit applicant fail to receive, within 180 days of issuance of the Coastal Zone permit, any and all permits required to undertake an offset project, the applicant, except for good cause shown by the applicant for additional time, will be required to submit an entirely new application for the activity, including all submissions listed in Section H above, additional permit fees and a new proposed offset project.~~

10.0 **Withdrawal of and Revisions to Applications**

10.1 An applicant may withdraw his a request for a status decision or Coastal Zone 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 ~~Section 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 he believes may significantly alter the scope of the project, he may require the applicant to submit a new application to reflect the altered nature of the project.

11.0 Permit Transfers

- 11.1 ~~Coastal Zone permits may be transferred in cases of real estate transfer, corporate mergers and acquisitions or other actions whereby ownership of the activity or facility changes. Permit transfers shall require a written request of the Secretary and shall be processed within 60 days of receipt of a request for transfer.~~

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.

12.0 Abandoned Uses

- 12.1 ~~Any existing facility which is determined to be abandoned shall not be reinstated except as otherwise provided in the Act.~~
- 12.2 ~~Involuntary shutdown of a facility shall not be deemed abandonment or a loss of the facility's non-conforming use status if the Secretary can determine that the owner had no intention to abandon the use.~~
- 12.3 ~~In determining whether or not the cessation of the use is temporary or an abandonment, factors such as, but not limited to, status of environmental permits and/or business licenses, maintenance of machinery and structures, owner presence and involvement to some degree in reinstating the use, and the duration of cessation shall be considered.~~
- 12.4 ~~When, after investigation, the Secretary makes a preliminary determination that an existing use may be abandoned, he shall notify the owner/operator in writing, by registered mail, that he intends to declare the use abandoned. The owner/operator shall have sixty days from the receipt of said notice to demonstrate that there is or was no intention to abandon the use and when operation of the use will resume.~~
- 12.5 ~~Within 120 days from the date of receipt by the owner/operator of the notice of abandonment, the Secretary shall render a decision of abandonment of the facility taking into consideration the response, if any, received from the owner/operator and shall give reasons therefore.~~
- 12.6 ~~The Secretary shall issue a public notice of the decision, which decision may be appealed in accordance with the provisions of Section 16.0 of these regulations and 7 Del. C. §7007.~~

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 good 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.
- 12.1.6 Conversion permittees shall update the project site's Sea Level Rise and Coastal Storm Plan every 10 years to reflect any changes to the factors listed in subsection 8.4.2, and resubmit the updated Plan to the

Department prior to but no more than 10 days before the 10-year anniversary of the date of permit issuance. If the update reveals that the areas having a 1% or 0.2% probability of flooding or being exposed in the High Sea Level Rise Scenario would include operations, facilities, and infrastructure that would not have been flooded or exposed according to the previous Sea Level Rise and Coastal Storms plan, but would be according to updated information, the permittee shall propose a schedule and, if necessary, request a major modification describing any capital improvements that must be made in order to avoid potential environmental damage in accordance with subsection 8.4.2.4.

12.1.7 Conversion permittees shall annually, within 30 days of the anniversary of permit issuance, submit evidence that the financial assurance required by these regulations is in effect, and that all necessary actions have been taken, including paying premiums or fees, to ensure that the full amount of the required financial assurance will be in effect through the date of the next subsequent anniversary of the date that the Secretary issued the permit.

12.1.8 If a conversion permit contains an annual offset, the permittee shall annually submit a report of offset operation, completion and efficacy within 10 days of the anniversary of permit issuance.

13.0 Public Information

All correspondence, permit applications, offset proposals and any other supporting materials submitted by applicants or materials prepared by ~~DNREC~~ the Department are subject to Delaware's Freedom of Information Act (29 Del.C. Ch. 100) and the Department's FOIA policy.

14.0 Public Notification

14.1 At a minimum, the Secretary shall notify the public by legal notice when the following events occur:

14.1.1 The receipt of a an administratively complete request for status decision.

14.1.2 The decision by the Secretary of a status decision request.

~~14.1.3 The decision by the Secretary to consider a facility/use as abandoned.~~

~~14.1.4~~ 14.1.3 The receipt of an application for a ~~Coastal Zone Permit~~ permit, renewal or major permit modification.

~~14.1.5~~ 14.1.4 The scheduling of all public hearings.

~~14.1.6~~ 14.1.5 The decision on all permit applications, renewals and major permit modifications.

~~14.1.7~~ 14.1.6 The withdrawal of an administratively complete application by the applicant.

~~14.1.8 The receipt of a request for a permit transfer as specified in Section 11.1.~~

14.2 All legal notices shall appear in one newspaper of statewide circulation and a second newspaper of local circulation in the county in which the proposed project is located. The Secretary will make every effort to publish legal notices on either Wednesdays or Sundays but may publish on other days when schedules require more expeditious handling of legal notices.

14.3 The Secretary shall also maintain a direct ~~mail~~ notification program whereby interested citizens may subscribe, free of charge, to a service where copies of all legal notices will be ~~mailed directly to citizens~~ emailed. The Secretary shall ~~advertise this service on an annual basis and~~ renew subscriptions from interested citizens as requested. Failure of the Secretary to ~~mail~~ email notices in a timely and accurate fashion shall not be cause for appeal of any action or decision of the Secretary.

15.0 Public Hearings

15.1 All public hearings shall be held in the county in which the proposed project is to be located and within a reasonable proximity to the proposed project site.

15.2 The date, location, time and a brief description of the project shall be published at least twenty (20) days prior to the date of the hearing. A copy of the hearing notice shall be ~~mailed~~ emailed to the applicant.

15.3 A written transcript of the hearing shall be made for the Department.

15.4 All hearings shall be conducted in accordance with the Delaware Administrative Procedures Act (29 Del.C. Ch. 101).

16.0 Appeals

16.1 Appeals of Decisions of the Secretary

16.1.1 Any person aggrieved by any permit or other decision of the Secretary under the Act may appeal same under Section 7007 of the Act and this section of the regulations.

16.1.2 Receipt of an appeal does not serve to stay the activity or approval in question.

- 16.1.3 Applicants must file notice of appeal with the Board within 14 days following announcement by the Secretary of his that decision. The day after the date of the announcement shall be considered the beginning date of the 14-day appeal period.
- 16.1.4 The date at which a notice of appeal is considered to have been filed shall be the date the Board receives the notice of appeal at the Dover Office of the Secretary of DNREC, 89 Kings Highway, Dover, Delaware, 19901. Should the end date of the 14-day filing period fall on a Saturday, Sunday, or legal holiday, the ending date of the appeal period shall be 4:30 p.m. of the next working day.
- 16.1.5 It is the responsibility of the applicant to insure that the appeal is received at the Secretary's office within the appeal period.
- 16.1.6 If no appeal is received within 14 days following the date of the publication of the legal notice, the decision becomes final and no appeal will be accepted.
- 16.2 Procedures for Appeals Before the Coastal Zone Industrial Control Board
 - 16.2.1 A majority of the total membership of the Board less those disqualifying themselves shall constitute a quorum. A majority of the total membership of the Board shall be necessary to make a final decision on an appeal of a status decision or permit request.
 - 16.2.2 The Board shall publish a notice of the hearing as prescribed in 29 **Del.C.** Ch. 101, Section 10122 at least 20 days prior to the hearing.
 - 16.2.3 The Board must process and rule on the appeal in accordance with 29 **Del.C.** Ch. 101, Subchapter III.
- 16.3 Appeals of Decisions of the Coastal Zone Industrial Control Board
 - 16.3.1 Any person aggrieved by a final order of the Board as provided for in 29 **Del.C.** §10128, may appeal the Board's decision to Superior Court in accordance with 29 **Del.C.** §10142. The Secretary may also appeal any decision of the Board as any other appellant.
 - 16.3.2 The appeal shall be filed within 30 days of the day the notice of decision is mailed.
 - 16.3.3 Appeals to Superior Court shall be carried out as specified in 29 **Del. C.**, Chapter 101.

17.0 Fees

- 17.1 The Secretary shall charge an application fee for Coastal Zone status decisions and permits as found in the Department's fee schedule as approved by the General Assembly.
- 17.2 Interested parties shall be entitled, at no charge, to copies of Coastal Zone Act status decisions and permit applications, provided such applications are not unreasonably bulky.
- 17.3 The applicant shall bear the costs of all public hearing notices, and the preparation of public hearing transcripts for the Department in addition to the application fee charged by the Department. Anyone desiring a typed transcript of the hearing must acquire their copy directly from the court reporter.
- 17.4 The applicant shall bear the cost of any additional review by a third-party expert on contract to provide the Department with a review of any financial insurance that is not a fully funded Trust Fund, Letter of Credit, Insurance Policy, Surety Bond or combination of these four instruments.

18.0 Enforcement

- 18.1 In cases of non-compliance with these regulations or the provisions of 7 **Del.C.** Ch. 70, the Secretary may suspend or revoke any permit issued pursuant to these regulations or exercise other enforcement authorities provided for in ~~the Act~~ 7 **Del.C.** Ch. 70.
- 18.2 If an applicant fails to carry out any offset project in accordance with the schedule outlined in their permit, the Secretary may take any enforcement action he deems appropriate, including revocation of the Coastal Zone permit. The Attorney General shall have the power to issue a cease and desist order to any person violating any provision of this chapter. Provided that any cease and desist order issued pursuant to this section shall expire (1) after 30 days of its issuance, or (2) upon withdrawal of said order by the Attorney General, or (3) when the order is superseded by an injunction, whichever occurs first.

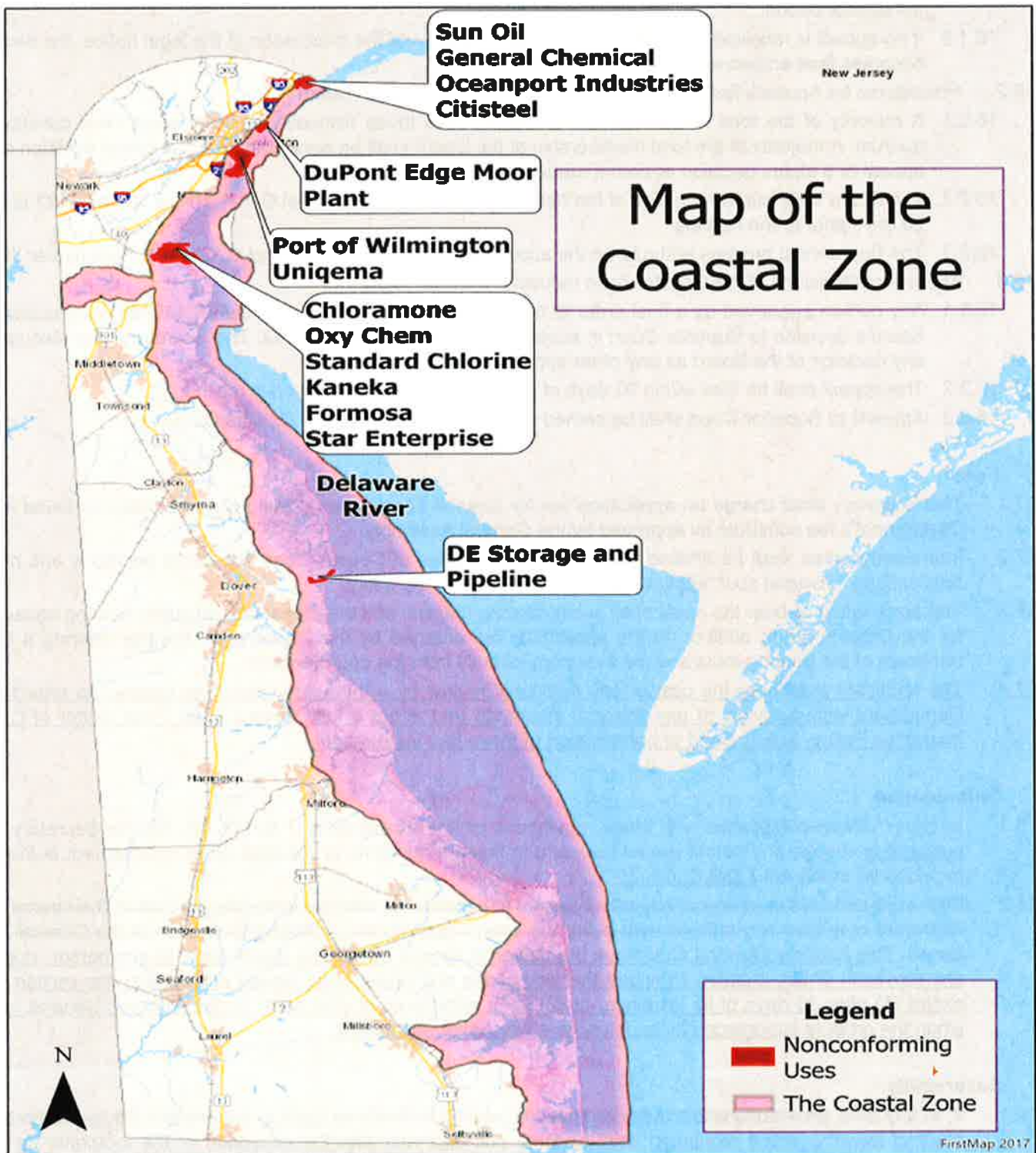
19.0 Severability

- 19.1 If, at any time, provisions within these regulations relating to ~~Sections~~ Section 5.0 and ~~9.0~~ are invalidated by a court of law, the entire regulation shall become null and void with the exception of the footprints for non-conforming uses shown in Appendix B and the public notice provisions of Section 44.0 15.0 of these regulations.
- 19.2 If, at any time, provisions other than those relating to requirements in ~~Sections~~ Section 5.0 and ~~4~~ are invalidated by a court of law, then only those particular provisions will become null and void and all other provisions will remain operational.

Appendix A

Map of the Coastal Zone

*Please contact the Department of Natural Resources and Environmental Control for a copy of this document.

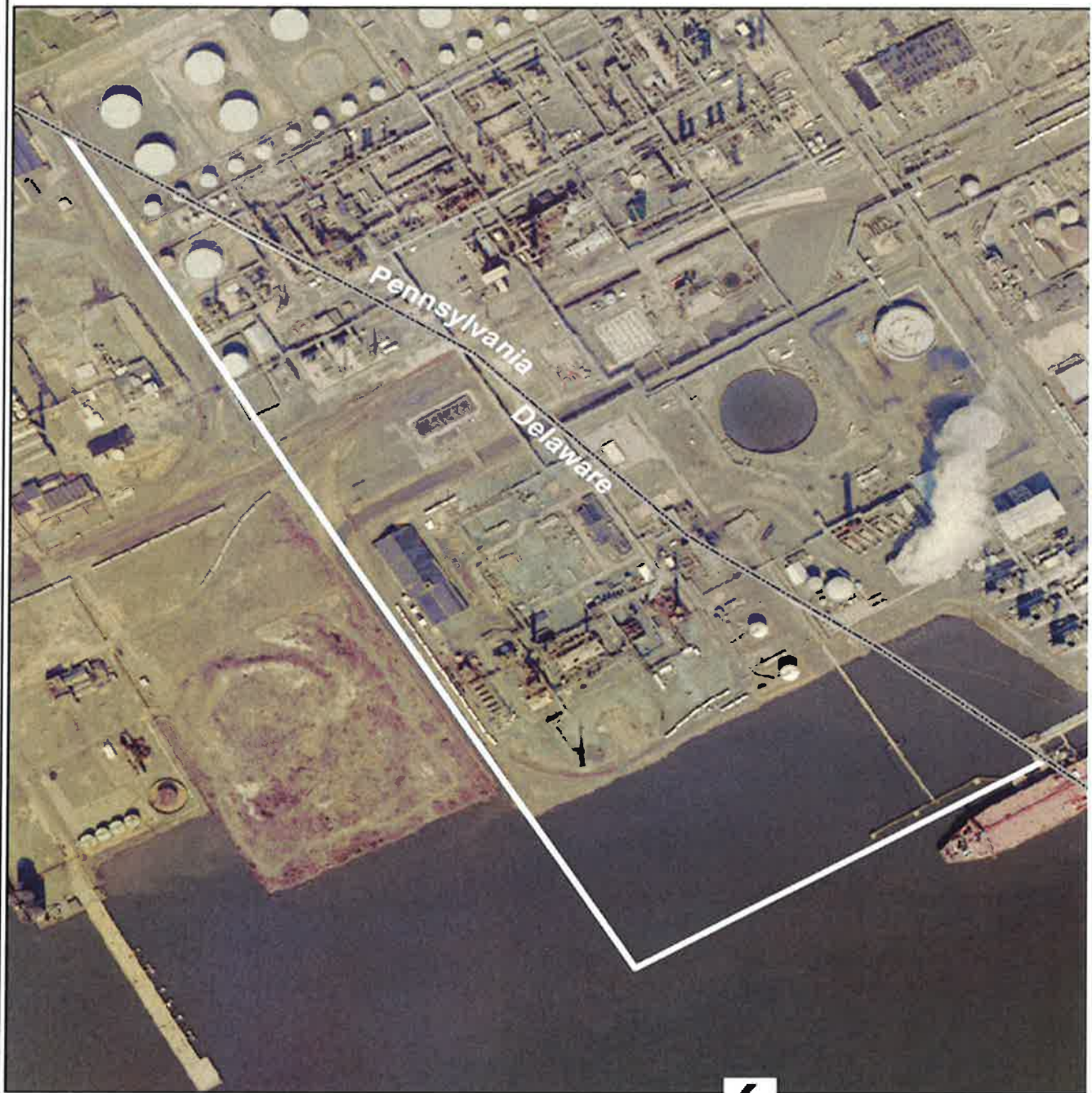


Appendix B

Footprints of Nonconforming Uses

~~*Please contact the Department of Natural Resources and Environmental Control for a copy of this document.~~

Sun Oil



General Chemical



0 0.1 0.2 Miles

Ocean Port Industries



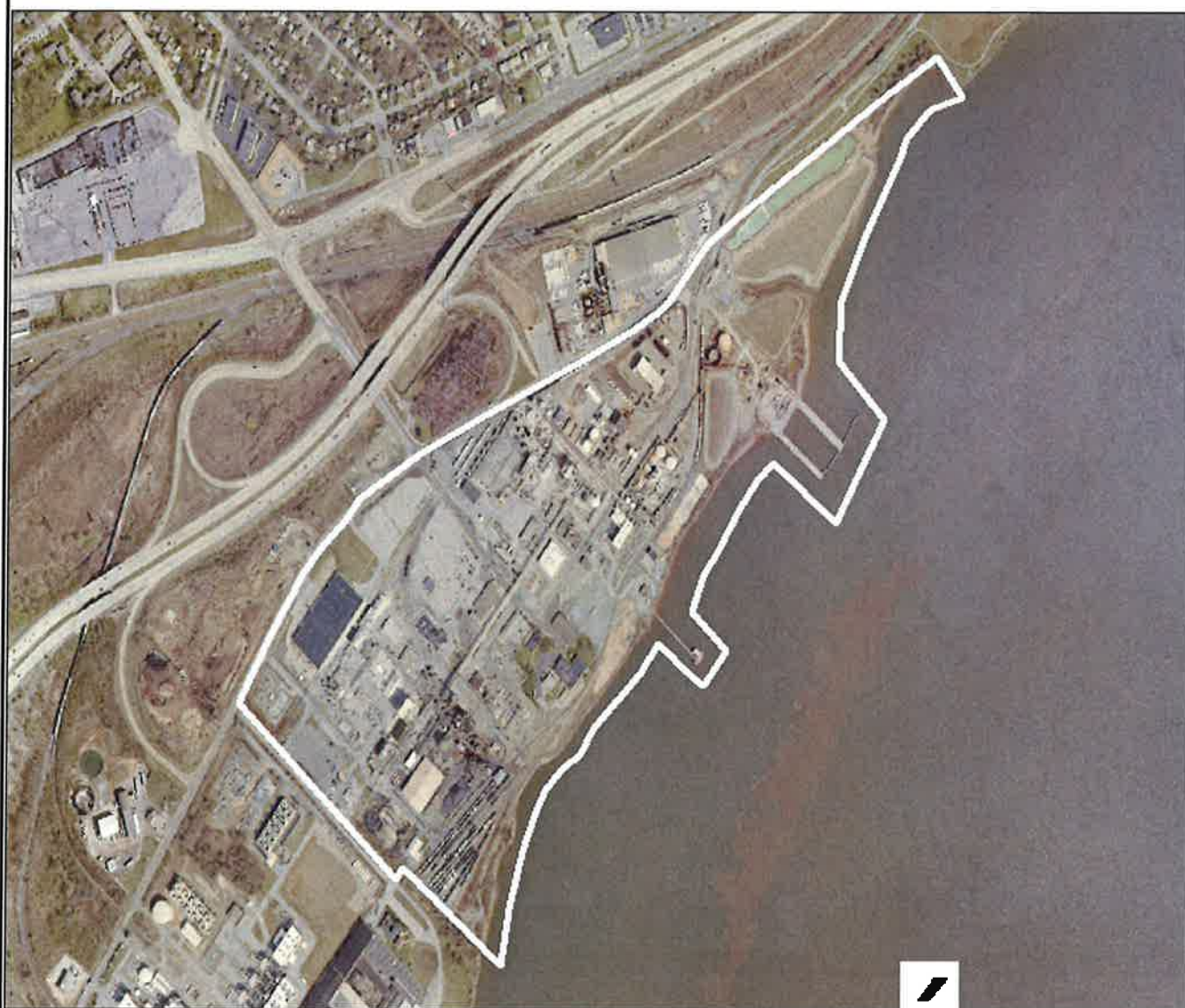
0 0.15 0.3 Miles

Citi Steel



0 0.2 0.4 Miles

DuPont - Edgemoor



0 0.2 0.5 Miles
5 5

Port of Wilmington



0 0.4 0.8 Miles

Uniqema



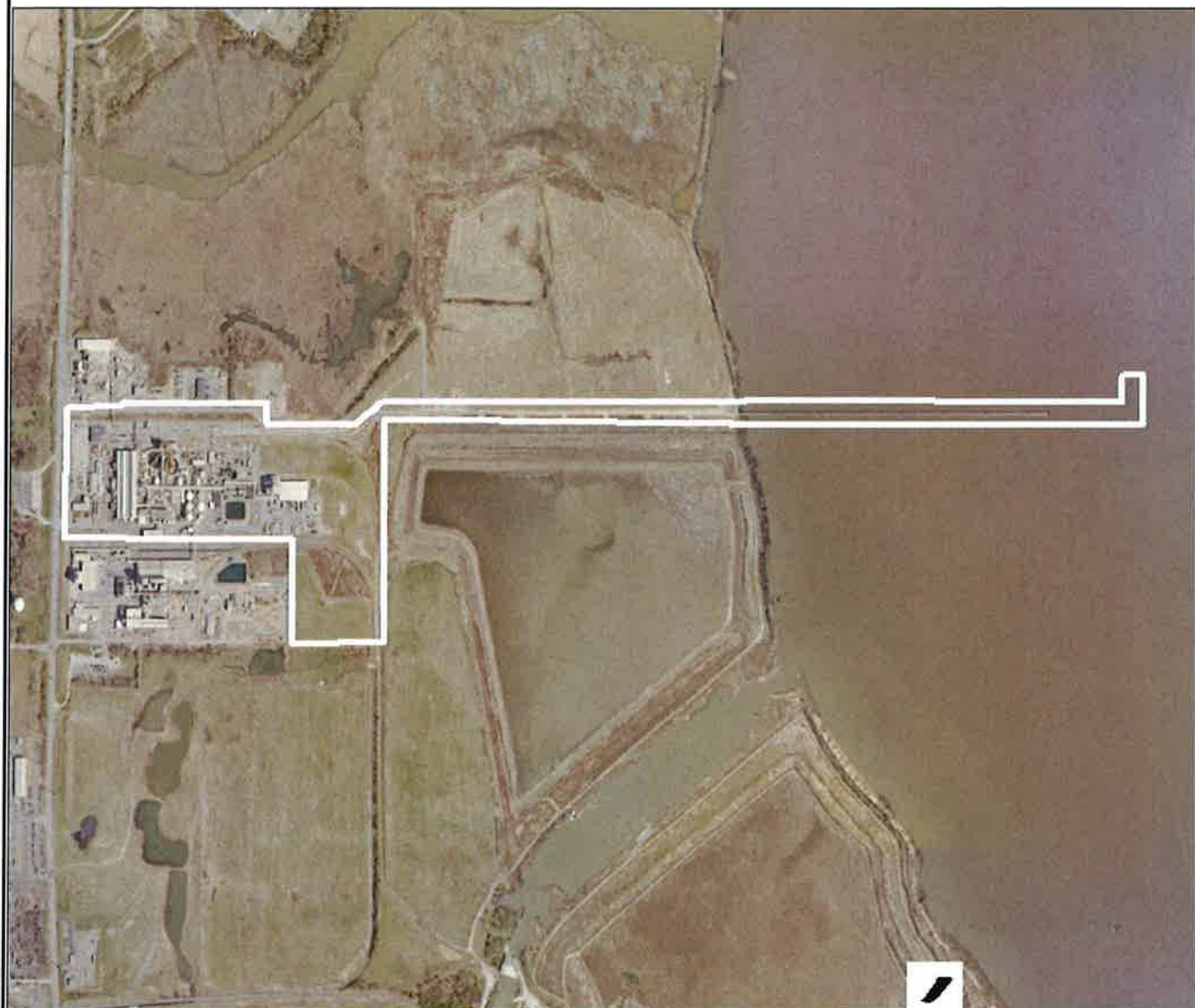
0 0.4 0.8 Miles

Chloramone



0 0.0 0. Mile
5 1 s

Oxy - Chemicals



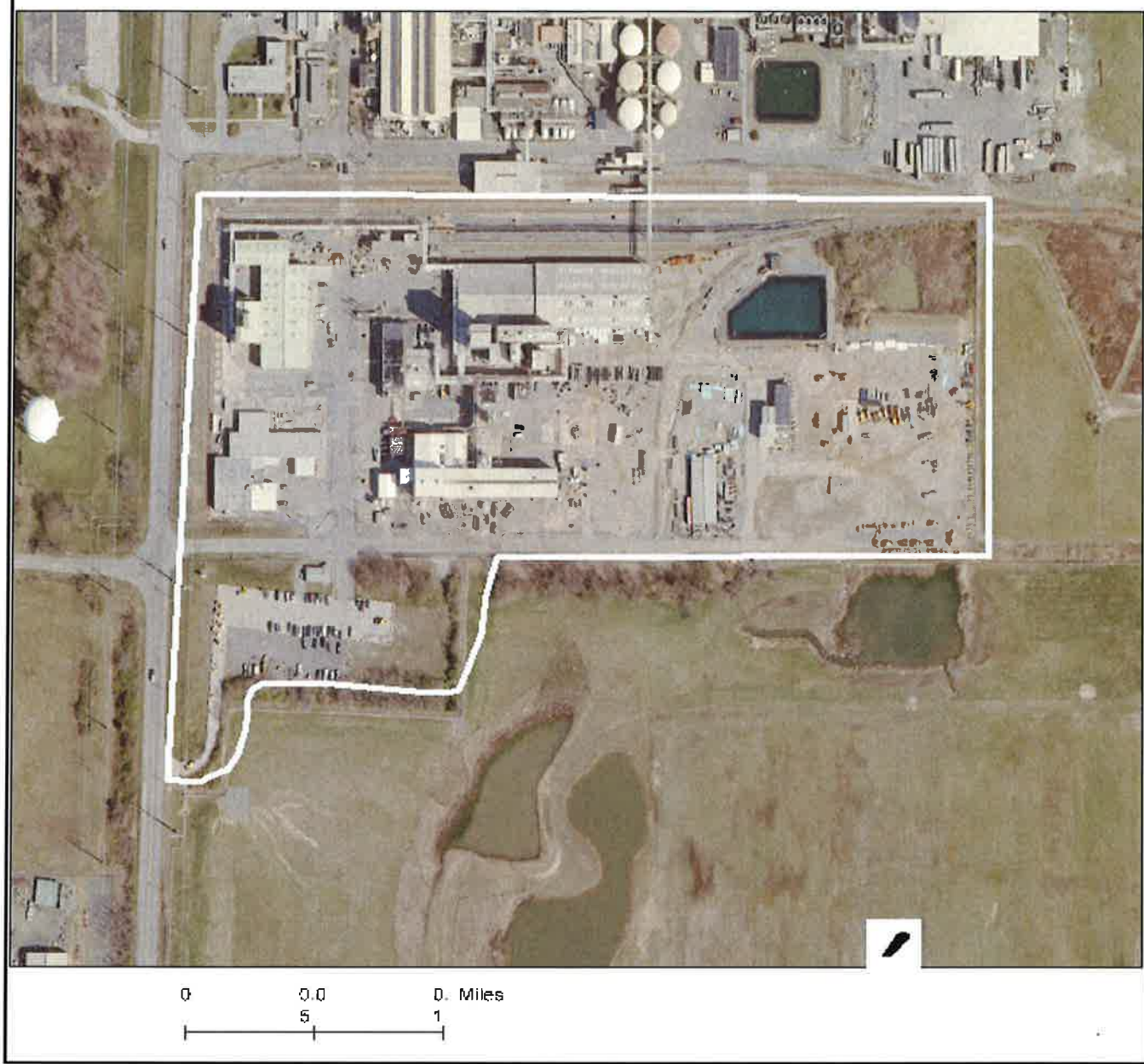
0 0.2 0. Miles
5 5

Standard Chlorine



0 0.05 0.1 Miles

Kaneka Delaware



Formosa Plastics



0 0.1 0.2 Miles

Star Enterprise



0 0.5 1 Miles

De. Storage and Pipeline



Appendix C

DNREC Guidance For Implementation and Interpretation of the Regulations Governing Delaware's Coastal Zone

1.0 Introduction

- 1.1 These regulations are built around two linked goals as developed by Governor Carper's Coastal Zone Regulatory Advisory Committee. This committee met in late 1996, through 1997 and culminated their work in early 1998 with signing of the Memorandum of Understanding that formed the basis for these regulations. These regulations are designed to ensure environmental improvement in the Coastal Zone while at the same time providing industry with the needed flexibility to remain competitive in a global marketplace. The original Regulations Governing Delaware's Coastal Zone (Regulations) were promulgated in 1999 to implement the

1971 Coastal Zone Act (CZA). This guidance was developed to support the application of those regulations. The Coastal Zone Conversion Permit Act (CZCPA) of 2017 required the Department to revise the Regulations, which was done with the recommendations of a Regulatory Advisory Committee (RAC) that deliberated from September 2018 through April 2019. This guidance document was also revised to reflect changes in the authorizing legislation and the revised regulations.

- 1.2 ~~In order to meet these two goals, a regulatory process comprised of regulatory exemptions, permitting requirements and offset provisions has been developed. This regulatory process has been designed so that each nonconforming use and new manufacturing uses can add new products, change existing products, increase production capacity, add new processes and modify existing processes or do any other activity so long as these activities are: 1) undertaken in a way that assures environmental improvement in the Coastal Zone; and 2) undertaken in such a way that they meet the six criteria outlined in the Coastal Zone Act.~~
- 1.3 ~~For a more thorough explanation of the deliberations of the Advisory Committee and the foundation upon which these regulations are built, the reader is referred to the final Memorandum of Understanding dated March 19, 1998, and which is available in the offices of the Department at 89 Kings Highway, Dover, Delaware.~~
- 1.4.1.2 ~~The following guidance is made available to interested citizens and applicants to better understand how these regulations will be interpreted and implemented by the Department. This guidance is, however, not a regulation and does not have the force of law. In the event of a conflict between this guidance and the regulations, the regulations will prevail.~~

2.0 **Guidance in determining whether a permit is ~~required~~ required.**

- 2.1 ~~When a business wants to conduct an activity that may be one of the activities exempted from the permitting process as outlined in Section 5.0, but the business is unsure of its determination, then the company Any entity that is conducting or is planning to conduct activities in the Coastal Zone may choose to seek a status decision from the Secretary rather than proceeding with filing a Coastal Zone permit application to determine whether they are required to obtain a permit under 7 Del.C. Chapter 70. According to 7 Del.C. Chapter 70, except for the fourteen heavy industry use sites, manufacturing sites that were not in active use on June 28, 1971 are allowed in the coastal zone by permit only. Also, the conversion of a heavy industry use site to an alternative or additional heavy industry use or to a bulk product transfer facility is allowed only by a conversion permit. Conversion permits are subject to special requirements as provided for in the statute and as described in the regulations. Any other use that is allowed by permit must obtain a coastal zone permit. Therefore, there are two types of coastal zone permits: one is a standard coastal zone permit and the other is a conversion permit. The status decision form contains questions that will help determine which, if any, of these permits will be required.~~
- 2.2 ~~The Advisory Committee recommended that DNREC establish a tiered system of Coastal Zone Act permitting and emphasized that such a system would promote efficiency to the permitting process by tailoring the extent of regulatory review to the expected impacts of the proposed project. Under the tiered approach outlined in the MOU, an industry would have been required to obtain a Coastal Zone Act permit only in those instances when a proposed new manufacturing facility, or a change in the operations of a heavy industrial or manufacturing facility, may have a negative impact on one or more of the six criteria cited in the Act.~~
- 2.3 ~~These regulations have maintained that provision, however, they have removed the concept of a tiered system and in its place created essentially two levels of review. The first are activities that are clearly exempted from regulation because they have no environmental consequence, they are exempted in the Act or they were seen by the advisory committee to be activities that simply shouldn't require a permit. The second level is the full Coastal Zone act permit where any negative impact on the six criteria will trigger the permit requirement. In cases where the applicant is unsure of the impact or how their activity will be viewed by the Department, they may apply for what has historically been — and will continue to be — called the "status decision".~~

3.0 **Environmental Goals and Indicators ~~Revisions under the Coastal Zone Conversion Permit Act~~**

- 3.1 ~~DNREC will develop within 12 months of the ratification of the Coastal Zone Act MOU, a set of Coastal Zone environmental goals and appropriate environmental indicators which will highlight the most significant environmental challenges to the Coastal Zone. The indicators will serve several important purposes. First, they will assist DNREC in developing a more accurate picture of the environmental quality of the Coastal Zone, and measuring trends in this quality over time. Second, they will assist DNREC and project applicants by providing a means for evaluating the potential impacts of proposed changes in facility operations and proposed offsets on the Coastal Zone environment. The Coastal Zone Conversion Permit Act (CZCPA) of 2017 made sweeping changes to the Coastal Zone Act (CZA). Most importantly, whereas abandoned sites under the 1999 regulations were precluded from future heavy industry uses, the CZCPA allowed for their reuse with the advent of a conversion permit. In addition, new heavy industry uses are allowed to be added to existing (or operating)~~

heavy industry use sites. However, the requirements for obtaining and maintaining a permit are much more rigorous than they are for a standard CZA permit. For example, conversion permit applications must contain evidence of compliance with the Hazardous Substance Cleanup Act, a plan for preparing the site for sea level rise and coastal storms, as well as evidence of financial assurance.

- 3.2 DNREC is responsible for defining, prioritizing, and making a matter of public record the set of goals and indicators for assessing the environmental quality in the Coastal Zone. Once goals for Coastal Zone have been established, DNREC will select a detailed set of indicators for use in assessing the quality of the environment as measured against those goals, and to monitor progress over time.
- 3.3 ~~DNREC will periodically review and reissue the Coastal Zone environmental indicators (perhaps bi-annually). As conditions in the Coastal Zone change, and scientific methods for tracking and analyzing these changes evolve, it may be necessary to add or change some indicators, or drop others. It may also be necessary to reprioritize them as some parameters of environmental health improve and others decline. DNREC's periodic review of the indicators will allow for these kinds of adjustments to be made. In addition to the revisions to the regulations as required by the CZCPA, the Department has also taken the opportunity to update some of the program's administrative aspects. For example, the application process used to entail the submission of multiple hard copies, but the revised process provides for the submission of applications in electronic format.~~
- 3.4 ~~DNREC's process for developing and prioritizing the indicators will include opportunities for formal public review and comment. To ensure that the public has opportunities to provide input into the development and any subsequent revision of the environmental indicators, the Advisory Committee recommended that DNREC establish an Environmental Indicator Technical Advisory Committee (EITAC). In 1999 the Department and its advisors intended to use environmental indicators, yet to be developed, to guide the identification and evaluation of environmental offsets. However, after the Environmental Indicator Technical Advisory Committee deliberated, the members concluded that the resources needed to launch and operate an indicators program would exceed those available to the Department. The General Assembly was silent on the issue of indicators in the CZCPA. The majority of references to indicators have therefore been removed from this guidance, although some provisions remain in the regulations and this guidance in case the resources become available and the Secretary chooses to resume developing the program in the future.~~
- 3.5 ~~A substantial proportion of the members of the EITAC should be technical experts. The Committee should also include representatives of various stakeholder groups, for example, heavy industry and manufacturing in the Coastal Zone, industry outside the Coastal Zone, agricultural interests, environmental advocacy groups and labor. EITAC meetings should be public and any reports generated by the Committee should be made available to the public.~~

4.0 Principles for Assessing an Application

- 4.1 Any negative environmental impact associated with a proposed project ~~will have to~~ must be more than offset, thus assuring continuing improvement in the Coastal Zone environment. The Secretary will only grant Coastal Zone permits in those cases where the overall environmental impacts of the total application, both positive and negative, assure improvement in the quality of the environment in the Coastal Zone.
- 4.2 Therefore, activities proposed for a Coastal Zone permit which would measurably increase air emissions, water discharges, or would cause negative impacts on the Coastal Zone environment, shall include provisions for net environmental improvement of the Coastal Zone environment. These environmental improvements may be part of the permitted activity itself or realized through an enforceable offset proposal that will be implemented by a date agreed to by the company and ~~DNREC the Department, and incorporated into the permit.~~
- 4.3 ~~DNREC will develop within 12 months of the ratification of the Coastal Zone Act MOU, a set of Coastal Zone environmental goals and appropriate environmental indicators which will highlight the most significant environmental challenges to the Coastal Zone. These indicators will be "prioritized" in accordance with their significance to achieving the Coastal Zone environmental goals. These prioritized indicators will provide Coastal Zone permit applicants a good idea of which types of future offset investments will yield the greatest environmental benefit and will allow a determination of which investments are most cost effective. These indicators should also provide the rational basis for permit decisions that involve offset proposals. The regulations require that all owners and operators of a site certify the accuracy and veracity of a permit application. The certifiers will become the permittees and the owners and operators will be held responsible for compliance.~~
- 4.4 All permit applicants must describe the economic effects associated with the proposed development. These include the number and types of jobs that will be created, the associated wages, and tax revenues. Conversion permit applicants will be required to also provide comparative data about the most recent heavy industry of the site. The Delaware Department of State, Division of Small Business is the repository of relevant

economic data about the most recent heavy industry uses of the non-conforming use sites, therefore, the Department requires the applicant to supply information that has either been generated or verified by the Division of Small Business.

- 4.5** Financial assurance is required of all conversion permittees. The amount of financial assurance required depends on several factors. First, the "Financial Assurance Amount" must include the cost of any remediation required of the permitted site under the Hazardous Substance Cleanup Act, and any other applicable state or federal environmental laws, less the amount of financial assurance that the permittee may already have for that site under an applicable state or federal remediation program. A second element of the Financial Assurance Amount is the capital costs associated with the approved Sea Level Rise and Coastal Storms Plan. The applicant must assess these costs and provide in the permit application a detailed calculation of the costs and any qualified, existing financial assurance that already covers the project site. The form of the financial assurance may be a Fully Funded Trust Fund, a Letter of Credit, an Insurance Policy, a Surety Bond or a combination of two or more of those instruments. Because the purveyors of those instruments typically do not provide coverage until a permit is granted, the application must contain evidence of the commitment to provide financial assurance, which will be effective upon permit issuance. The Secretary may consider forms of Financial Assurance other than the four listed above, however, under those circumstances the Department would potentially seek external expertise in reviewing the application and will require the permittee to bear the cost of such external assistance. The Secretary also has the discretion to reject financial assurance proposals that do not conform to the standard forms that are described in the regulations, in accordance with the Department's resources and the Secretary's discretion.

5.0 Evaluation of Offset Proposals

- 5.1** ~~Although offsets within the Coastal Zone, in the same environmental medium and at the same site are preferred, there will be circumstances when offsets outside the Coastal Zone, in other media, or at another site within the zone provide greater environmental benefit or otherwise make sense, and will be considered by the Secretary. The RAC recommended that the Department administer the environmental offsets in such a way as to counter the environmental impacts of a heavy industry use by matching the location and type of environmental impact as much as possible. As a result, a permit applicant must attempt to identify offset projects that are as geographically close as possible to the impact, as well as projects that are in the same environmental medium. Offset projects proposed for locations off of the nonconforming use site in a different environmental medium will be considered only if the applicant can show that it was not practicable to identify a project on the nonconforming use site in the same medium. Where environmental impacts of a project may affect neighboring communities, the Department encourages applicants to engage in meaningful dialogue with those communities in developing potential offset proposals.~~
- 5.2** ~~While it is the applicant's responsibility to fully describe an offset proposal in the Environmental Impact Statement, it is the Secretary's responsibility to carefully assess whether the applicant's offset proposal will more than offset negative impacts of the project, and thus ensure environmental improvement in the Coastal Zone. The CZCPA specifically required that ongoing environmental impacts be offset on an annual basis. Although some environmental impacts may be ongoing, others may manifest themselves in a singular event. The Department will require offsets that correspond to the nature of either ongoing or discrete impacts accordingly. Applicants are required to submit a proposed schedule for completing offset projects and the Department will enforce deadlines for completion in the permit.~~
- 5.3** ~~The Secretary shall make decisions on applicants' status decision requests and environmental impact assessments, in writing, based on all of the expected environmental impacts of the total project on the health of the Coastal Zone, including both positive and negative impacts. Impacts may be related to air and water emissions, or they may be related to other factors such as the viability of wildlife habitat, the protection of wetlands, or the creation or preservation of open space. The Secretary will develop and use a set of prioritized environmental indicators as a tool for assisting these determinations as discussed elsewhere in this guidance.~~
- 5.4** ~~The Secretary shall consider likely cumulative impacts of proposed activities on the environment and the relevant environmental indicators. The Secretary shall also give consideration to the potential for negative cumulative impacts in situations where cross-media offsets are proposed.~~
- 5.5** ~~In addition, the Secretary will give more weight to offset proposals that: 1) have established track records and are likely to succeed from a technical standpoint; and 2) will produce beneficial effects that are verifiable.~~
- 5.6** ~~If an applicant includes in its permit application evidence of past voluntary environmental improvements and/or investments made prior to the time of application, DNREC will consider this history of environmental performance in determining the magnitude of the required offsets for the proposed project (with the understanding that the total project must assure improvement in the quality of the environment in the Coastal Zone).~~

- 5.7 ~~The Secretary will also consider the applicant's ability to carry out such improvements as evidenced by its compliance history. Compliance with environmental standards and enforcement histories of facilities is not in itself a factor in determining the required magnitude of the potential offset project, but will be used by DNREC in gauging the applicant's ability to carry out the offset project with a minimum of supervision.~~
- 5.8 ~~All offset projects must be incorporated into the Coastal Zone permit as an enforceable condition of the permit. Since some of the benefits of "flexibility" are achieved immediately upon issuance of a permit (i.e., permission to proceed), and most benefits of "environmental improvement" are achieved over time, the permit itself must include well-defined and measurable commitments or accomplishments which are independently auditable by the Department, and available to the public via the Freedom of Information Act (FOIA). DNREC will also include inspection, reporting and/or notification obligations in the permit depending on the company's compliance record and the nature of the offset project.~~
- 5.9 ~~In cases where an applicant fails to receive all required offset permits within 180 days and must therefore show good cause why a new permit application should not be required, good cause shall mean, but not be limited to, delays on the part of DNREC or other permitting authorities that could otherwise not have been expected and are considered by the Secretary to be extraordinary.~~

6.0 Guidance Regarding Activities Within The Port Of Wilmington

- 6.1 All proposed manufacturing uses within the footprint of the Port of Wilmington are not in any way exempted from permitting requirements and must apply for and be issued a Coastal Zone Act permit if otherwise applicable.
- 6.2 Proposed uses within the Port of Wilmington which constitute heavy industry uses are prohibited.
- 6.3 The regulations do not prohibit or restrict activities involving containerized, palletized, or otherwise confined materials at any location within the Diamond State Port Corp. Bulk products, once off-loaded within the designated area, may be stored, transported, or otherwise used throughout the Port, subject to all other appropriate local, state and federal statutory and regulatory provisions.
- 6.4 ~~The MOU negotiated by the Advisory Committee goes to some length to define the area that is the Port of Wilmington, some of which area is actually owned by the Diamond State Port Corporation. Regardless of the definition of the Port, it is nonetheless the equivalent of a "footprint" as that term is used to define other areas of industrial activity within the Zone. Therefore the definition of the Port as negotiated in the MOU is not repeated within the definitions section of these regulations but is rather transformed into a map or footprint similar to the other non-conforming industrial uses found in Appendix B of the regulation.~~
- 6.5 The current boundary of the Port of Wilmington is the area beginning at the intersection of the right of way of US Route I-495 and the southern shore of the Christina River; thence southward along said I-495 right of way until the said I-495 right-of-way intersects the Reading Railroad Delaware River Extension; thence southeast along the said Reading Railroad Delaware River Extension to its point of intersection with the Conrail Railroad New Castle cutoff; thence southward along the Conrail Railroad New Castle cutoff until it intersects the right of way of U.S. Route I-295; thence eastward along said I-295 right of way until the said I-295 right of way intersects the western shore of the Delaware River; thence northward along the western shore of the Delaware River as it exists now to the confluence of the Christina and Delaware Rivers; thence westward along the southern shore of the Christina River to the beginning point of the intersection of the said I-495 right of way and the Southern shore of the Christina River.

7.0 Coastal Zone Report Reports

- 7.1 ~~To ensure that the public is kept fully informed about the regulatory process under the Coastal Zone Act and about the quality of the Coastal Zone generally, the Secretary will issue a report twelve months after the regulations are promulgated, and every twenty-four months thereafter. The report will include:~~
- 7.1.1 ~~A description of progress towards environmental goals developed by DNREC for the Coastal Zone;~~
- 7.1.2 ~~Information on the general trends in the environmental indicators, in the form of narrative text as well as charts and graphs that will be easily understandable to a lay reader;~~
- 7.1.3 ~~A list of permits issued, a brief description of the status of activities under those permits, and a review of selected existing permits and actual versus projected environmental benefits; and~~
- 7.1.4 ~~A description of the cumulative impacts of permitted activities on the environmental indicators.~~

The CZCPA requires two Coastal Zone Program reports. One is a Comprehensive Economic development report by the Delaware Department of State, Division of Small Business (formerly the Delaware Economic Development Office). The other is the Remediation Status report that the Department must provide to the General Assembly every two years. These reports will provide information about the effects of Coastal Zone Program.

Appendix D

Permitting Flow Chart

~~*Please contact the Department of Natural Resources and Environmental Control for a copy of this document.~~

Appendix E

Delaware's Coastal Zone Act

~~*Please contact the Department of Natural Resources and Environmental Control for a copy of this document.~~

22 DE Reg. 993 (06/01/19) (Prop.)

Delaware's Coastal Zone Conversion Permit Act Proposed Regulations

Public Hearing
June 24, 2019
Judy Jordan, DNREC, Coastal Zone Program Manager



Reason for Regulatory Revision

- General Assembly passed the Coastal Zone Act (CZA) in 1971.
- Established boundaries of Delaware's "Coastal Zone" and prohibited additional heavy industry use that was not in operation on June 28, 1971.
- CZA was amended August 2, 2017 with passage of Coastal Zone Conversion Permit Act (CZCPA).
- CZCPA required DNREC to revise regulations.



Coastal Zone Act and Development

- **Not Regulated:**
 - Residential development
 - Commercial development
- **Prohibited:**
 - New "heavy industry use" beyond 14 sites that were in use on June 28, 1971
 - The 14 existing/grandfathered HIUSs are called "nonconforming uses"
- **Allowed (by permit only):**
 - Manufacturing facilities
 - New activity on existing "heavy industry use" (14 sites)



Characteristics of Heavy Industry

- Facilities with structures like smokestacks, tanks, chemical processing equipment, etc.
- Takes up 20+ acres of land
- Only some heavy industry can be built on the 14 sites. What's still not allowed includes:
 - Oil refineries
 - Incinerators
 - Steel manufacturing plants
 - Paper mills
 - Liquefied natural gas terminals



Delaware City Refining Company LLC Delaware City, DE

What is the difference between heavy industrial uses and manufacturing uses? It is a matter of characteristics.

DNREC Regulations of 1999

- Implemented the original CZA
- **For permits, required**
- Analysis of:
 - Environmental impact
 - Economic effect
 - Aesthetics
 - Supporting facilities
 - Effects on neighbors
 - County and municipal comprehensive plans
- Offsets for environmental impacts
- **Prohibited:**
 - bulk product transfer facilities established after 6/28/71
 - Conversion of existing facility to a heavy industry use
- Reinstatement of abandoned sites

CZCPA of 2017 Required

- DNREC to revise the regulations to describe how new heavy industrial development can be permitted at the 14 nonconforming use sites, *including abandoned sites*, in accordance with the legislative direction.



Coastal Zone Conversion Permit Act (CZCPA)

- The CZCPA (7 Del. C. Ch. 70 § 7015 (b) (9)) **required** DNREC to:
- Begin a public workshop process by October 1, 2017 and
- Promulgate regulations to implement the CZCPA by October 1, 2019.



Schedule (to date)

- September 28, 2017 Secretary Garvin signed the start action notice
- Nov 29 & 30, 2017 DNREC held 2 public workshops
- June 2018 – Secretary convened a [Regulatory Advisory Committee \(RAC\)](#) to provide recommendations on certain aspects of the regulations
- Summer 2018 through April 2019 RAC met monthly
- Summer/Fall 2018 – Technical Work Groups formed to provide RAC with options to consider on Economic Effects, Environmental Impacts, Offsets and Risk Evaluation and Financial Assurance
- Winter 2018/2019 – RAC issued preliminary recommendations
- April 16, 2019 RAC held last meeting to finalize recommendations.
- May 15, 2019 released the Final Report and Recommendations of the Coastal Zone Conversion Permit Act RAC
- June 1, 2019 Proposed Revised Regulations published in Registrar of Regulations

Conversion Permits

- DNREC's regulations will administer **conversion permits (7 Del. C. §7014(a))**:
 - An owner, operator or prospective purchaser of a heavy industry use site
 - May submit an application
 - For an alternative heavy industry use, or
 - An additional heavy industry use




Regulatory Advisory Committee

- Composed of representatives of communities, industry, environmental interests, labor, others, and chaired by retired DE Supreme Court Justice Randy Holland
- Obtained expertise input from technical expert work groups
- Developed recommendations through discussion and consensus



Public Workshops on RAC's Preliminary Recommendations Were Held

- Monday, February 25, 2019, 5:00pm-8:00pm
Claymont Community Center
- Tuesday, February 26, 2019, 5:00pm-8:00pm
Delaware City Fire Hall
- Wednesday, February 27, 2019, 5:00pm-8:00pm
Wilmington (Elbert Palmer Elementary School)



DE Storage and Pipeline Site, Port Mahon Road, Kent County

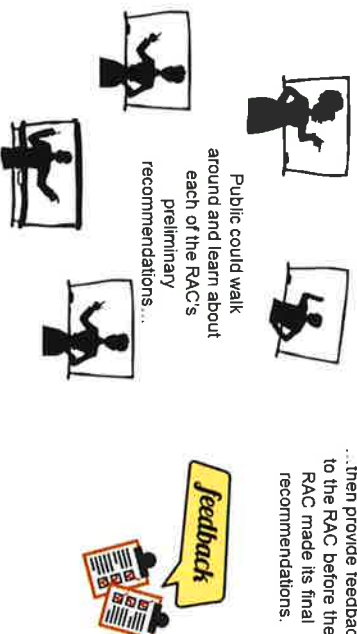
Fairy Print, DP/EC

Regulations are established to guide implementation and enforcement of laws passed by the general assembly.

Public Workshops

... then provide feedback to the RAC before the RAC made its final recommendations.

Public could walk around and learn about each of the RAC's preliminary recommendations...



Example Recommendations and Revisions

- RAC Recommendation
- Conversion permit duration should be 20 years
- (Since 1971, CZA permits were forever unless site was abandoned.)
- Proposed Regulatory Revision
- 8.6.1 Permit Duration. Any permit granted under these regulations shall be issued for no longer than 20 years. The Secretary may in his or her discretion issue a permit for a lesser duration and may grant an extension of a permit term for a period of no more than 180 days.

Example Recommendations and Revisions

- RAC Recommendation
- Proposed Regulatory Revision
- Direct and cumulative impacts should continue to be considered for conversion permits
- ~~8-3-28 5.2~~ In assessing an application, the Secretary shall consider how the proposed project will affect the six criteria cited in the Act, including project's direct and cumulative environmental impacts....

Example Recommendations and Revisions

- RAC Recommendation
- Should define "existing or previous use" to mean the same as "most recent heavy industry use"
- Proposed Regulatory Revision
- 8.3.2 For conversion permits, the applicant shall also submit to the Secretary:
 - 8.3.2.1 An Economic Effects Analysis from the Delaware Division of Small Business of the elements described in subsection 8.3.1 for the most recent heavy industry use of the project site.

Example Recommendations and Revisions

- RAC Recommendation
- Proposed Regulatory Revision
- All offset proposals shall favor offsets that directly benefit Delaware
- 9.1.1 Any application for a Geospatial Zone 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.

Example Recommendations and Revisions

- RAC Recommendation
 - The form and amount of financial assurance should be reviewed at appropriate, periodic intervals.
- Proposed Regulatory Revision
 - 12.1.7 Conversion permittees shall annually, within 30 days of the anniversary of permit issuance, submit evidence that the financial assurance required by these regulations is in effect and that all necessary actions have been taken, including paying premiums or fees, to ensure that the full amount of the required financial assurance will be in effect through the date of the next subsequent anniversary of the date that the Secretary issued the permit.

Example Recommendations and Revisions

- RAC Recommendation
 - Sea Level Rise and Coastal Storms Plan should require permittee to address combined SLR and 1% flood.
- Regulatory Revision
 - 8.4.2. At a minimum, the Sea Level Rise and Coastal Storm Plan shall... identify:
 - 8.4.2.3.5 Areas that have a 1.0% probability of being flooded by a storm in a given year combined with the effects of the High Sea Level Rise Scenario, as defined by the Delaware Sea Level Rise Advisory Committee.

Regulatory Drafting Process

- The RAC made its *final recommendations* to DNREC (April 2019)
- DNREC published proposed regulations (June 1, 2019)
- General public can review the preliminary draft regulations and provide *public comment* (until July 9, 2019)
- General public can also provide comment at the *public hearing* (June 24, 2019)
- DNREC may revise proposed regulations (July – Sept. 2019)
- DNREC publishes its *final regulations* (Oct 2019)



Demolition at the Former Citi Steel site, Oct 2017

Comments

Coastal Zone Act Program
DNREC Division of Climate, Coastal, & Energy
de.gov/conversionpermits



