

Delaware Wetlands Regulatory Advisory Committee (RAC)

September 9, 2026



DELAWARE DEPARTMENT OF
NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL

September 2026 RAC Meeting Objectives

- Orient RAC to the scope of topics and decisions it needs to address to meet its August 1, 2027, deadline.
- Establish a shared baseline understanding of SB9 as the RAC's statutory container.
- Establish RAC operations, including discussing the RAC's draft work plan and operating procedures.
- Elect RAC co-chairs.

CBI's Role in the RAC Process

- Third-party facilitators
- Work in service of helping the RAC meet its August 1, 2027, deadline.
- Focus on seeking consensus among RAC members
- Our aim is to identify shared goals and interests to help pinpoint mutually beneficial outcomes
- Support discussions across difference

RAC Member Introductions

- Name
- Affiliation
- In one sentence or less:

Note a perspective you bring to the RAC that contributes to the group and its purpose.



RAC Staff Introductions

- Name
- Affiliation
- In one sentence or less:
What is your role to support the RAC?



Agenda

10:45 a.m.	Review of Wetlands Stewardship Act and Previous Stakeholder Engagement
11:30 a.m.	BREAK
11:45 a.m.	Regulations: Drafting Process and Role of RAC
12:15 p.m.	Interview Insights and RAC Operating Procedures
1:00 p.m.	LUNCH
1:45 p.m.	Election of RAC Co-Chairs
2:00 p.m.	Overview of RAC Topics for the Year
3:00 p.m.	BREAK
3:15 p.m.	Overview of RAC Topics for the Year (cont.)
3:45 p.m.	RAC Work Plan
4:00 p.m.	Public Comment
4:15 p.m.	Next Steps and Closing Remarks
4:30 p.m.	Adjourn





Discussion Guidelines

- Speak one at a time
 - Virtual RAC members: please use hand-raise function or the chat when you have questions/comments
 - In-person RAC members: please stand up your name tent when you have questions/comments
- Communicate concerns, interests, and ideas openly.
- Express your own views rather than speaking for others at the table.
- Step up, step back: be mindful of your airtime in the room
- Keep your comments succinct and on topic
- Strive to be a collaborative problem solver



Housekeeping

- Who is in the room (and virtual room)
- If you need to step out, do it
- Restrooms
- Coffee / Lunch
- Binders (take 'em!) / nametags (leave 'em!)
- Public/open meeting expectations

To view meeting materials from past RAC meetings or join an email list for updates on the RAC:

de.gov/wetlandsrac

Questions or public comments may be submitted to:

DNREC_Wetlands_RAC@delaware.gov

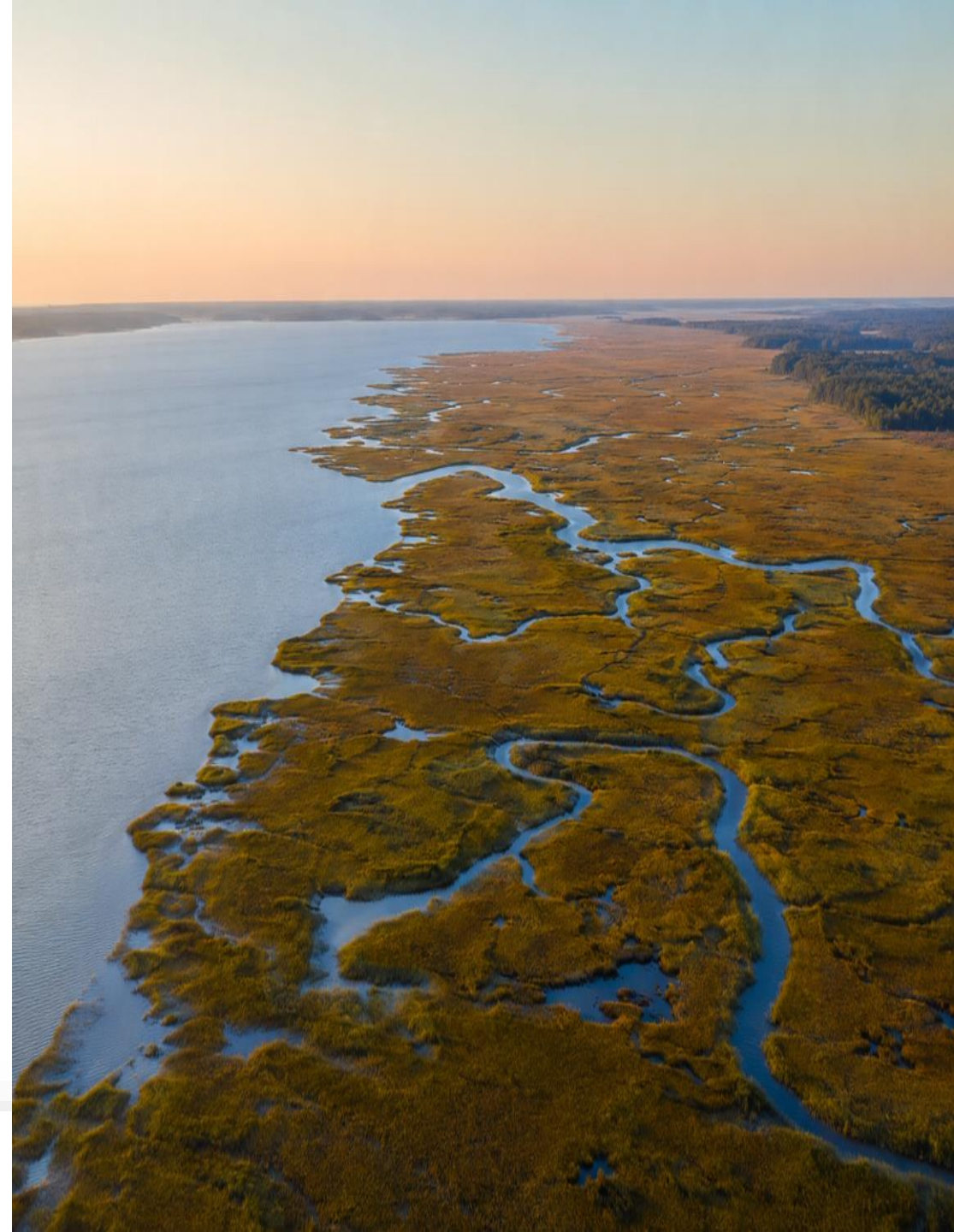


Review: Wetlands Stewardship Act & Stakeholder Engagement



Wetlands are a defining part of Delaware

- The policy history matters because the resource is extensive
 - ~300,000 acres of tidal + nontidal wetlands
 - ~25% of Delaware is wetlands
 - ~50% of historic wetlands have been lost since early settlement
- Wetland composition:
 - 56% nontidal / freshwater
 - 44% tidal
 - ~85% of tidal wetlands are state or federally owned



1972-1973: the start of protections

- Federal and state protections grew together – but covered different parts of the landscape



- Historic state jurisdiction: all tidal wetlands + nontidal wetlands of 400 or more contiguous acres

1973-2026: fixed maps for a changing landscape

EXAMPLE • STATE WETLAND MAP #041 • 1988 PHOTOBASE



Representative facsimile of the official DNREC reproduction of Map #041 (Whites Creek). M = Marsh; T = Tidal mudflats; W = water; O = Other/Upland. Original map scale: 1" = 300'.

Why the maps mattered

- **Conclusive boundary** — Once adopted, the mapped wetland designation controlled Chapter 66 jurisdiction, subject to appeals and formal map corrections.
- **Long-lived reference** — DNREC continued using the 1988 tidal maps as the state regulatory reference for tidal permitting decades later.

SB 9: from fixed map to screening + field confirmation

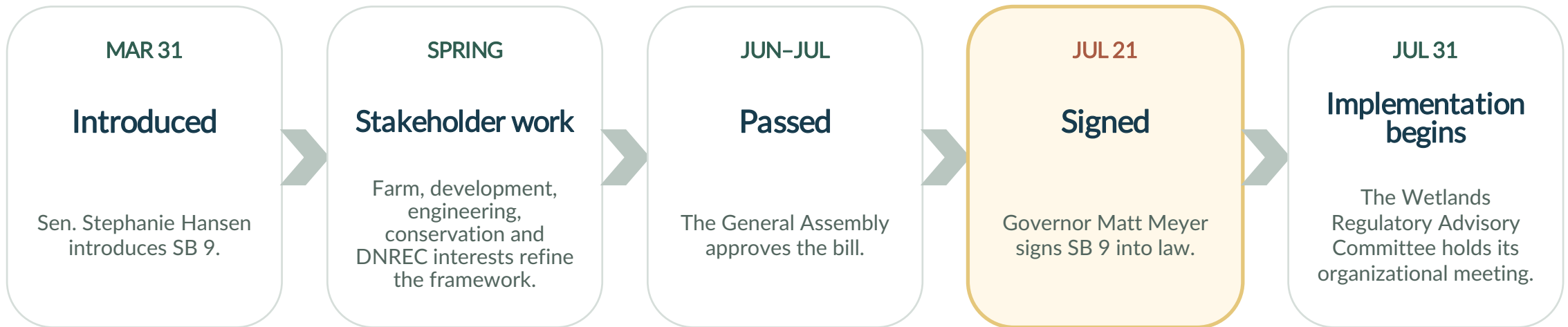
- Mandates a Delaware Wetland Screening Tool using modern maps and other data.
- Allows field methods to confirm or refine whether an area is a wetland.

1988-2024: repeated efforts to close the freshwater gap

- The idea of a broader state program persisted for decades, but consensus proved difficult
 - Seven legislative attempts since 1988
 - 2023 – U.S. Supreme Court *Sackett* decision changed the federal baseline
 - Delaware could either accept reduced protections or build its own statewide program
 - 2024 – Senate Bill 290
 - A predecessor proposed a state nontidal wetlands program while leaving the tidal program intact. It did not become law, but it set the stage for the more collaborative SB 9 process.
- Why the difficulty?
 - Balancing wetlands conservation, farming, development, property rights, permitting certainty, and overlap with federal programs

2026: Senate Bill 9 breaks the stalemate

- Wetlands Stewardship Act - a negotiated, bipartisan approach
 - Building upon the lessons learned during the 2024 SB 290 process Senator Stephanie Hansen lead a multi-year effort to craft what became Senate Bill 9



- What changed politically?
 - The bill was developed with an unusually broad coalition – farmers, builders, realtors, engineers, environmental groups and DNREC

What Senate Bill 9 changes

- Delaware moves from a tidal-centered state program to a combined tidal + nontidal framework

1

Jurisdiction

- Revises “wetlands” to include tidal and nontidal wetlands statewide
- Adds state protection where federal jurisdiction no longer reaches

2

Permitting & Certainty

- Creates a Delaware Wetland Screening Tool
- Directs DNREC to reduce duplication with federal permits and establish clearer decision timelines

3

Protection & Flexibility

- Adds “Exceptional Value Wetlands” and mitigation direction toward no overall net loss
- Preserves broad exemptions and conditional exemptions, including qualifying ≤ 0.50 -acre nontidal wetlands



After passage: implementation is next

- The law is signed but most new program requirements await the revised regulations



- Important distinction: “passed” does not mean the full nontidal permitting is already operating.
- This RAC is key to the final implementation

The historical shift: from a jurisdictional patchwork to a comprehensive state program

- SB9 changes who bears the responsibility when federal wetland protection contracts

BEFORE SB 9

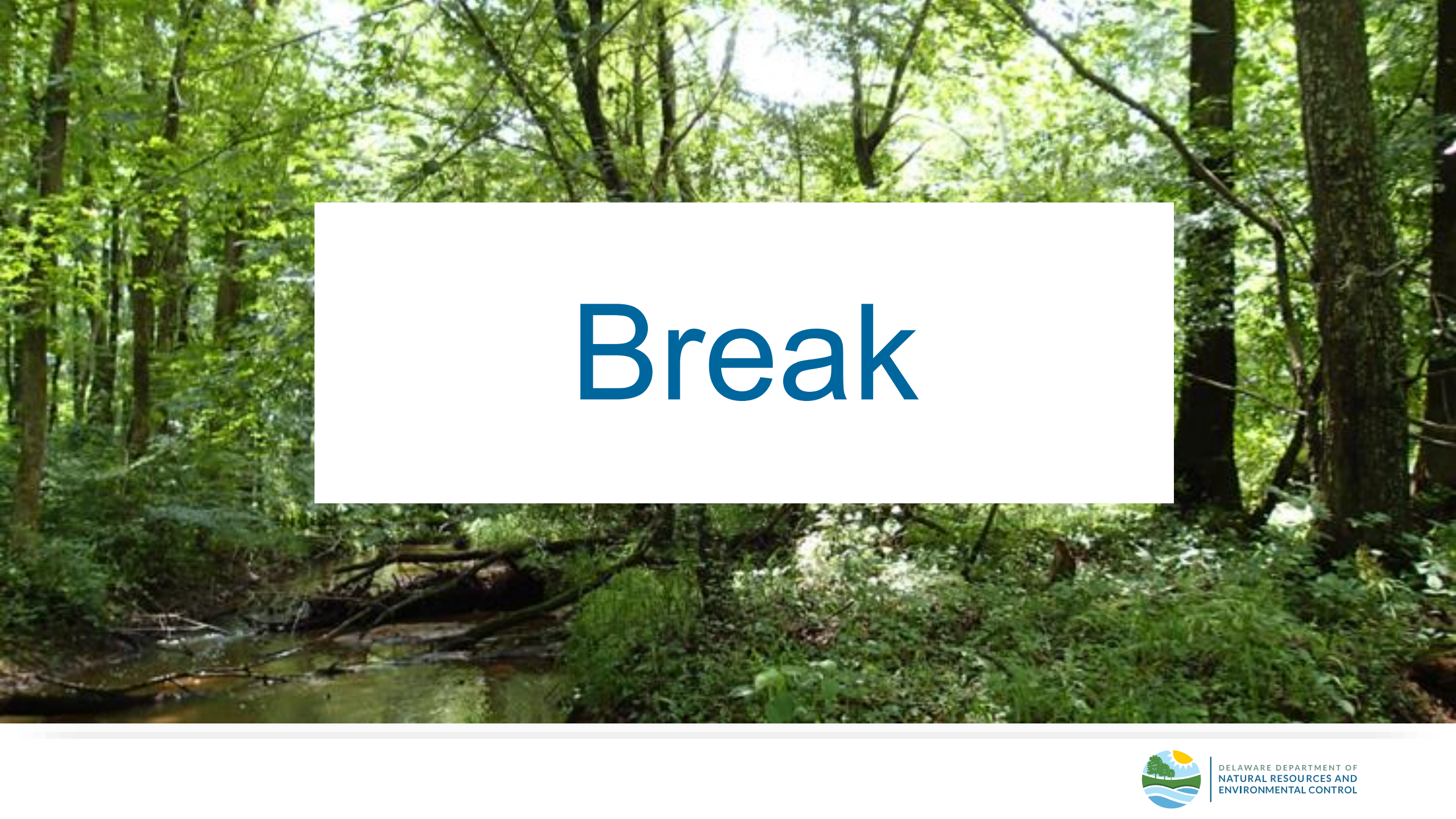
- State law focused mainly on tidal wetlands and nontidal wetlands ≥ 400 contiguous acres
- Most freshwater wetlands depended on federal Clean Water Act jurisdiction
- Federal court decisions could directly create state-level protection gaps
- Freshwater program proposals repeatedly failed to achieve consensus



AFTER SB 9

- A combined state framework covers tidal and nontidal wetlands
- State law serves as a backstop for wetlands, including those outside federal jurisdiction
- Screening, exemptions, mitigation, and permit-coordination tools are built into the statute
- Implementation is shaped through a multi-sector regulatory advisory committee

- Delaware's wetland policy has moved from a reliance on a federal protections to a state-designed program with a negotiated permitting and exemption structure.

A lush green forest scene with a stream flowing through the bottom left. Sunlight filters through the dense canopy of tall trees, creating a dappled light effect on the forest floor and water.

Break



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Regulations: Drafting Process and Role of RAC



Regulatory Promulgations under the Delaware Administrative Procedures Act:

A quick primer on Delaware Code, Delaware Administrative Code, and the Regulatory Process pursuant to the APA (29 **Del.C.** Ch.101)

- 29 **Del.C.** Ch. 101 is the “Delaware Administrative Procedures Act” or APA. Originally adopted in 1976, this chapter governs the process for adopting administrative regulations.
- The chapter sets forth the requirements for filing proposed, emergency, and final regulations.
- Regulations adopted under this process have the force and effect of law.

Who Adopts Regulations?

- Rulemaking authority is a special power granted by the Delaware General Assembly to various:
 - State Agencies
 - Boards
 - Other Government Instrumentalities

How are Regulations Adopted?

- Administrative regulations first go through a series of filings, hearings, and review by the agency and then are submitted to the Office of the Registrar of Regulations

Office of the Registrar of Regulations

Duties as defined in 29 Del.C. Ch. 11:

- Compiling and maintaining the *Register of Regulations*
- Advising agencies as to the form and style of the regulations
- Review of regulation filings for required elements
- Publication of proposed, final, and emergency regulations
- Publication and distribution of the *Register of Regulations* on the first of each calendar month



Regulatory Adoption Process- Overview

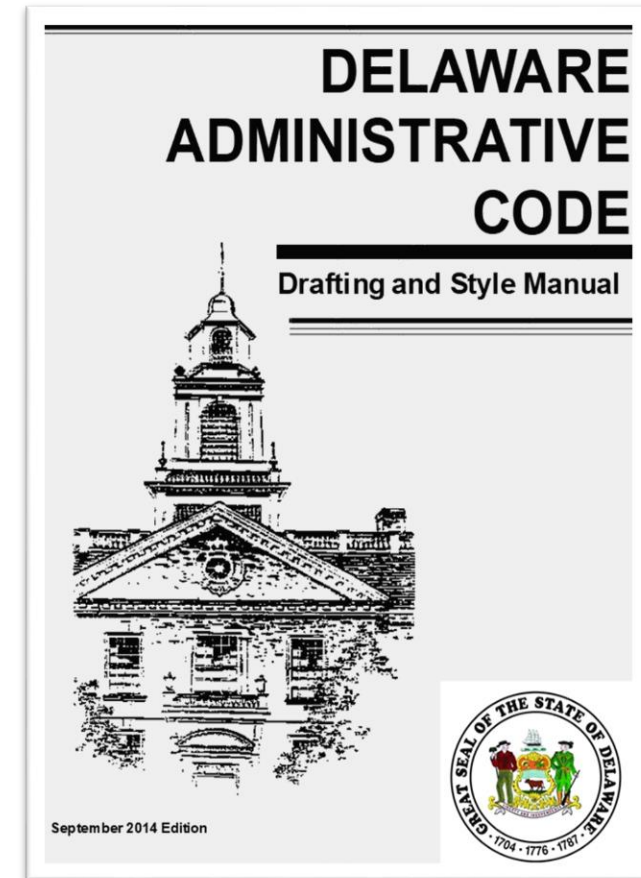
- Submit the proposed regulation to the Registrar of Regulations by the 15th of the month
- Proposed regulation and public notice are published in the *Register of Regulations* on the 1st of the following month
- Public hearing no less than 20 days after publication
- Public comment period remains open no less than 30 days after publication; if holding a public hearing, the public comment period shall be extended for a minimum of 15 days after the public hearing

Regulatory Adoption Process- Overview (Cont.)

- Submit the final regulation by the 15th of the month
- Final regulation and Order are published in the *Register of Regulations* on the 1st of the following month
- Regulation effective 10 days after publication (unless delayed effective date)
- Adopted regulation updated in the Administrative Code

Regulatory Adoption Process- Overview (Cont.)

- An agency has 12 months from the end of the public comment period (or the last public hearing on the proposed regulation) to submit the final regulation (29 Del.C. §10118)
- Proposed Regulations are to be drafted pursuant to the guidelines set forth in the Delaware Administrative Code Drafting and Style Manual.
- Most recent - **MAY 2025 STYLE MANUAL** -
https://regulations.delaware.gov/style_manual



Regulatory Flexibility Act/ Regulatory Impact Statement (RFA/RIS)

- Effective January 1, 2016, agencies, boards, and commissions proposing new regulations or proposing amendments to regulations must submit a Regulatory Flexibility Analysis (RFA) and a Regulatory Impact Statement (RIS) to the Office of the Registrar of Regulations with the PROPOSED regulation or amendment. If the regulation is exempt, the agency, board, or commission must state the reason why the regulation is exempt in the RFA/RIS.
- Forms and guidelines to assist are posted on the Register of Regulations website at: <http://regulations.delaware.gov/rfa>

What is a Regulatory Flexibility Analysis (RFA)?

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



What is a Regulatory Impact Statement (RIS)?

- Among other things, each RIS must:
 - Describe the purpose of the regulation;
 - Identify the individuals and/or small businesses subject to it;
 - Provide an estimate of the potential costs of compliance; and
 - Describe any less intrusive or less costly alternative methods of achieving the purpose of the regulation.
- In addition, the Act further enhances transparency by requiring the Registrar of Regulations to transmit regulatory impact statements to the appropriate standing committee of the General Assembly.

The Registrar has the Authority to Make Revisions- 29 Del.C. §1134(a)(3)

"The Registrar, in the course of compiling and maintaining the Register of Regulations shall do all of the following:

(3) Make, as needed, revisions to both proposed and existing regulations that do not alter the sense, meaning, or effect of the regulations, including all of the following:

- a. Renumbering and rearranging sections or parts of sections.
- b. Transferring sections or dividing sections to give to distinct subject matters a separate section number, but without changing the meaning.
- c. Inserting or changing the wording of headnotes.
- d. Changing reference numbers to agree with renumbered regulations or renumbered sections or subsections of regulations.
- e. Substituting the proper section or regulation number for the terms "this regulation," "the preceding section," and the like.
- f. Striking out figures where the figures are merely a repetition of written words or vice versa.
- g. Changing capitalization for the purpose of uniformity.
- h. Applying gender silent language when there is no ambiguity regarding the noun which a pronoun is meant to replace.
- i. Correcting manifest typographical and grammatical errors.
- j. Making other purely formal or clerical changes in keeping with the purpose of the revision.

Hearing and Comment Period



An agency may be required by law to hold a hearing, or an agency may determine, in its discretion, to hold a public hearing as described in 29 Del.C. §10117.



Agencies shall:

Schedule a hearing (if one is to be held) no less than 20 days following publication of notice of the proposal in the *Register*.

Afford opportunity for the submission of written comments for a minimum of 30 days after publication; extending the period through the 15th day following the last public hearing (if one is held).

Consider all relevant written and oral submissions concerning the proposed regulation.

Create a record of public hearings (if held).



Final Regulation Submission

- Must be submitted to the Registrar of Regulations by the **15th of the month** for publication in the *Register of Regulations* on the 1st of the following month
- Submission needs to contain:
 - Order (including summary of evidence, findings of fact, decision, and effective date)
 - Annotated text showing the proposed changes (underlining and strike type) as well as any subsequent changes properly marked

Final Regulation Submission (Cont.)

- The regulation will go into effect 10 days after the date it is published in the *Register of Regulations* unless a later date is specified
- Check the Delaware Administrative Code to see your new or changed regulation language (after the 11th or your alternative effective date)
- Available at <http://regulations.delaware.gov/AdminCode/>

Role of RAC



Initial Regulations

“[A]ssist the Department in developing the initial regulations required under this chapter”

“[R]eview and approve the initial regulations before they are submitted to the Secretary”

Authority: 7 Del. C. 6621(b)
6621(c)
6621(n)
6622(a)
6622(b)
6622(c)



Implementation Review & Final Report

“[R]eview the Department’s implementation of those regulations and the overall operation of the wetlands program”

Authority: 7 Del. C. 6621(b)
6621(o)



Guidance

“[P]rovide guidance in other matters related to the work under this chapter as requested by the Secretary”

Authority: 7 Del. C. 6621(b)



Solicited Input on Subsequent Regulations

“[P]rovide any input it might have [on any subsequent regulations] within a 60-day period after solicitation from the Secretary”

Authority: 7 Del. C. 6622(d)



Role of RAC: *Initial Regulations*



Obligations

“The Committee shall assist the Department in developing the initial regulations required under this chapter”

“The Committee, working staff provided by the Department, shall review and approve the initial regulations before they are submitted to the Secretary”

Authority: 7 Del. C. 6621(b)
6622(a)

Considerations

- Nationally recognized best practices and standards
- Surrounding states’ actions (re: incentive programs, policies, regulatory roles)
- Reducing duplication
- Efficient permitting
- Expediting voluntary wetland habitat project permits
- Improving ability to account for cumulative and individual impacts

Authority: 7 Del. C. 6621(c)
6622(b)



Role of RAC: *Initial Regulations (Cont.)*



Time Limitation

“The Committee must submit regulations for approval by the Secretary by August 1, 2027.”

“If no version of the initial regulations are approved by the Committee and submitted to the Secretary before August 1, 2027, the Department shall thereafter have full authority to promulgate initial regulations under the procedures of Chapter 101 of Title 29.”

Authority: 7 Del. C. 6621(n)
6622(c)

Secretary’s Standard of Review: Consistency with Delaware Law

“If the Secretary concludes that initial regulations, or any portion of such regulations, are inconsistent with Delaware law, the Secretary shall provide a reason and remand the regulations to Department staff and the [Committee] for revision”

“[I]f the Secretary concludes that the initial regulations developed by the Committee, and approved by a majority plus 1 of the Committee, are consistent with Delaware law, then the Secretary shall thereafter promulgate the initial regulations as proposed by the Committee under the procedures of Chapter 101 of Title 29”

Authority: 7 Del. C. 6622(a)

Promulgation Procedure

“[T]he Secretary shall thereafter promulgate the initial regulations as proposed by the Committee under the procedures of Chapter 101 of Title 29”

“The Department shall have no authority to promulgate regulations under this chapter until the initial regulations have been approved by the Committee and thereafter approved by the Secretary and promulgated under the procedures of Chapter 101 of Title 29”

Authority: 7 Del. C. 6622(a)
6622(c)



Role of RAC: *Implementation Review & Final Report*



Review

“Upon promulgation of the initial regulations required by this chapter, the Committee shall review the Department’s implementation of those regulations and the overall operation of the wetlands program for a 3-year period . . . ”

Authority: 7 Del. C. 6621(b)
6621(o)

Final Report

“[Committee] shall, within 1 year after this period, provide a final report making recommendations for legislative or regulatory improvements to the wetlands program. ”

Authority: 7 Del. C. 6621(b)
6621(o)

Recipients

- Governor
- President Pro Tempore of the Senate
- Speaker of the House of Representatives (for distribution to General Assembly)
- Division of Research of Legislative Council (Director and Legislative Librarian)
- Delaware Public Archives

Authority: 7 Del. C. 6621(o)



Role of RAC: *Guidance*



“The Committee shall . . . provide guidance in other matters related to the work under this chapter as requested by the Secretary”

Authority: 7 Del. C. 6621(b)



Role of RAC: *Solicited Input on Subsequent Regulations*



“Any subsequent regulations, including any amendments to the initial regulations, shall be promulgated under the procedures of Chapter 101 of Title 29 without need of approval by the Committee, although the Secretary must solicit input in any subsequent regulations from the Committee.

The Committee must provide any input it might have within a 60-day period after solicitation from the Secretary”

Authority: 7 Del. C. 6622(d)



Drafting Resources



Underline and Strike Type example

- 2.1.1.6 Verification of Application. The Application must be ~~verified by~~ accompanied by a signed, notarized verification of a principal or officer of the Applicant with personal knowledge and responsibility for the information and representations made in the application stating that all information in the application is true and correct as filed. Where the Applicant is a corporation or an association, the verification shall be signed by an officer thereof and notarized.
- 2.1.1.7 Consent to ~~the~~ Jurisdiction. All ~~Electric Suppliers~~ Applicants shall consent to the jurisdiction of the Delaware courts for acts or omissions arising from their activities in the State.
- 2.1.1.8 Other Requirements:
 - 2.1.1.8.1 Legal name as well as the name and tax identification number or employer identification number under which the Applicant proposes to do business in Delaware. List any other names under which the Applicant has previously done business in Delaware;
 - 2.1.1.8.2 State of incorporation; and business address, and address of the principal officer. Provide certification issued by the state of formation or incorporation certifying that the Applicant is in good standing and qualified to do business in that state;



Citations:

Delaware Code	Entire chapter: 29 Del.C. Ch. 100 Specific section: 29 Del.C. §10101 Multiple sections: 29 Del.C. §§500-520 Subsection: 29 Del.C. §300(a)
Delaware Administrative Code	Title and regulation number • For example, to refer to the Department of Natural Resources and Environmental Control, Division of Air Quality, Air Quality Management Section, Regulations for Requirements for Preconstruction Review use: 7 DE Admin. Code 1125 Requirements for Preconstruction Review (name optional) When citing sections and subsections within a regulation of the Delaware Administrative Code: • Citing an entire section: Section 2.0 of this regulation • Citing a subsection: subsection 2.1.1 of this regulation



Citations (cont.):

- **Delaware *Register of Regulations***
 - Volume, page number, and issue date
 - For example, to refer to Volume 17, Page 948 of the Delaware ***Register of Regulations*** issued on April 1, 2014, the citation should read: 17 **DE Reg.** 948 (04/01/14)



Drafting Tips

“Section” refers to the entire section ending in .0 (e.g. Section 4.0); capitalize Section

“subsection” refers to a part of a Section (e.g. subsection 4.2); subsection is not capitalized

“Regulation” refers to the entire regulation (e.g. 1202 Unemployment Insurance Regulations)



Drafting Tips (Cont.)

- Be mindful of internal references - if you strike a Section/subsection, check to see if it is referenced elsewhere and also check to see if any of the renumbered Sections/subsections are referenced elsewhere
- Don't use ambiguous language:
 - “of this section”
 - “of this section above/below”
 - “as above”
 - “as herein”

Drafting Tips (Cont.)

- Use active voice instead of passive voice, unless the actor cannot be identified or the statement is intended to be universal
- Active voice- the subject of the sentence does the action
- Passive voice- the subject receives the action

PASSIVE VOICE:

1.3.7 Documentation of all evaluation and treatment of the patient and all changes to such evaluation and treatment plans must be reviewed and approved by the Chiropractic Preceptor.

ACTIVE VOICE:

1.3.7 The Chiropractic Preceptor must review and approve documentation of all evaluation and treatment of the patient and all changes to such evaluation and treatment plans.

ACTIVE WITH UNNECESSARY WORDS DELETED:

1.3.7 The Chiropractic Preceptor must review and approve all patient evaluation and treatment documentation, including all changes.



Drafting Tips (Cont.)

- Avoid “and/or”
 - “And” means “in addition to”
 - “Or” means “as an alternative”
 - Instead, use “and” or “or” or “A or B, or both”
 - For more than two choices, use “one or more of the following:”

DO NOT USE: Please buy apples and/or oranges.

USE:

Please buy apples and oranges.

Please buy apples or oranges.

Please buy apples or oranges, or both.

Please buy one or more of the following: apples, oranges, or pears.



Drafting Tips (Cont.)

- Use “means” or “includes” but NEVER use “means and includes” or “includes but not limited to”
 - Use “means” when it is intended to be exhaustive or identical/synonymous
 - Use “includes” when the term encompasses some specific matter (one thing “includes” another when the second is a part of the first)
 - “means and includes” is a nullity as “means” is complete and “includes” is partial
 - “includes but is not limited to” is redundant as “includes” is partial (invites misinterpretation)

Miscellaneous Tips

- Registrar of Regulations is a person; *Register of Regulations* is a publication
- Delaware *Register of Regulations*, *Delaware State News*, *News Journal* are italicized
- Spacing of **Del.C.** citation:
 - Incorrect: 24 **Del. C.** § 2706 (a) (1)
 - Correct: 24 **Del.C.** §2706(a)(1)
- Deletions (strikethrough) appear before additions (underline)
- Tables are better than pictures; if a picture is necessary, use jpeg or bitmap

Questions





Insights from RAC Member Interviews



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Interview Insights

What we heard from RAC members



Conversations

Held individually with RAC members (23 of 25 so far).



Non-attributional

Nothing noted today is tied to individual RAC members.



Highlights only

A read-back of themes, not a full record.

The group brings deep institutional memory and broad technical capacity. Many RAC members also took part in the SB9 process in some form.



Areas of Alignment



Protecting wetlands

Not in dispute. The question is which, and at what cost.



Plain language

Rules a landowner can read and follow without a consultant.



Science first

With the value judgments named, not folded in.



Function varies

Largely held that not all wetlands are the same.



Coordination

Fit with federal and county requirements, not duplication.



Where the Work Is

The four areas members are watching most closely



Defining a wetland

Largely seen as settled and technical.

Questions remain “at the edges.”



Exceptional Value Wetlands

Named as the hardest topic. Consider how value is defined, and by whom.



DE Wetland Screening Tool

Seen as what will decide outcomes.

Want:
Transparent and easy to use.



Permitting

Timelines and certainty on decisions. Also, reducing paperwork, and overlap with federal and county review.



Areas of Divergence

- ➔ **Statutory language: Outer bound or starting point?**
Whether SB9's required considerations set the limit of what should be protected as exceptional value or a place to begin.
- ➔ **Wetlands with small and seasonal features**
Whether small, isolated, or seasonally dry features warrant protection.
- ➔ **Trust in the drafter**
Views on who should put the first proposal forward are not uniform, and they cut in more than one direction.

Small Group Discussions (5 minutes)

Turn to those next to you, and in groups of 2-3, share:

- One reflection from the interview insights that resonated with you.
- One question or curiosity that you would like to explore further

We'll also provide some time to share out what you heard.

A lush green forest with a stream flowing through it, surrounded by dense foliage and tall trees.

DRAFT RAC Operating Procedures



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Draft RAC Operating Procedures:

Opening Sections

These sections provide context based almost exclusively from SB9:

- Background
- Purpose and Scope
- Committee Composition



Draft RAC Operating Procedures:

Designation of Alternates

- Members encouraged to designate alternate in advance to attend meetings they cannot attend
- Must represent same constituency
- Notably, alternates do not have authority to vote nor does an alternate's attendance at a meeting count towards quorum
- Alternates must be designated in writing
- Ensure alternates are briefed before sitting in for a RAC member



Draft RAC Operating Procedures:

RAC Member Responsibilities

- Attend all meetings
- Name an Alternate **alternates do not count toward member's attendance*
- Come prepared
- Communicate with your represented constituency
- Negotiate in good faith
- Assume all written materials are or will be publicly accessible



Draft RAC Operating Procedures:

Code of Conduct and Discussion Ground Rules

- Balanced participation – Speak one at a time; avoid interruptions
- Stay on track; move deliberations forward
- Communicate concerns, interests, and ideas openly.
- Express your own views rather than speaking for others at the table.
- Respect others' views, including those you disagree with
- Listen with curiosity; share your perspectives and ideas
- Avoid personal attacks or blame
- Keep your comments succinct and on topic; no filibustering
- Strive to be a collaborative problem solver
- When speaking outside meetings, clarify you do not speak for the RAC

Draft RAC Operating Procedures:

DNREC's Responsibilities

- DNREC **staffs** the Committee but is **not a member**.
- Handle meeting logistics
- Provide staff support for Committee deliberations
- Circulate meeting materials at least **3 business days** in advance
- Prepare technical presentations
- Seek technical input from National Association of Wetland Managers (NAWM)
- Identify the boundaries initial regulations have to work within
- Post meeting materials to DNREC website and public meeting calendar
- Draft regulatory language for RAC to review and comment on

Draft RAC Operating Procedures:

RAC Co-Chair's Role

From the Wetlands Stewardship Act:

- Help establish subcommittees (if needed or desired)
- Designate RAC member replacements, at the co-chairs' discretion, if they miss successive meetings

Other expectations:

- Act as liaison for administration of the RAC (i.e., meeting with CBI/DNREC to plan meetings)
- Not expected to relinquish voting privileges as a part of the RAC

Draft RAC Operating Procedures:

CBI's Role

- Facilitate meetings and help members follow procedure
- Lead support on agenda development
- Identify and summarize Committee agreement and disagreement
- Draft summaries and track actions
- Push for a fair, effective, and credible process
- Act as a communication channel
- Work closely with Co-Chairs



Draft RAC Operating Procedures:

National Association of Wetland Managers' Role

- NAWM provides **third-party technical input** but is **not a RAC member**
- Provide NAWM's professional knowledge and resources to inform the RAC about nationally recognized best practices and standards including, but not limited to:
 - Actions that surrounding states have implemented concerning incentive programs, policies, and assumption of regulatory roles; and
 - Possible areas of regulatory overlap between state and federal agencies
- Coordinate with DNREC and CBI to provide the RAC with established scientific data and information for RAC deliberation

Draft RAC Operating Procedures:

Work Groups (Subcommittees)

- Purpose: Deliberation, exploring, and generating options
- Report regularly with RAC; decisions still rest with full Committee
- Co-Chairs establish with Committee input
- May include outside experts who are not Committee members
- Subject to Delaware open meeting requirements
- Expected to meet virtually, with physical location provided to member of the public
- Meeting summaries will be public



Draft RAC Operating Procedures:

Logistics

- Meeting Location: **Kent County Levy Court**
- Notice and agendas are posted at least seven days in advance
- Materials will be **posted** on the **DNREC website**
- Public comment at every meeting
- CBI will draft meeting summaries
- Members of the **media are welcome** at all meetings
- DNREC **will record** all Committee and Work Group meetings via Zoom.



Draft RAC Operating Procedures:

Decision Rule

- Quorum = 13
- Official Action: For purposes of RAC decision-making, **majority plus one** will be referred to as a “majority” vote. If 25 members are present, majority approval requires 14 yes votes.
- Consensus: All or nearly all members can “live with” a proposal
- Voting Process:
 - Initial regulations will be adopted by majority vote of the **entire RAC**
 - Only members may take part in voting
 - Votes will be made public at the meeting and in the meeting summary
 - Abstaining has the same effect as voting no. Abstentions will be recorded.
 - Members are expected to raise and work to address concerns throughout the process, rather than raising objections for the first time during the final vote

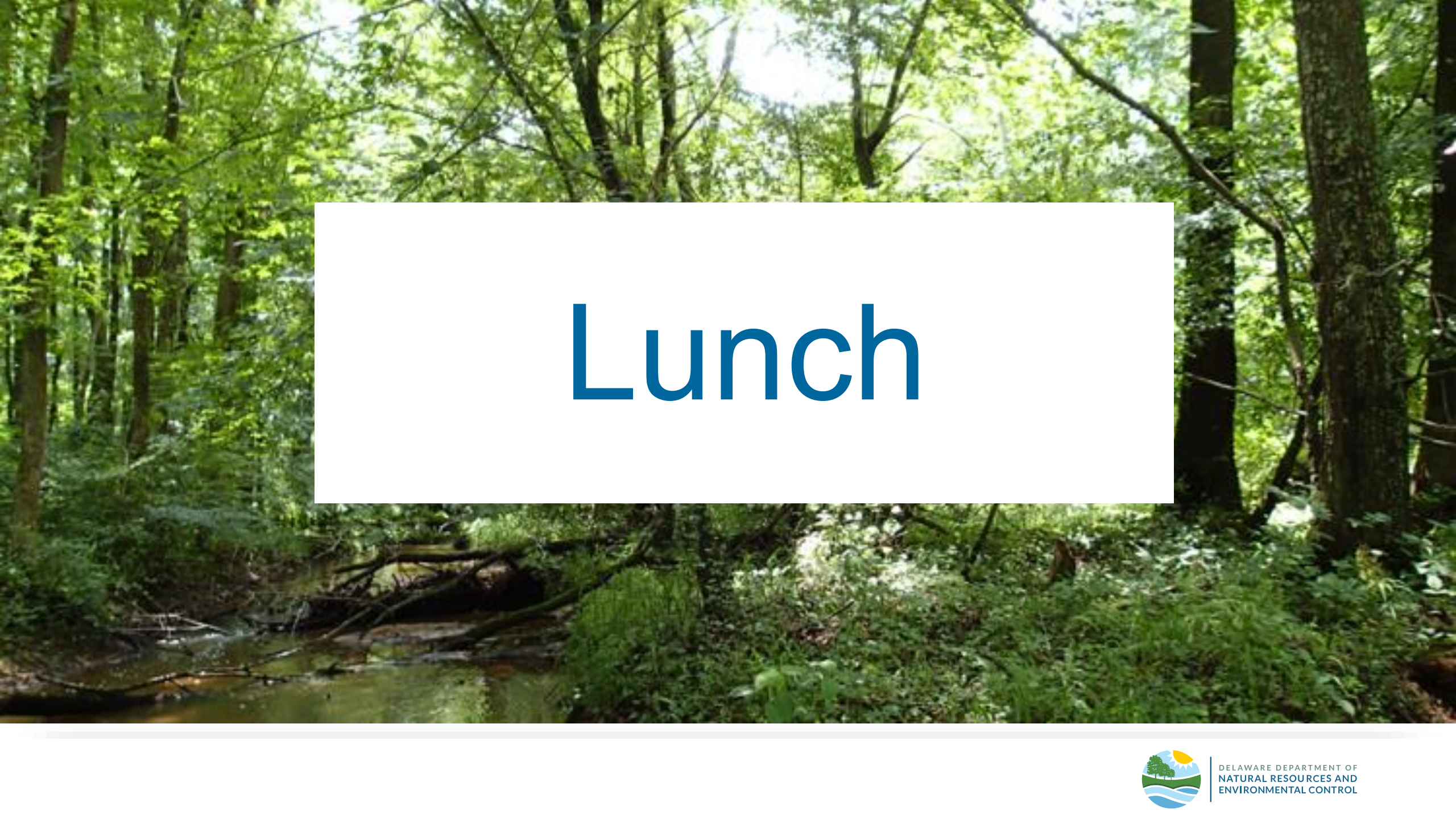
Draft RAC Operating Procedures:

Approved Work Products

- Operating Procedures
- Overall Work Plan
- Work group records and report

By vote:

- Interim updates, documents, and recommendations
- Initial regulations, submitted to DNREC Secretary before Aug 1, 2027
- Report accompanying initial regulations, detailing RAC's decisions, reasoning on each choice, options it considered yet set aside, minority positions, and public comments.

A lush green forest scene with a stream flowing through the bottom left. Sunlight filters through the dense canopy of tall trees. A large white rectangle is centered over the image, containing the word "Lunch" in blue text.

Lunch



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RAC Co-Chair Election



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Overview of RAC Topics for the Year



Overview RAC Topics for the Year

- Definition of wetlands, nontidal wetlands, and tidal wetlands
- Definition of “exceptional value wetlands”
- Creation of a “Delaware wetland screening tool”
- Certification
- Mitigation
- General Permits
- Other relevant regulations

Across all topics, the RAC must:

- Consider **nationally recognized best practices and standards**
- Consider **actions that surrounding states have implemented** in the way of incentive programs, policies, and assumption of regulatory roles

As we go through each topic...

- **Keep in mind:** What's noted on the following slides is what statute says the RAC must consider
- **Raise questions** on items for which you'd like clarification.
- **Be ready to contribute:** Note specific items you (or your constituency) would like the RAC to discuss. We will note down these ideas as long as:
 - They are within the bounds of what is called for in statute.
 - They are not knowingly inconsistent with existing Delaware law.

Note: We will not discuss whether a specific item “should” be discussed if it meets the above criteria. When in doubt, we will note down the item and come back to it.

- **Consider:** For this particular topic, should the RAC create a sub-committee to help generate options for full committee consideration?

Out of scope?

- Legislative text amendments
- Definitions already in legislation
- Impact fee rates – *Fees require new legislation, RAC can recommend*
- Specific conditions for permit issuance – *Conflict of interest for RAC to set conditions*



Wetlands Definitions

- **Regulations to define** “wetlands”, “nontidal wetlands”, and “tidal wetlands”
- Must be based upon **generally accepted criteria and methodologies**, including:
 - The U.S. Army Corps of Engineers Wetlands Delineation Manual dated January 1987; and
 - Any regional supplemental guidance pertaining to local conditions
 - Example: U.S. Army Corps of Engineers, Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region, Version 2.0 (November 2010)

Exceptional Value Wetlands (EVWs)

- Shall be **defined by regulations**
- EVWs are wetlands that are:
 - **“Unique” wetlands** – Categorized by DNREC as:
 - Coastal Plain seasonal ponds;
 - Inner-dune depression meadows;
 - Peat-land fens;
 - Piedmont stream valley wetlands;
 - Bald cypress swamps;
 - Atlantic white cedar swamps; and
 - Black ash seepage swamps.
 - **High functioning wetlands** – Criteria for determining these wetlands to be included in Delaware Wetland Screening tool



Exceptional Value Wetlands (cont.)

- EVWs are wetlands that are (cont.):
 - Based upon documented and appropriate habitat criteria, **support flora or fauna listed as endangered or threatened** under the Endangered Species Act of 1973 or listed as endangered pursuant to § 601 of this title (*state designations by DNREC Division of Fish and Wildlife*)
 - Located in the public water supply **Source Water Protection Areas**
 - Located within **designated natural areas**
- Regulations must:
 - **afford additional protections** to exceptional value wetlands, including:
 - restrictions on allowed activities and
 - development of best management practices for any allowed activity in such areas.

Exceptional Value Wetlands (cont.)

- Regulations must (cont.):
 - Provide guidance **on how a landowner can rebut any presumption** that a particular wetland supports any given species of concern
 - Rebuttal must be allowed via **“Presence/Probable Absence Study”** – Using standardized field methods and survey efforts, determine **whether any particular species of concern is detected** or, if not detected, **can be treated as probably absent**

Note: The phrase “species of concern” refers back to “flora or fauna listed as endangered or threatened,” as defined earlier.

Delaware Wetland Screening Tool

- Tool to be developed as a **component of the initial regulations** promulgated
- Could be used to determine/indicate:
 - **Whether an area has the potential to qualify as a wetland**, including tidal or nontidal wetlands; and
 - **Areas that may require further evaluation** to determine if the wetlands are of “exceptional value”
- May include:
 - Methodologies to determine likely or predicted existence of a wetland
 - Methodologies for confirming and/or refining that assessment based on field conditions using published criteria such as the Classification of Wetlands and Deepwater Habits of the United States

Delaware Wetland Screening Tool (cont.)

- The tool should:
 - Where available, **provide maps to assist in screening for wetland status**, including information on all known unique wetland parcels. Maps will only be determinative of wetland status to the extent DNREC so indicates
 - Criteria for evaluating/rating **wetland function** (high, moderate, and low)
 - **Address high function** for purposes of **exemptions for non-tidal wetlands** equal to or less than a contiguous 0.50 acres in extent (on one or multiple parcels) – *Protocol for identifying a high function wetland*
 - Incorporate **guidance to the public** on exempt activities
- Tool may include other elements (screening to distinguish tidal/non-tidal wetlands, certification and oversight criteria for use of the tool, etc.)
- **To extent possible:** Onsite screening in under 1 day with minimum equipment
- Update tool on an ongoing basis to incorporate current DNREC knowledge

Certification

- **Process for professional certification** to make site determinations on whether a wetland qualifies as “unique” or “high function”
- Relatedly, develop **protocol to identify a high function wetland**
 - Measurement of high function made independently of whether parcel supports (or could support) floral or fauna listed as endangered or threatened under Endangered Species Act of 1973 or state designation
- Both the certification and protocol are **relevant to the exemption** of nontidal wetlands equal to or less than a contiguous 0.5 acres (on one or multiple parcels) from further regulation, as long as they do not qualify as “unique” or “high function”

Mitigation

- **Environmental impact** includes (but not limited to):
 - Likely destruction of **wetlands and flora and fauna**
 - Site preparation impact on **tidal ebb and flow** and the otherwise **normal drainage** of the area in question, especially as it relates to **flood control**
 - Site preparation/proposed activity impact on **land erosion**
 - Site preparation/proposed activity impact on **quality and quantity of tidal and nontidal waters, water resources** (surface, ground, subsurface), related watershed, and **other resources**.

Mitigation (cont.)

- Mitigation is an action undertaken to accomplish one or more of the following:
 - **Avoid or minimize impacts** by limiting the degree or magnitude of the action and its implementation.
 - **Rectify the impact** by repairing, rehabilitating or restoring the impacted environment.
 - **Reduce or eliminate the impact** over time by preservation and maintenance operations during the life of the action.
- If impact cannot be eliminated through mitigation measures, one must **compensate** for the impact by **replacing the environment impacted by the project** or by **providing substitute** resources or environments of similar or greater type, size and function.

Mitigation (cont.)

- Regulations must **promulgate mitigation strategies** designed to:
 - facilitate **no net overall loss** in wetland acreage and function throughout this State, and
 - **protect Delaware's resiliency** to the impacts of climate change.
- Strategies to be considered include:
 - **wetland mitigation bank,**
 - **aquatic restoration fund,**
 - **in-lieu fee program, or**
 - **other vehicle** that provides incentives for the creation, restoration, enhancement, or protection of wetlands.
- Incentives shall be structured to create a framework that provides a strong **incentive for the preservation of exceptional value wetlands.**

General Permits

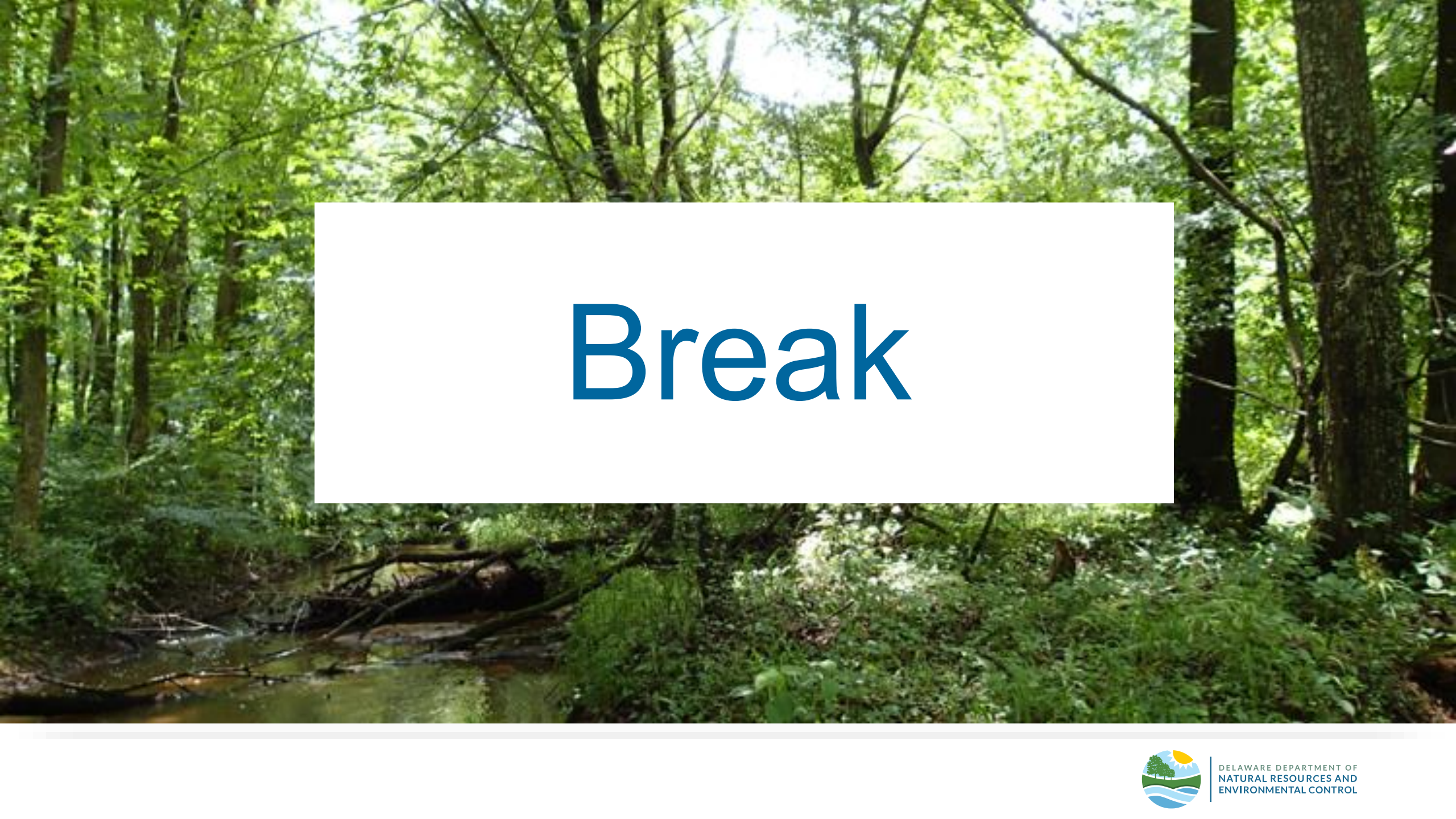
- **Establish eligibility and mitigation requirements for general permits** to improve efficiency of permitting for common/ environmentally beneficial activities with minimal environmental impact:
- Consider permits for the following (and **state whether they apply** in tidal wetlands, nontidal wetlands, or both):
 - **Voluntary wetland habitat restoration** projects (expedited process)
 - **Linear utility infrastructure projects**
 - **Use of pilings in nontidal wetlands** in appropriate circumstances. Consider imposing restrictions where:
 - Closely space pilings that increase sedimentation rates
 - Pilings would effectively replace bottom of water body
 - Pilings/related structures adversely alter or eliminate aquatic or biologic functions
 - Pilings structurally support a building (e.g., commercial or residential structure)

General Permits

- Consider permits for the following (and **state whether they apply** in tidal wetlands, nontidal wetlands, or both, cont.):
 - **Educational signage placement**
 - **Infrastructure construction for public use** (e.g., viewing tower, nature trails)
 - **Wetland walkway** for individual properties for water access (under designated conditions to enable 1-stop State and federal permitting)
 - **One community access structure** per community for multi-unit/multi-home communities for water access (under designated conditions)
 - **“Default general permit”** – Activities that disturb cumulative area of nontidal wetlands equal to or less than 0.5 acres if not an exceptional value wetland
 - Shall require mitigation measures
 - Automatically issued if not permit issued or denied within 120 days from receipt

Other Relevant Regulations

- **Reduce duplication** with the permitting requirements of the Army Corps of Engineers.
 - Where possible, **enable joint applications or 1-stop permitting** in areas of jurisdictional overlap.
- Improve the State's ability to **account accurately for cumulative and individual** impacts from wetlands permitting actions.
- DNREC to develop a **tracking system** to record and make public its response times for all permit applications received.

A lush green forest scene with a stream flowing through the bottom left. Sunlight filters through the dense canopy of tall trees, creating a dappled light effect on the forest floor and water.

Break



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A lush green forest with a stream flowing through it, surrounded by dense foliage and tall trees.

DRAFT RAC Work Plan



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Draft RAC Work Plan: The Year at a Glance



The Work Plan assumes...

- 12 RAC meetings, roughly monthly, with subcommittees carrying option development from October onward
- DNREC delivers a complete working draft of the initial regulations at the February 2027 meeting
- Public engagement sessions and an online feedback form run in early 2027, before the text is settled

Fall 2026: Foundation and Issue Framing

July 2026	RAC	Overview of the Wetlands Stewardship Act and the RAC's charge; nominations open for the two Co-Chairs
Aug 2026	CBI	Conversations with RAC members on priorities, concerns, and interests; non-attributational summary of key themes
Sept 2026	RAC	Vote to approve the two Co-Chairs; review of the draft Operating Procedures and Work Plan; background presentations; guiding principles; outline the issue areas needing subcommittees
Oct 2026	RAC + Subcommittees	Best practices, surrounding states, and State/federal permitting overlap; establish subcommittees, confirm charges, name a RAC member to chair each; public engagement approach
Nov 2026	RAC + Subcommittees	Key issues not assigned to subcommittees; initial subcommittee updates; subcommittees begin formulating options
Dec 2026	RAC + Subcommittees	Interim subcommittee report-outs; RAC direction on unresolved questions and further option development

Winter 2027: From Options to a Working Draft

Jan 2027	RAC + Subcommittees	Interim report-outs and discussion; RAC direction on unresolved questions and option refinement; RAC directs which options carry into the draft initial regulations
Early 2027	Public Engagement	Opportunities for the interested public to follow RAC discussions and provide input, with an online feedback form open in parallel; the RAC considers public comment throughout the process
Feb 2027	RAC + Subcommittees	Subcommittee report-outs; DNREC presents a complete working draft of the initial regulations reflecting subcommittee options and RAC direction; the RAC begins its section-by-section review
Mar 2027	RAC	DNREC presents a revised working draft; the RAC completes its section-by-section review and directs further revisions

Spring and Summer 2027: Resolution and Approval

Apr 2027	RAC	DNREC presents a revised working draft reflecting RAC direction; resolve open issues
May 2027	RAC	DNREC presents a revised working draft reflecting RAC direction; resolve remaining open issues
June 2027	RAC	Final review of the initial regulations; the RAC votes to approve them for submission to the Secretary; minority opinions identified and logged
July 2027	RAC	Held in reserve if the RAC did not approve the initial regulations in June; if approval was reached, the RAC confirms the transmittal package

Before August 1, 2027 The approved initial regulations go to the Secretary with any minority opinions and the supporting record (7 Del. C. §§ 6621(n), 6622(a)).

Public Comment



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Public Comment

- **Those on Zoom:**
 - Use the 'Raise Hand' button to get in the queue; or
 - Submit your comment via the Q&A box and *clearly indicate it as a public comment to be read out loud.*
- Keep comments to **2 minutes**, you will hear a chime sound when 2 minutes has elapsed.
- Written public comments may also be submitted to:
DNREC_Wetlands_RAC@delaware.gov

Next Steps



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Look Ahead and Next Steps

- **Homework:**
 - Provide suggested edits to *DRAFT* RAC Operating Procedures and Work Plan
 - Pre-Reads for October Meeting
- You will receive calendar holds for the upcoming meetings -- **Next meeting Wed, Oct 7 (tentative)**
- CBI will draft meeting summary and circulate for review with October meeting documents



Thank You!

**To view meeting materials from past RAC meetings or
join an email list for updates on the RAC:**

de.gov/wetlandsrac

Questions or public comments may be submitted to:

DNREC_Wetlands_RAC@delaware.gov



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