

## **APPENDIX “A”**



# 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

#### 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, [and] 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[, **modification 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 Significant] 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 are] 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.

**["Expansion" means an increase in the overall processing capability of a use or facility.]**

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

**["Extension" means an increase in the geographic footprint of a nonconforming use.]**

**"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.

**["Pollutant" means a substance that causes pollution as defined in these regulations.]**

"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.

**"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.

"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, distriet 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] [Extension]** 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 5.1.20] 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.

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

### 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 there is]** 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 ~~9.1.4~~ 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 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 [remediation] 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, [according to the current (at the date of the application) Flood Insurance Rate Map from the Federal Emergency Management Agency];
- 8.4.2.3.3 Areas that have a 0.2% probability of being flooded in any given year [according to the current (at the date of the application) Flood Insurance Rate Map from the Federal Emergency Management Agency];
- 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]~~ [as described by the Delaware Sea Level Rise Technical Committee in "Recommendation of Sea Level Rise Planning Scenarios for Delaware: Technical Report," November 2017];
- 8.4.2.3.5 Areas that have a 1.0% probability of being flooded by a storm in a given year[according to the current (at the date of the application) Flood Insurance Rate Map from the Federal Emergency Management Agency,] 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]~~ [and as described by the Delaware Sea Level Rise Technical Committee in "Recommendation of Sea Level Rise Planning Scenarios for Delaware: Technical Report," November 2017].
- 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 significant]** 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 **[Rise]** 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

- 8.3-18.5.1 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 **[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 ~~Ø~~ **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 an administrative]~~ or ~~[a]~~ 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 Administrative] 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]~~ control, or any substantive term of a permit that would not constitute ~~[a minor an administrative]~~ 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 DNREC.~~ 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 not feasible] to achieve an offset in the same environmental medium.
- 9.1.7 An applicant may propose an offset project at a location other than the project site only if it demonstrates to the satisfaction of the Department that it was not feasible to execute the offset on the project site.
- 9.1.8 Where an offset project in itself requires one or more permits from a program or programs within the Department, the Secretary shall issue the permit only after all applicable permit applications for offsetting projects have been received and deemed administratively complete by the Department.
- 9.2 Offset Proposal Contents 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 which may consist of] peer[-]reviewed studies, models, or state, local or federal government publications concerning the efficacy of the offset project in producing its intended results.
- 9.2.7 How the applicant proposes to quantitatively and qualitatively measure the success or failure of the offset project ~~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 **[may be required]** 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 goods] received by and shipped from the project site, and its origin and destination, except that bulk transfers of grain shall not report the shipping destination.
- 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 **[administratively complete]** application for a Coastal Zone Permit permit, [renewal 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 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 A notice of appeal must be filed 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 person or entity filing the appeal]~~ to ~~[insure ensure]~~ 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 assurance]~~ 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 14.0 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.~~

## 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 Department]~~ 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.

**[4.6 Section 8.4.4 requires an applicant for a conversion permit to present a Department-approved Environmental Remediation and Stabilization Plan (ERSP). The applicant should develop a draft ERSP as part of the process of developing its application. Most of the nonconforming use sites have undergone or are undergoing some type of remediation that required or requires contact with the Department. The applicant should develop an ERSP that complies with the requirements of these regulations, and submit the draft ERSP to the project officer from the Department who is overseeing their remediation work for review. The project officer may confer with staff from the Coastal Zone program, so it is important to plan ahead and provide time for review and revision, if necessary. The final ERSP should contain a line for an approval signature, which represents verification from the Department, that the ERSP:**

- **Accurately depicts the status of remediation activities under Department-administered environmental remediation programs, and specifically the Hazardous Substances Control Act (HSCA) if the site is regulated under HSCA.**
- **Accurately describes the remediation that the site is required to undergo.**

**The Department may develop internal processes for coordinating between the Coastal Zone program and other divisions, but the initial contact in obtaining Department approval on the ERSP should be with the remediation project officer, regardless of which of the remediation program or programs has authority over the activities at the site. In cases where the site is regulated under more than one remediation program, the applicant may choose any project officer from the Department to initiate the dialogue and the Department will coordinate internally among different programs, if necessary. Once a representative of the Department has approved the ERSP, it can be included in the application and evaluated for administrative completeness.]**

## **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.

**[6.56.4]** 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 [the] 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.~~