



STATE OF DELAWARE

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF CLIMATE, COASTAL AND ENERGY

STATE STREET COMMONS

100 W. WATER STREET, SUITE 7B

DOVER, DELAWARE 19904

**COASTAL
PROGRAMS**

PHONE
(302) 739-9283

TECHNICAL RESPONSE MEMORANDUM

TO: Lisa A. Vest, Hearing Officer, Office of the Secretary

THRU: Dayna Cobb, Director *Dayna M. Cobb*
Dr. Katera Moore, Environmental Justice Coordinator *Katera Moore*

FROM: Erin Wilson, Environmental Scientist IV *Erin Wilson*

DATE: June 12, 2023

SUBJECT: Request for Technical Response Memorandum
Re: FujiFilm Imaging Colorants, Inc. Coastal Zone Act Permit Modification
(Docket #2023-P-CCE-0010)

This Technical Response Memorandum (TRM) was prepared at the request of the presiding Hearing Officer to assist in the completion of the Hearing Officer's Report and recommendations to the Secretary of the Delaware Department of Natural Resources and Environmental Control (DNREC). The TRM provides the information necessary to inform the final decision on a request for Coastal Zone Act permit modification by FujiFilm Imaging Colorants, Inc. ("FujiFilm").

FujiFilm proposes to modify the facility's existing permit CZA-441P, which authorizes the manufacturing of 110 tons per year (TPY) of high-performance aqueous pigment dispersions for ink jet printer ink. The modification would introduce additional equipment and a new boiler building to the site and utilize the processes described and permitted under CZA-441P to create the same products, thereby increasing the production capacity to 220 TPY. A public comment period was initiated for this matter on April 12, 2023, through May 18, 2023, with a public hearing on May 3, 2023.

On Friday, May 19, 2023, Hearing Officer Lisa A. Vest requested a formal response to public comments made during the open public comment period. Specifically, Hearing Officer Vest requested a thorough investigation of issues raised by the public comments and development of a hearing record of decision to assist and support the Secretary's final decision. This memorandum provides the requested information and a recommendation from staff regarding permit issuance.

Public comments are summarized and answered below:

- 1. One commenter stated that there is no state agency that works to protect public health and environment or that works to provide quality outdoor recreation or that improves the quality of life for those in overburdened communities.**

DNREC's mission is to engage stakeholders to ensure the wise management, conservation, and enhancement of the State's natural resources; protect public health and the environment; provide quality outdoor recreation; improve quality of life; lead energy policy and climate preparedness; and educate the public on historic, cultural, and natural resource use, requirements, and issues. It is the policy of DNREC that no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance, as provided by Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987, the Rehabilitation Act of 1973, and all other related nondiscrimination laws and requirements.

- 2. Multiple comments expressed concerns regarding cumulative impacts of facilities in the area, the need to reduce pollution over time, and the potential to partner with nearby facilities to better address community concerns.**

The scope of this modification process is limited to activities at the FujiFilm facility and the CZA program does not have authority to require cooperation between facilities.

The *Regulations Governing Delaware's Coastal Zone* were designed to promote environmental improvement, which is why there is an offset requirement. Under these regulations, negative impacts must be more than offset, which results in a reduction in pollution over time.

- 3. Multiple comments expressed concerns that the communities near the FujiFilm facility are already overburdened by pollution and that any additional pollution in the area may result in increased health impacts to communities that are more sensitive to environmental pollution.**

There would be a net benefit from the project as the offset proposal is greater than the proposed new emissions. The new emissions at the site would be more than offset through the retirement of two older boilers, the replacement of the remaining propane forklifts onsite, and the purchase of a nitrogen oxide (NO_x) emission reduction credit (ERC).

The CZA program is requiring FujiFilm to certify compliance with their permit on a 5-year basis as a condition of the permit.

4. Multiple comments expressed concerns regarding emissions of hazardous chemical pollutants.

The proposed manufacturing activity itself would not result in any air emissions. FujiFilm would not be emitting hazardous chemicals or anything in quantities for concern. The pollutants that would result from the proposed activity are solely from burning natural gas as a form of electricity generation. The by-products from burning natural gas are NO_x, carbon monoxide, particulate matter, sulfur dioxide, total organic compounds (including volatile organic compounds (VOCs)), nitrous oxide, and carbon dioxide (CO₂).

It is common for natural gas to be burned as a source of power in residential and commercial buildings. In its application, FujiFilm compared the use of one of their boilers to 46 household furnaces. Under that scenario, the project impacts would be similar to natural gas emissions from a small neighborhood. The proposed activity would emit the same types of pollutants that would be emitted from a home heater or stove. And the same types of pollutants would be more than offset through FujiFilm's offset proposal.

5. Multiple comments expressed the desire for environmental monitoring systems with open public access to data.

DNREC monitoring data is available on the Delaware Open Data Portal (data.delaware.gov), including the Air Quality Monitoring Network, Toxics Release Inventory, and Well Permits. Additional facility information is available in the Delaware Environmental Navigator (den.dnrec.delaware.gov) and through Delaware FirstMap (delaware.maps.arcgis.com).

The EPA also has publicly available monitoring data (epa.gov/outdoor-air-quality-data and AirNow.gov).

6. Multiple comments expressed concern relating to the offset proposal's use of emission reduction credits (ERCs). Commenters state that credits from another part of the state do not result in direct pollution reduction in the communities, that CO₂ has not been offset, and ask DNREC and FujiFilm to determine what conditions could apply to this permit to create a real reduction in emissions, or net zero at minimum.

ERCs are created according to the regulations under the *Delaware Emission Banking and Trading Program* (7 DE Admin. Code 1134) and represent real pollution reductions from facilities in Delaware. For instance, if a facility in Delaware wants to voluntarily retire old equipment which would reduce NO_x or VOC pollution below regulatory levels, they can submit data to DNREC Division of Air Quality (DAQ) to quantify those reductions. After DAQ certifies the calculations and provides written approval, the source facility only retains credit for 50% of the total reductions, with 25% of the total reductions retired to ensure a permanent air quality benefit and 25% of total reductions held in a separate

account operated by Delaware Division of Small Business for economic development purposes. FujiFilm proposes to purchase a NO_x credit generated following 7 DE Admin. Code 1134 through Division of Small Business to meet the requirement of more than offsetting negative environmental impacts, as required in the *Regulations Governing Delaware's Coastal Zone* (7 DE Admin. Code 101, subsection 9.1.2).

Although air pollution often does not remain confined to the area from which it originated and much of the pollution affecting Delaware is from out of state, ERCs through Delaware's program are only allowed to be certified for Delaware sources and may not be traded or sold to out-of-state sources in order to keep the incentive and benefits localized. Because of the historic industrialization of New Castle County and the coastal zone, many of the credits in the ERC bank have been generated for sites that are in close proximity to the proposed activity.

The main strength of the credit banking system is the verifiability of the benefit achieved through this type of offset. As outlined in 7 DE Admin. Code 1134, ERCs are generated for real, surplus, enforceable, permanent, and quantifiable emissions. The benefit of the offset is guaranteed because it is directly connected to actual elimination of emissions which have been calculated by subject matter experts.

NO_x emissions are the by-product of combustion. It can be assumed that every credit of NO_x that is generated also represents a reduction in the other by-products of combustion, such as carbon monoxide, particulate matter, sulfur dioxide, total organic compounds, nitrous oxide, and CO₂. Therefore, FujiFilm's purchase of one NO_x credit can be used to address reductions of emissions that could not be achieved wholly through onsite offset projects. Attachments G and I of the application include emissions and offset calculations for all pollutants that would result from the proposed project. The offset calculations show the emissions would be more than offset, resulting in a net benefit.

7. Multiple comments expressed concerns regarding the project's potential impacts to traffic in the area and associated pollution.

FujiFilm provided response to these comments upon request for the TRM:

Considering the trucks involved previously in delivering materials that were shipped to the site from Scotland, additional truck activity is not anticipated at the site at this time. Under current production, the entire Fujifilm facility handles about two tractor-trailer rigs per day of operation. This truck traffic accounts for raw material deliveries and finished product shipping. While the trucks are within the facility unloading or loading, typically the engines are shut down and not left to idle. With the added production capacity of Project Maxwell, one additional tractor-trailer rig is anticipated per day of operation, indicating that the typical operating day might yield three tractor-trailer rigs visiting the facility on a daily basis. The tractor-trailer rigs access the facility by-way-of Interstate Highway 295 (I-295) exiting or entering the highway at the State Route 9 interchange and using Cherry Lane to access the facility. The total distance from the center of the I-295/Route 9 interchange to the facility is approximately one-half mile (0.5 miles).

Emissions associated with traffic are included in the State of Delaware annual emission budget and planning for air quality.

8. Multiple comments expressed the desire for more sustainable businesses in the coastal zone.

As noted in the application, FujiFilm is ISO 9001 certified for quality management and ISO 14001 certified for measuring and improving environmental impact. ISO 14001 sets out internationally agreed upon standards and requirements for an environmental management system, which focuses on a commitment to sustainability and pollution prevention.

For example, FujiFilm is planning to install solar panels at the facility to create enough solar energy to charge the proposed new electric forklifts and decrease their reliance on the regional electricity grid.

9. One commenter expressed concern that this project expansion is counter-productive to Delaware's climate goals.

FujiFilm's proposal would more than offset new emissions from the project, including greenhouse gases that contribute to climate change. FujiFilm proposes to burn natural gas rather than rely on the regional electricity grid, which currently utilizes a fuel mix that includes coal and oil sources with the potential to pollute more than natural gas and generate more CO₂.

10. One commenter recommended that FujiFilm and the community enter into a community benefit agreement.

The CZA program requested a community engagement plan and information about local hiring preferences to be included in the application; a community benefit agreement is not required under the current regulations. This process does not preclude the community and FujiFilm from entering into an agreement in the future.

Conclusion and Recommendation:

Based upon DNREC's review of the application for the proposed project, the offset proposal, the testimony provided at the public hearing, and consultation with DNREC's Environmental Justice Coordinator, the Coastal Zone Act program finds that the proposed activity by FujiFilm at 233 Cherry Lane, New Castle, DE 19720 meets the criteria and standards set forth in the *Regulations Governing Delaware's Coastal Zone* for issuance of a coastal zone permit and recommend issuance of the permit.