

pg 1

My name is Martin Willis and
I live in ~~New Castle Delaware~~
tonight I like to make ~~some~~ my
personal comments, ~~opinions~~ viewpoint
recommendation & perspective about
a

My name is Martin Willis and
I live in New Castle Delaware.
Tonight I like to make ^{oral} a summary
of the main points of my written
personal comments, viewpoint,
recommendation & perspective about
the propose amendments to the Draft
Regulations Governing Delaware's Coast
Zone

First I like to recommend that the
definition "Catastrophic Incident" found
in Section 3.0 definition ~~elim~~ be
eliminate because ~~outside~~ I could
not find anywhere in the 27 pages

pg 2

of the propose amendment any mention or reference to Catastrophic Incident. Also I ~~could not find any mention of Exposed, or Pollution, I like for DNREC~~

In Section 4.0 Prohibited Uses I like to direct your attention to Section 4.1b which is ~~about~~ ^{the follow}

get "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 regulation

my ~~re~~ comment is simply this DNREC need to update the business entity monies not as they appear on MAY 11, 1999 but as they appear today. Also DNREC needs to update the aerial photography of each site just to give you a example present day Corda is listed as Unigenc and the Del. City Refinery is listed

Star Enterprise

in Section 5.1.10 The Diamond State Port Corp is 1st mention with Gulfstream having acquire a ~~50 year lease~~ in Sept. 2018 the exclusive right to operate and develop the Port of Wilmington for the next 50 years. I think it time to include Gulfstream anywhere there is a mention of the Diamond State Port Corp

In Section 6.0 Uses Requiring a Permit I think a important ~~change is required~~ but simple change is required in Section 6.1.1.

The provision that "the construction of pipelines or docking facilities serving as offshore ~~bottle~~ bulk product transfer facilities or such facilities serve only one on shore manufacturing or other facility

Any modern day pipeline or docking facilities I feel should not be handicapped by serve "only one" manufacturing or other facility. I like to make the recommendation that the words only one be omitted from section 6.1.1

Section 8.0 permitting in my written comment I expand on the unnecessary need to have Section 8.2.2 in the Final Regulations and tonight like to draw attention to Section 8.3.1 An Economic Effect Analysis

now where in Section 8.3.1 is there any mention ~~of~~^{or} a description of any local hiring on the on-site construction jobs. This omission is significant. And I feel it is vital that the Final ~~Request~~ Regulation required in Section 8.3.1 similar

language found in Section 8.3.2^{ish}
for conversion permits

I found in Section 8.3.2.5

the following "A description of any local hiring or purchasing ~~preference~~ investment in community benefit agreement, work force development or educational programs that the the applicant has implemented

Basically all I like to see in the final Reg is for DNREC to make it clear in writing that any ~~project~~ construction project inside Delaware Coastal Zone ~~will be~~ the work force will be locally-hire ~~by the~~ Community Economic Benefit should start with 1st shovel of dirt But I can tell you 1st hand my community is always left on the outside of ~~those~~ on too many on-site construction job and now we can fix it

8.6.1 I object to the Secretary making a permit less than 20 years

In Section 8.6.3 permit modification I object that the Secretary can make any minor modification without public notice ~~for~~ for any propose

In Section Appendix C

Section C.3 engine^{the} Gulfstream. Con should be mention and the Depto should update the names of the Railroads twice the Reading Rai I found the Reading Railroad is mention and twice I found that Conrail is listed

~~My checklist is not criticism but I have to say overall the propose Reg's on the Envel Insure found through out the propose Draft Dec~~

Financial assurance

8.6.4.1 Financial assurance in my opinion is a bridge too far DNRRC. The Dept ~~is~~ is experts on Air Quality, ~~Waste~~ Climate, Energy & Water Relations. But I make out any thing related to Financial assurance as they deal with Conservation Permits. I would ask that DNRRC take 2nd look at all the propose amendment with maybe the Division of Revenue and Insurance Commissioners

My analyst is not criticism because other than financial assurance I believe the propose amendment are possible. I like to take this time to the. Kevin Coyle

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

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

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

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

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

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

"CZCPA" means Coastal Zone Conversion Permit Act.

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

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

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

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

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

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

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

"Permit" means a permit issued under these regulations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.0 Uses Not Regulated

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

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

6.0 Uses Requiring a Permit

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

- 6-16.1.1 The construction of pipelines or docking facilities serving as offshore bulk product transfer facilities if such facilities serve only one on-shore manufacturing or other facility. To be permissible under these regulations, the materials transferred through the pipeline or docking facilities must be used as a raw material in the manufacture of other products, or must be finished products being transported for delivery.
- 6-26.1.2 Any A recycling plant or sewage treatment plant not excluded by Section subsection 5.20 of the Regulations.
- 6-36.1.3 Any new activity, with the exception of those listed in Section 5.0 of these regulations regulations, proposed to be initiated after promulgation of these regulations, which constitutes an alternative or additional use or bulk product transfer facility on a heavy industry use site, or which is conducted by an existing heavy industry or a new or existing manufacturing facility that may result in any negative impact on the following factors as found in 7 Del.C. §7004 (b):
- 6-3-16.1.3.1 Environmental impact, including but not limited to, items 8.2.1 through 8.2.10 of these regulations-regulations;
 - 6-3-26.1.3.2 Economic effect, including the number of jobs created and the income which will be generated by the wages and salaries of these jobs in relation to the amount of land required, and the amount of tax revenues potentially accruing to state and local government-government;
 - 6-3-36.1.3.3 Aesthetic effect, such as impact on scenic beauty of the surrounding area-area;
 - 6-3-46.1.3.4 Number and type of supporting facilities required and the impact of such facilities on all factors listed in this subsection-subsection;
 - 6-3-56.1.3.5 Effect on neighboring Neighboring land uses including, but not limited to, effect on public access to tidal waters, effect on recreational areas and effect on adjacent residential and agricultural areas-areas; and
 - 6-3-66.1.3.6 County and municipal comprehensive plans for the development and/or conservation of their areas of jurisdiction.

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 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 9.1.1~~ 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.
 - 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~~ drainage of the area in question, especially as it relates to flood control the watershed in which the proposed project is located, including any changes in topography, erosion, ground cover and displacement by structures of floodwaters;
 - 8.2.5 Impact of site preparation and facility operations on land erosion; Effect of project site preparation and facility operation on the quality and quantity of surface and ground water resources, including withdrawals and discharges, identification of potentially affected water supply sources, and public and private wastewater treatment facilities;
 - 8.2.6 Effect of site preparation and facility operation on the quality and quantity of surface and ground water resources; A description of the need for the use of water for processing, cooling, effluent removal, and other purposes;

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

8.3 Economic Effects Analysis

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

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

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

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

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

8.38.5 Application Review Process

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

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

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

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

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

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

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

8.6 Permits

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

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

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

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