

## HEARING OFFICER'S REPORT

**TO:** The Honorable Shawn M. Garvin  
Cabinet Secretary, Department of Natural Resources and Environmental Control

**FROM:** Lisa A. Vest, Regulatory Specialist  
Department of Natural Resources and Environmental Control

**RE:** Application of FujiFilm Imaging Colorants, Inc., for a Major Modification to existing Standard Coastal Zone Permit (CZA-441P), to increase production capacity from 110 Tons Per Year (“TPY”) to 220 TPY at its facility located at 233 Cherry Lane, New Castle, Delaware (Hearing Docket No. 2023-P-CCE-0010)

**DATE:** June 15, 2023

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### **I. BACKGROUND AND PROCEDURAL HISTORY:**

A virtual public hearing was held on Wednesday, May 3, 2023, at 6:00 p.m., via the State of Delaware Zoom Platform, to receive comment on the application of FujiFilm Imaging Colorants, Inc. (“FujiFilm”, “Applicant”), for a Major Modification to their existing Standard Coastal Zone Permit (CZA-441P) previously issued by DNREC, pursuant to 7 *Del. C. Ch. 70, Coastal Zone Act*. The *Coastal Zone Act* (“CZA”) regulates new manufacturing activities, or the expansion of existing manufacturing uses, heavy industry, and bulk product transfer activities within Delaware’s Coastal Zone through a permitting system governed by DNREC.

The Coastal Zone is a geographic area that extends the length of the State of Delaware, along the Delaware River, the C&D Canal, the Delaware Bay, Inland Bays, and Atlantic Ocean, specifically defined by the CZA at 7 *Del.C. §7002(i)*. This public hearing was held pursuant to Delaware’s *Coastal Zone Act* and 7 DE Admin. Code 101, *Regulations Governing Delaware’s Coastal Zone* (“CZA Regulations”).

The CZA Regulations include provisions for major modifications to existing Coastal Zone Permits, as set forth specifically in Section 8.6.3.2. Such major modification requests require a 20-business day public comment period, and the scheduling of a public hearing, at the DNREC Secretary's discretion. In matters where a major modification request to an existing Coastal Zone Permit is pending before the Secretary, only the permit conditions subject to modification are reopened for public comment and further consideration.

To serve as background in this matter, FujiFilm applied for a Standard Coastal Zone Permit in 2021 to manufacture 110 tons per year ("TPY") of high-performance aqueous pigment dispersions for ink jet printer ink at its facility located within the Coastal Zone at 233 Cherry Lane, New Castle, Delaware. The Applicant's prior application also proposed the installation of new manufacturing equipment inside an existing building (L44) and construction of a small boiler building on already paved ground. Negative environmental impacts were limited to air emissions from two new boilers and a new HVAC unit, with no emissions from the manufacturing process itself. The pollutants were collectively characterized as contributors to the formation of ozone, which have the potential to result in impacts to human health in exceedance of the National Ambient Air Quality Standards ("NAAQS"), as set by the U.S. Environmental Protection Agency ("EPA"). However, the quantities at which such pollutants would be emitted were well below the NAAQS thresholds.

After coordinating with DNREC, FujiFilm proposed to offset the new emissions by purchasing Emission Reduction Credits ("ERC") from the Delaware Division of Small Business, and by eliminating the use of five (5) propane-operated forklifts on site and replacing them with electric forklifts. These combined actions more than offset the negative impacts of the proposed activity. Accordingly, FujiFilm's 2021 application was processed by the Department, and fully vetted to the public through the DNREC Public Hearing process. Ultimately, a Coastal Zone Permit (CZA-441P) was issued by DNREC to FujiFilm for the above-described manufacturing activity, pursuant to DNREC Secretary's Order No. 2021-CZ-0019 (dated July 23, 2021).

On October 20, 2022, Fujifilm submitted a new Coastal Zone Permit application to the Department, requesting a major modification to existing CZA-441P. That application was deemed administratively complete by the Department on November 16, 2022, and put on public notice on November 20, 2022. Upon notification from the Applicant's consultant that the application contained an emission calculation error, however, the application was withdrawn by FujiFilm. Notice of the cancelation of the public hearing scheduled for December 14, 2022, and closure of the comment period regarding the same, were publicly noticed on December 4, 2022. It should be noted that no permitting decision was rendered with regard to the prior application submitted by the Applicant on October 20, 2022, as that application is considered by the Department to be a separate and closed matter.

FujiFilm submitted several application revisions prior to the Department deeming the current Application administratively complete. During this time, the Department's Coastal Zone Program, housed within DNREC's Division of Climate, Coastal and Energy, coordinated with other sections within the Department to request additional information on items such as emissions calculations, the offset proposal, public engagement, and local hiring preferences.

On February 9, 2023, the Department received the final Coastal Zone Permit application from FujiFilm, requesting a major modification of the facility's existing CZA-441P, as noted above. The proposed modification would introduce additional process equipment, two new boilers, and a new HVAC unit, and would utilize the processes and technology previously described and permitted under CZA-441P to create the same end products, thereby increasing the Applicant's production capacity from 110 TPY to 220 TPY ("Application"). This modification proposal is also referred to in the Application as "Project Maxwell" or "Plant U45." Pursuant to the CZA Regulations, the Applicant's proposed modification qualifies as a change to a substantive term of the original permit.

The additional equipment proposed by the Applicant's modification request (hereinafter referred to as "Draft CZA-441M-1") also includes the construction of an extension to the existing building onsite and the addition of a small pre-engineered metal building for the boilers. Operations would involve the dispersion of pigment into polymer, the use of bead mills to reduce the particle size of the pigment, stabilization of the particles with the addition of a crosslinking material, centrifugation of the stabilized material to remove impurities, and sterilization of the final product using heated water. The aqueous dispersion range can produce approximately twenty (20) products for customers with varying mixtures of black, yellow, magenta and cyan.

It should be noted that the Applicant's request for confidentiality for the purpose of financial security, pursuant to 29 *Del.C.* §10002(o)(2), reviewed and approved as part of CZA-441P, also applies to the above-described current Application, as the proposed modification concerns the same type of manufacturing activity. It should also be noted that the Applicant's modification request contains certain process equipment that is protected by this confidentiality agreement, however, that equipment does not result in the generation of emissions.

The Department requires a CZA Applicant to set forth in its application the proposed project's possible environmental impacts, including, but not limited to, any increased air emissions of pollutants, water quality/water quantity/water use, and the disposal of solid and hazardous wastes. Furthermore, any application for a CZA permit for an activity or facility that will result in any negative environmental impact shall contain an offset proposal. Pursuant to Section 9.0 of the CZA Regulations, offset proposals must more than offset the proposed environmental impacts of any proposed project.

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

The following sections of this Hearing Officer's Report ("Report") describe relevant environmental impacts as a result of the modification project proposed by FujiFilm. Impacts discussed in the original application for CZA-441P that are not expected to change are not included.

In the present matter, FujiFilm's manufacturing process itself would not generate any air emissions. However, the two natural gas boilers used to power the operations (4.6 million metric British thermal units [MMBTU] per hour each) and an HVAC unit in building L47 would result in emissions of nitrogen oxide ("NO<sub>x</sub>"), carbon monoxide ("CO"), particulate matter ("PM"), sulfur dioxide ("SO<sub>2</sub>"), total organic compounds ("TOC") such as volatile organic compounds ("VOCs"), methane, ethane, chlorofluorocarbons, toxics and hazardous air pollutants ("HAPs"), aldehydes, and semi-volatile compounds, nitrous oxide ("N<sub>2</sub>O"). The specific values of each of these emissions are set forth in the Secretary's Assessment Report ("SAR") at Table 1, page 4. For ease of review, the SAR is expressly incorporated into this Report and attached hereto as Appendix "A."

Burning natural gas produces fewer emissions than burning coal or petroleum products to produce an equal amount of energy. Because the electric power supply from the regional grid to the facility currently includes coal and petroleum sources in the mix, natural gas-fired boilers are less polluting than electric boilers at the regional scale. For context, the local emissions associated with each new boiler could be compared to the emissions of forty-six (46) household furnaces, assuming the average household has a furnace with a heat input rate of 100,000 BTU/hour.

Additionally, FujiFilm has updated its inventory of air emissions sources with the Department's Division of Air Quality ("DAQ"). The facility has removed all sources subject to DAQ permitting, according to the NAAQS, and the facility-wide potential to emit is below the major source threshold. For the purposes of clarity, it should be noted that any equipment with actual emissions of air contaminants, in the aggregate, during any day that are equal to or greater than 0.2 lb/day, and less than 10 lb/day, needs to be registered with DAQ. The air permitting threshold is for 10 lb/day and greater.

The equipment onsite at the Applicant's facility is all below DAQ permitting levels, but not registration levels. FujiFilm is currently going through the process of canceling their existing DAQ permit. Once it is canceled, the facility will still have one remaining registration with DAQ.

With regard to water use and discharge, the Applicant's operation would use approximately 40,000 gallons of water per day. The manufactured products are aqueous based, and no solvents are used in processing or cleaning operations. Additionally, operation and material storage would be indoors to the maximum extent practicable to prevent contact with the natural environment. Wastewater effluent would increase slightly compared to the existing facility operations but would still be in compliance with the flow rate and permissible effluent limits permitted by New Castle County. The effluent would be collected and pumped through a new transfer line and conveyed to an effluent tank to be pretreated and discharged to the New Castle County sewer system.

The facility is permitted to discharge stormwater, noncontact cooling water, and treated groundwater through an outfall to Magazine Ditch, a tributary of the Delaware River (through existing DNREC permits WPCC 3032E/97 and NPDES DE 0051080, as well as through a General Industrial Stormwater Permit). No additional stormwater runoff is anticipated due to the proposed modification, as new structures would be located on existing impervious surface. Additionally, roof drainage from buildings is to be collected and directed to the recharge basin onsite to beneficially increase the amount of stormwater infiltrated at the site. Stormwater would flow to a series of catch basins that collect runoff and convey it to two outfalls that can be blocked to prevent pollutants from leaving the site in the event of an accidental release.

Additional solid waste generation is expected to result from the Applicant's proposed modification. Environmental factors are considered when selecting waste disposal routes and companies and large portions of the total waste are mitigated through reuse and recycling initiatives. Approximately twelve (12) cubic yard boxes and one empty/residual 55-gallon drum of denacol per month go to Waste-to-Energy disposal locations that accept solid waste to produce electrical energy.

Most of the waste collected in the cubic yard boxes for Plant U45 would be sent to Waste-to-Energy disposal locations. Other waste would be disposed of in a landfill through Republic. FujiFilm mitigates a large portion of its total waste through reuse and recycling initiatives. Waste is collected appropriately, and disposal occurs offsite.

With regard to hazardous waste, the facility is currently registered with the Department as a Small Quantity Waste Generator (ID: DED984076265). However, the proposed project is not expected to generate waste that would be characterized as hazardous. Releases are avoided through proper training for employees on chemical handling and spill response, regular inspections of containment and storage areas, safeguarding the transportations of chemical containers, and ensuring at least one spill kit is in each working area and several are at all loading docks. Additionally, raw materials are segregated to prevent incompatible material interactions in storage.

In assessing the anticipated economic effects of the Applicant's proposed modification, the Department notes in the SAR that an estimated 81-125 workers would be hired for the construction component of this project, with 35-50 workers estimated to be hired from Delaware (while the Applicant's preference is to hire qualified local residents, FujiFilm's recruiting area includes New Jersey, Maryland and Pennsylvania as well as Delaware). An estimated eleven (11) full-time positions would be available for ongoing plant operations. Estimated tax revenue that would accrue to state and local government through fiscal year 2027 is set forth in Table 3 on page 6 of the SAR, with the State Corporate Income Tax projections ranging from \$358,030 (for fiscal year 2023) to \$681,256 (for fiscal year 2027).

No impacts are anticipated with regard to aesthetic effects, as operations would mainly utilize pre-existing structures in an already industrial area. Insofar as the number and type of supporting facilities impacts, none are anticipated, as one new pre-constructed metal boiler building would be added to the site on already paved ground.

With regard to effect on neighboring land uses, no impacts associated with the Applicant's proposed modification are anticipated. It should be noted that Fujifilm developed a Public Engagement Plan to detail how the company would interact with the neighboring community and bring awareness about the proposed modification and other site operations. The Public Engagement Plan included a commitment to attending and/or presenting at the Wilmington Area Planning Council ("WILMAPCO") Route 9 Corridor Public Health Subcommittee meetings and an invitation for community members to tour the facility. Insofar as compatibility with county and municipal comprehensive plans, the hearing record ("Record") reflects that FujiFilm's proposed modification project is compatible with local planning and zoning.

Section 9.1.1 of the CZA Regulations states that "[a]ny application for a CZA permit for an activity or facility that will result in a negative environmental impact shall contain an offset proposal." Moreover, Section 9.1.2 notes that such offset proposals "...shall more than offset the negative environmental impact associated with the proposed project of activity requiring a permit...."

The offset requirements for existing CZA-441P were incorporated as conditions under Section 4.0 of that permit. In light of the additional air emissions anticipated from the Applicant's proposed modification, however, that section of FujiFilm's permit must be revised. It should be noted that the Applicant's processing equipment used to make the ink itself does not result in air emissions. The additional air emissions anticipated arise from generating power needed for operation, as well as from a new HVAC unit that is part of the modification proposal.

FujiFilm's offset proposal includes (1) retiring two smaller, older boilers that have uncontrolled NO<sub>x</sub> emissions; (2) eliminating the remaining three propane-operated forklifts and replacing the same with electric-operated equipment; and (3) purchasing one NO<sub>x</sub> ERC. Additionally, all electric forklifts, including those permitted under CZA-441P, would be powered by new solar panel installations onsite. The SAR breaks down the emission reductions to be achieved by each component of the offset proposal (Table 4, page 7), and confirms that all pollutants would meet the regulatory requirement of being more than offset.



The Record generated in this matter reflects that ERCs are created pursuant to the *Delaware Emission Banking and Trading Program* (7 DE Admin. Code 1134). The Department's subject matter experts in this matter note in the Technical Response Memorandum ("TRM") of June 12, 2023, that ERCs represent real pollution reductions from facilities in Delaware. The Record further reflects that the Delaware ERC banking system has been approved by the EPA. The EPA recognizes that, in order to avoid increases in emissions without hindering economic growth, proposed emission increases from new or modified facilities can be balanced by equivalent or greater reductions from existing sources. Additional discussion regarding the Department's TRM and the Applicant's use of ERCs in their offset proposal will be set forth in Section III of this Report.

The Department received the current Application from FujiFilm on February 9, 2023, and the Department's determination that the Application was administratively complete was declared in the SAR on April 3, 2023, as noted above. On April 12, 2023, the Department published Legal Notice of this information, as well as that the Application was available for public comment and that the Department would be holding a virtual public hearing regarding this matter on May 3, 2023, in the *News Journal*, the *Delaware State News*, the DNREC website (in both English and Spanish), and by direct email to Coastal Zone Act Email List subscribers. Additionally, the date of the public hearing was added to the Delaware Public Meeting Calendar on April 19, 2023.

Accordingly, the Department held the virtual public hearing regarding this pending Application on May 3, 2023, as noted above. Department staff and members of the public attended the hearing, and comment was received from the public, both at the time of the hearing and during the pre- and post-hearing phases of this matter, which will be discussed in further detail below. The public comment period remained open through May 18, 2023. Proper notice of the hearing was provided as required by law.

## **II. SUMMARY OF THE PUBLIC HEARING RECORD:**

The Record consists of the following documents:

- (1) Official verbatim Court Reporter's transcript from Lexitas, dated May 3, 2023;
- (2) Eleven (11) documents introduced by responsible Department staff at the public hearing held on May 3, 2023, and marked by this Hearing Officer accordingly as "Department Exhibits 1-11";
- (3) Copy of the Applicant's PowerPoint presentation offered by FujiFilm representatives at the public hearing and marked accordingly as "Applicant Exhibit 1";
- (4) Copies of all public comments received in this matter (four in total), as contained and displayed on the DNREC Public Hearing webpage dedicated to this matter at <https://dnrec.alpha.delaware.gov/events/public-hearing-fujifilm-imaging-colorants-coastal-zone-act-permit-modification-2/>;
- (5) TRM from Erin Wilson, Environmental Scientist IV, of the Department's Division of Climate, Coastal and Energy, Coastal Zone Program, dated June 12, 2023; and
- (6) Draft CZA-441M-1 and Draft Decision Letter to be issued to FujiFilm, should the Secretary approve the same, provided to this Hearing Officer on June 12, 2023.

The Department's person primarily responsible for reviewing the Application, Ms. Wilson, developed the Record with the relevant documents in the Department's files.

Representing the Applicant at the hearing was Maureen Concordia, Facilities and EHS Manager. Following opening remarks from this Hearing Officer and Ms. Wilson's presentation on behalf of the Department (and the introduction of the Department's exhibits to be entered into the hearing record), Ms. Concordia proceeded to offer a brief background concerning FujiFilm's facility, and a brief description of the current processes and the proposed modification on behalf of the Applicant. At the conclusion of the Applicant's presentation, the floor was then opened for the purpose of receiving live public comment regarding this matter.

As noted previously, comment was received not only at the time of this hearing, but also during both the pre- and post-hearing phases of this permitting matter. The public comment period closed on May 18, 2023.

Following the close of the public comment period, this Hearing Officer requested a TRM from the Department's technical experts to (1) specifically address the concerns associated with the current Application pending before the Department, as set forth in the public comments received in this matter; and (2) offer conclusions and recommendations regarding this permitting matter for the benefit of the Record. The TRM, along with the Draft CZA-441M-1 and Draft CZA Program Decision Letter to be issued to FujiFilm, should the Secretary approve the same, were all provided to this Hearing Officer on June 12, 2023.

I find that the Department's TRM identifies all areas of concern voiced by the public that are germane to the subject matter of the aforementioned public hearing, and responds to them in a balanced manner, accurately reflecting the information contained in the Record as it relates to the Applicant's proposed modification project. Thus, the aforementioned TRM, along with the Draft CZA-441M-1 and Draft CZA Program Decision Letter, are all attached hereto as Appendices "B" through "D," respectively, and expressly incorporated herein as such.

### **III. RECOMMENDED FINDINGS AND CONCLUSIONS:**

Currently pending before the Department is FujiFilm's Application requesting a major modification to existing CZA-441P. I find that the Applicant's facility is located within Delaware's Coastal Zone. I also find that, while FujiFilm's proposed modification project will result in increased air emissions, the Department has certified the proposed offsets are more than sufficient, as required per Section 9.0, *Offsets*, of the CZA Regulations. As noted previously, FujiFilm has proposed to (1) retire two smaller, older boilers that have uncontrolled NO<sub>x</sub> emissions; (2) eliminate the remaining three propane-operated forklifts and replace the same with electric-operated equipment; and (3) purchase one NO<sub>x</sub> ERC. Additionally, all electric forklifts, including those previously permitted under CZA-441P, would be powered by new solar panel installations onsite.

The Record confirms that all pollutants would meet the regulatory requirement of being more than offset. Furthermore, the Department believes that the offset acquired by FujiFilm, as set forth in their Application, complies with the applicable regulations.

The Department is to evaluate a CZA application based upon a consideration of the CZA's balancing of economic and environmental factors. As previously noted, 7 *Del.C.* §7004(b) requires the Department to consider the following issues of any given proposed project: (1) environmental impacts; (2) economic impacts; (3) aesthetic impacts; (4) the number and type of supporting facilities required and their impacts on all other factors; (5) the impact on neighboring land uses; and (6) the county and municipal comprehensive plans. The Record developed in this matter indicates that the Department's experts have considered the above factors and have recommended issuance of CZA-441M-1 to the Applicant in this matter. Further, the experts recommended that FujiFilm's Application for the above-described modification request, including the proposed offset proposal as set forth therein, is sufficient.

The Department's TRM acknowledges the comments received from the public concerning FujiFilm's present Application, and thoroughly responds to the same. The comments received in this matter were grouped into various areas of concern, including, but not limited to, the following:

- The need to reduce pollution over time in the Coastal Zone;
- Communities near FujiFilm's facility already being overburdened by pollution;
- Emissions of hazardous chemical pollutants;
- The desire for environmental monitoring systems with open public access to data;
- The offset proposal's use of ERCs;
- The potential impacts to traffic in the area and associated pollution;
- The need for more sustainable businesses in the Coastal Zone;
- The project expansion is counter-productive to Delaware's climate goals; and
- Recommendations that the Applicant and the community enter into a community benefit agreement.

Some comments received from the public fell outside of the Department's specific permitting authority with regard to Coastal Zone matters. The TRM acknowledged receipt of such comments and responded to the same by noting that certain concerns, such as the potential of the Applicant to partner with nearby facilities to better address community concerns, fell outside of the scope of this present permit modification process, which is specifically limited to activities occurring at the FujiFilm facility. The TRM further noted that the CZA Program does not have the authority to require cooperation between facilities in the Coastal Zone.

With regard to the comments received by the Department that expressed the need to reduce pollution over time in the Coastal Zone, the TRM responded by noting that the CZA Regulations were designed to promote environmental improvement in the Coastal Zone and requires applicants to include offset proposals in their permit applications submitted to the Department. Under the CZA Regulations, negative impacts must be more than offset, which in turn results in a reduction in pollution over time.

With regard to the concerns that the communities near the Applicant's 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, the TRM noted that there would be a net benefit from the modification 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 NO<sub>x</sub> ERC, as noted above. Additionally, the CZA Program is requiring FujiFilm to certify compliance with CZA-441M-1 on a five-year basis as a condition of the permit.

Some comments expressed concerns regarding emissions of hazardous chemical pollutants. In response, the TRM stated that FujiFilm would not be emitting hazardous chemicals. The pollutants that would result from the proposed activity are solely from burning natural gas as a form of electricity generation.

FujiFilm's Application compares the use of one of their boilers to forty-six household furnaces. Under that scenario, the proposed project impacts would be similar to natural gas emissions from a small neighborhood. The proposed activity would emit the same types of pollutants emitted from a home heater or stove, and the same would be more than offset through FujiFilm's offset proposal.

In response to multiple comments desiring environmental monitoring systems with open public access to date, the TRM noted that DNREC monitoring data is available on the Delaware Open Data Portal, including the Air Quality Monitoring Network, Toxics Release Inventory, and Well Permits. Additional facility information is available in the Delaware Environmental Navigator and through Delaware FirstMap. Furthermore, the EPA also provides publicly available monitoring data. Links to all of the above websites were also contained within the TRM, which again has been expressly incorporated into this Report and is attached hereto as Appendix "B."

Multiple comments expressed concern relating to the Applicant's offset proposal including the use of ERCs. Specific concerns included that credits from another part of the state do not result in direct pollution reduction in the communities near the facility, and that CO<sub>2</sub> has not been offset. Additionally, some commenters requested that DNREC and FujiFilm determine what conditions could apply to this permit to create a real reduction in emissions, or net zero at minimum. In response, the TRM noted that 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. As an example, if a Delaware facility wants to voluntarily retire old equipment to reduce NO<sub>x</sub> or VOC pollution below regulatory levels, that facility may submit data to 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 the remaining 25% of the total reductions held in a separate account operated by the Delaware Division of Small Business for economic development.

The TRM further noted that, 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 at FujiFilm.

The TRM continued to respond to ERC concerns by noting that the main strength of the credit banking system is the verifiability of the benefit received 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. In the present matter, FujiFilm proposes to purchase a NO<sub>x</sub> credit generated following 7 DE Admin. Code 1134 through the Division of Small Business to meet the requirement of more than offsetting negative environmental impacts, as required under the CZA Regulations. NO<sub>x</sub> emissions are the by-product of combustion. It can be assumed that every credit of NO<sub>x</sub> that is generated also represents a reduction in the other by-products of combustion, such as CO, PM, SO<sub>2</sub>, TOC, N<sub>2</sub>O and CO<sub>2</sub>. Therefore, FujiFilm's purchase of one NO<sub>x</sub> credit can be used to address reductions of emissions that could not be achieved wholly through onsite offset projects. FujiFilm's Application (Attachments "G" and "I") 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, thus resulting in a net benefit.

With regard to the concerns expressed about the proposed project's potential impacts to traffic in the area and associated pollution, the Applicant has responded by advising DNREC that, even with the added production capacity set forth in CZA-441M-1, only one additional tractor-trailer rig is anticipated per day of operation. The TRM also noted that emissions associated with traffic are included in the State of Delaware annual emission budget and planning for air quality.

In response to multiple comments expressing the desire for more sustainable businesses in the Coastal Zone, the TRM states that FujiFilm is ISO 9001 certified for quality management, and ISO 14001 certified for measuring and improving environmental impact. Internationally agreed upon standards and requirements for an environmental management system are set forth in ISO 14001, thus focusing on a commitment to sustainability and pollution prevention. Additionally, FujiFilm is planning to install solar panels at the facility to create enough solar energy to charge the proposed new electric forklifts and decrease reliance on the regional electricity grid.

One commenter expressed concern that FujiFilm's modification proposal is counter-productive to Delaware's climate goals. In response, the TRM again states that the Applicant's proposed project would more than offset new emissions anticipated from the modification, 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 generates more CO<sub>2</sub>).

Lastly, in response to the comment recommending that FujiFilm and the community enter into a community benefit agreement, the TRM noted that the Department's CZA Program requested a community engagement plan and information about local hiring preferences be included in the Application. The present permitting process does not preclude FujiFilm and the community from entering into such agreement(s) in the future.

The Record reflects that the Department's CZA Program has reviewed the Application for the proposed modification of FujiFilm's existing CZA-441P, including the offset proposal contained therein, has found that the proposed activity to be located at the Applicant's facility at 233 Cherry Lane, New Castle, Delaware, meets the criteria and standards set forth in the CZA Regulations for modification of existing CZA-441P, and has recommended issuance of the same.



Furthermore, the Record reflects that the Department's CZA Program has consulted with DNREC's Environmental Justice Coordinator throughout this permitting process, has reviewed the Record generated in this matter in the light of potential Environmental Justice issues existing in the area surrounding the Applicant's facility, and has determined that the issuance of CZA-441M-1 is consistent with the Department's Environmental Justice policy.

As noted in the TRM, 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. Furthermore, 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 *Rehabilitation Act of 1973*, the *Civil Rights Restoration Act of 1987*, and all other related nondiscrimination laws and requirements.

In this present matter, at the request of the CZA Program, FujiFilm has developed a Public Engagement Plan, as noted previously, to detail how the Applicant would interact with the neighboring community and bring awareness about the modification project and other site operations. The plan includes a commitment to attending and/or presenting at WILMAPCO Route 9 Corridor Public Hearing Subcommittee meetings, and an invitation for community members to tour the facility.

Based on the Record developed, I find and conclude that the Applicant has adequately demonstrated its compliance with all requirements of Delaware's *Coastal Zone Act* and its *CZA Regulations*, as noted herein, and that the Record supports approval of FujiFilm's modification request of existing CZA-441P. In conclusion, I recommend that CZA-441M-1, consistent with the Record developed in this matter, be issued by the Department in the customary form, and with appropriate conditions, to ensure continued improvement of environmental quality in the Coastal Zone of the State of Delaware.

Further, I recommend the Secretary adopt the following findings and conclusions:

1. The Department has jurisdiction under its statutory authority, pursuant to Delaware's *Coastal Zone Act* and the CZA Regulations, to grant requests for major modifications to an existing CZA Permit, subject to reasonable permit conditions deemed appropriate and consistent with the CZA's purposes;
2. The Department provided adequate and lawful public notice of FujiFilm's Application requesting a major modification to existing CZA-441P, and of the public hearing held on May 3, 2023, and held said hearing to consider any public comment that may be offered on said Application, in a manner required by the law and regulations;
3. The Applicant's request for major modification to existing CZA-441P is for production/manufacturing activities which will take place within the defined Coastal Zone of Delaware, specifically, for a production increase from 110 TPY to 220 TPY of high-performance aqueous pigment dispersions for ink jet printer ink. The proposed modification would introduce additional process equipment, two new boilers, and a new HVAC unit, and would utilize the processes and technology previously described and permitted under CZA-441P to create the same end products. Increased air emissions are anticipated, however, the Department has certified the proposed offsets are more than sufficient, as required per Section 9.0, *Offsets*, of the CZA Regulations;
4. To offset anticipated new emissions associated with the proposed modifications, FujiFilm has proposed to (1) retire two smaller, older boilers that have uncontrolled NO<sub>x</sub> emissions; (2) eliminate the remaining three propane-operated forklifts and replace the same with electric-operated equipment; and (3) purchase one NO<sub>x</sub> ERC. Additionally, all electric forklifts, including those permitted under CZA-441P, would be powered by new solar panel installations onsite.

5. The Department believes that the offset acquired by FujiFilm, as set forth in their Application, complies with the applicable regulations.
6. The Department has reviewed and carefully considered all factors required to be weighed in issuing a major modification to existing CZA-441P, and finds that the proposed modification project is acceptable for the Coastal Zone at the proposed location, and that it should be permitted as set forth in FujiFilm's Application;
7. Furthermore, the Department has consulted with DNREC's Environmental Justice Coordinator throughout this permitting process, has reviewed the Record generated in this matter in the light of potential Environmental Justice issues existing in the area surrounding the Applicant's facility, and has determined that the issuance of CZA-441M-1 is consistent with the Department's Environmental Justice policy;
8. The Department shall issue CZA-441M-1 to the Applicant, FujiFilm Imaging Colorants, Inc. Said permit shall include all conditions consistent with the final Order and any other reasonable conditions that the Department includes in a CZA permit, to ensure that Delaware's environment will be protected from harm, consistent with the CZA and its Regulations;
9. The issuance of CZA-441M-1 does not relieve the Applicant of the legal obligation of compliance with all building permits, subdivision, and other applicable code requirements of the county or municipality wherein the permitted project is located;
10. If there are deviations from the Applicant's proposed plan and operations previously approved by the Secretary, FujiFilm shall notify the Secretary as soon as possible. If the Secretary receives information which he or she believes may alter the scope of the project, the Secretary may revoke the permit or require FujiFilm to submit a new application to reflect the altered nature of the project;

11. The aforementioned CZA permit will allow the Applicant to continue to operate its business while reducing the overall environmental impacts to the Coastal Zone area, in furtherance of the purposes of 7 *Del. C.*, Ch. 70;
12. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
13. The Department shall serve and publish its Order on all affected persons in a manner consistent with the service and publication of the Secretary's Order.

/s/Lisa A. Vest  
LISA A. VEST  
Public Hearing Officer

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Attachments:

Appendix A: Secretary's Assessment Report, (04/03/2023)

Appendix B: TRM (06/12/2023)

Appendix C: Draft CZA-441M-1

Appendix D: Draft CZA Program Decision Letter