



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

PHONE: (302) 739-9000
FAX: (302) 739-6242

June 27, 2011

Dr. Robert J. Kainz
MWL Products, Inc.
26050 Orchard Lake Road, Suite 300
Farmington Hills, MI 48334-4419

Re: Coastal Zone Act Status Decision

Dear Dr. Kainz:

We have carefully reviewed your April 29, 2011 Coastal Zone Status Decision Application proposing to manufacture boiler fuels on the 5-acre property adjacent to the existing pier at the DuPont Chamber Works Facility.

My Status Decision is that a Coastal Zone Act permit is required under *7 Del. C. § 7004*. MWL plans to construct a facility to manufacture various boiler fuels from centrifuge oil within the grounds of the Chambers Works. Although the Chambers Works facility is located in New Jersey, the proposed pier and dock would be located below the mean low watermark of the Delaware River and are, therefore, subject to Delaware law and regulation. MWL's application states that the new pier and dock would be used only to serve its manufacturing facility. Despite being used for bulk product transfers, the proposed facility is not prohibited by the Coastal Zone Act. Docking facilities and piers that serve only a single industrial or manufacturing facility for which permits are granted are not included within the definition of "bulk product transfer facilities," *7 Del. C. §7003(f)*, and may be constructed if MWL obtains a CZA permit.

There is a fourteen day appeal period following the date of the legal notice announcing this decision. I have enclosed a copy of the legal notice for your files. There is a one hundred dollar application fee for an appeal. If no appeal is received within the fourteen day appeal period, this decision becomes final.

Please call Kevin Coyle at (302) 739-9071 if you have any questions or concerns regarding this decision.

Sincerely,

A handwritten signature in black ink, appearing to read "Collin P. O'Mara".

Collin P. O'Mara
Secretary

Delaware's Good Nature depends on you!



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MEMORANDUM

TO: Collin P. O'Mara

THRU: David S. Small *DS*

THRU: Lee Ann Walling *LAW*

FROM: Kevin F. Coyle, AICP *KFC*

RE: Recommended CZA Status Decision for MWL Products, Inc.

DATE: June 10, 2011

Introduction

MWL Products, Inc. ("MWL") submitted an application on April 29, 2011, seeking a Status Decision under the Delaware Coastal Zone Act (Chapter 70 of Title 7 of the Delaware Code) to determine if a Coastal Zone Act Permit is required to manufacture boiler fuels on the 5-acre property adjacent to the existing pier at the DuPont Chamber Works Facility.

Description of the Project

MWL proposes to manufacture boiler fuels on the 5-acre property adjacent to the existing pier at the DuPont Chamber Works Facility. The manufacturing operations will utilize the existing two storage tanks (approximately 2,000,000 gallons/tank) at the site and the pier will be repaired and used for the single purpose of receiving base stock for the manufacturing operation.

The base stock will be stored in one tank, go through a series of filters in a closed filtration system and be stored in the second tank. Additives will be incorporated to produce six burner fuels. The

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filtration equipment will be on a skid unit and the filtration process will be fully enclosed. Secondary containment will be provided where the product is transferred from vessels to the tank and through the filter into the second tank or rail/highway/water transportation.

The pier repair will include placement of approximately seven pilings, an extension boom, and walkway from the existing pier forty feet towards the shipping channel, to accommodate medium-sized Panamax ships and medium river barges. Shipments of base stock are expected to occur four times per year, with 500,000 gallons anticipated with each shipment. No other entity will use the pier for the offloading/on-loading of any bulk product. The base stock received at the pier will be used solely by MWL for this proposed manufacturing operation.

Project Analysis

MWL plans to construct a facility to manufacture various boiler fuels from centrifuge oil within the grounds of the Chambers Works. The feed stock would be delivered by water to the proposed pier and dock four times a year in 500,000 gallon shipments. Although the Chambers Works facility is located in New Jersey, the proposed pier and dock would be located below the mean low watermark of the Delaware River and is, therefore, subject to Delaware law and regulation. MWL's application states that the new pier and dock would be used only to serve its manufacturing facility.

While MWL's application for a status decision states in § 4.1 that the proposed pier and dock will not be used "at least in part for bulk cargo transfers," that statement is clearly wrong. MWL plans to receive their raw material in four 500,000 gallon shipments every year. In the Superior Court's decision in *Vane Line Bunkering*, the Court determined that a transfer of such a quantity of product is clearly a bulk product transfer.

Despite being used for bulk product transfers, the proposed facility is not prohibited by the Coastal Zone Act. Docking facilities and piers that serve only a single industrial or manufacturing facility for which permits are granted are not included within the definition of "bulk product transfer facilities," 7 Del. C. §7003(f), and may be constructed if MWL obtains a CZA permit.

Public Commentary

Legal notices announcing receipt of the Status Decision application were published in the News Journal on May 22, 2011, and the New Castle Weekly on May 25, 2011; in addition, an e-mail was sent to the Coastal Zone listserv on May 20, 2011. The Department has received correspondence (see attached) from Kenneth T. Kristl, Associate Professor of Law and Director of the Environmental and Natural Resources Law Clinic at the Widener University School of Law, on behalf of the Delaware Nature Society. Comments from the Law Clinic conclude that the project proposal constitutes a "heavy industry" as defined by the Coastal Zone Act and is therefore prohibited.

While the Nature Society's letter compares this project to FCC Environmental (387SD), MWL's proposal does not evidence the same characteristics of heavy industry. In its application, FCC said its operations would include smokestacks, tanks, distillation or reaction columns, chemical processing

equipment and scrubbing towers – tipping the balance toward heavy industry, as described in the Coastal Zone Act regulations. That project clearly involved re-refining oil. Refineries are specifically included in the Coastal Zone Act’s list of prohibited “heavy industries.” MWL’s proposal includes only tanks among the types of equipment which the Act lists as being typical of “heavy industry” uses.

Recommendation

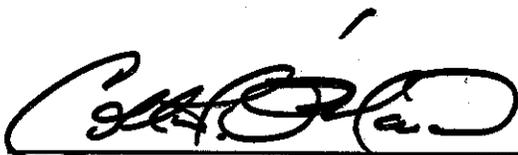
Based on the analysis of the Deputy Attorney General assigned to represent the Department with respect to matters arising under the Coastal Zone Act in a letter dated June 2, 2011 (see attached), the MWL Status Decision application correctly characterizes their proposed project as a new manufacturing facility and the pier and dock will be essential for delivery of raw materials to the facility. As an essential element of a new manufacturing use which was not in existence and in active use on June 28, 1971, MWL will need a coastal zone permit pursuant to 7 Del. C. §7004 and the Regulations, in particular 6.1:

6.0 Uses Requiring a Permit

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

6.1 The construction of pipelines or docking facilities serving as offshore bulk product transfer facilities if such facilities serve only one on-shore manufacturing or other facility. To be permissible under these regulations, the materials transferred through the pipeline or docking facilities must be used as a raw material in the manufacture of other products, or must be finished products being transported for delivery.

If MWL proceeds with a Coastal Zone permit, the company may be required to propose offsets for any environmental impacts associated with the pier repair and offloading of raw materials, but not for the manufacturing operation – which is not located in the Coastal Zone. These impacts may include, but are not limited to, air emissions from offloading oil, disturbance to the bay floor and marine life from pier extension, and any potential impact on water quality.



Approved, Collin P. O'Mara, Secretary

21 Jun 2011
Date



JOSEPH R. BIDEN, III
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
NEW CASTLE COUNTY
820 NORTH FRENCH STREET
WILMINGTON, DELAWARE 19801

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June 2, 2011



Kevin Coyle
Principal Planner
DNREC
89 Kings Highway
Dover, DE 19901

Re: Application of MWL Products, Inc. for a Coastal Zone Act status decision

Dear Kevin:

I have reviewed the application for a Coastal Zone Act status decision submitted on April 25, 2011 by MWL Products, Inc. concerning its proposed facility on the grounds of the DuPont Chambers Works in Pennsville, NJ. I have also reviewed the Coastal Zone Act and the Regulations. After that review, it is my opinion that MWL will be required to seek and obtain a Coastal Zone Act permit before constructing or extending a pier and dock into the Delaware River as proposed.

MWL plans to construct a facility to manufacture various boiler fuels from centrifuge oil within the grounds of the Chambers Works. The feed stock would be delivered by water to the proposed pier and dock four times a year in 500,000 gallon shipments. Although the Chambers Works is located in New Jersey, the proposed pier and dock would be located below the mean low watermark of the Delaware River and is, therefore, subject to Delaware law and regulation. MWL's application states that the new pier and dock would be used only to serve its manufacturing facility.

While MWL's application for a status decision states in § 4.1 that the proposed pier and dock will not be used "at least in part for bulk cargo transfers", that statement is clearly wrong. MWL plans to receive their raw material in four 500,000 gallon shipments every year. As you know from the Superior Court's decision in *Vane Line Bunkering*, a transfer of such a quantity of product is clearly a bulk product transfer.

Despite being used for bulk product transfers the proposed facility is not within the scope of the CZA. Docking facilities and piers that serve only a single industrial or manufacturing facility for which permits are granted are not included within the definition of "bulk product transfer facilities", 7 *Del. C.* §7003(f), and may be constructed if MWL obtains a CZA permit.

Kevin Coyle

Re: Application of MWL Products, Inc. for a Coastal Zone Act status decision

June 2, 2011

Page 2

The MWL application correctly characterizes their proposed project as a new manufacturing facility and the pier and dock will be essential for delivery of raw materials to the facility. As an essential element of a new manufacturing use which was not in existence and in active use on June 28, 1971, MWL will need a coastal zone permit pursuant to 7 Del. C. §7004 and the Regulations, in particular 6.1:

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I suggest that any permit which may be issued in the future under the Coastal Zone Act contain a condition limiting use of the proposed pier and dock to the single MWL facility. The permit could then be revoked if information is received that indicates the pier is being used by more than one on-shore manufacturing facility.

Please contact me if you have any questions or comments regarding this letter.

Very truly yours,



Robert F. Phillips
Deputy Attorney General