



#4113
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2009

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

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MEMORANDUM

TO: Collin P. O'Mara

THRU: David S. Small

THRU: Philip J. Cherry

THRU: Lee Ann Walling, AICP

FROM: Kevin F. Coyle, AICP

RE: Recommended CZA Status Decision for Bouchard Affiliates

DATE: November 12, 2009

Introduction

Bouchard Affiliates submitted an application on July 2, 2009, seeking a Status Decision under the Delaware Coastal Zone Act (7 Del Code, Ch. 70) to determine if a Coastal Zone Act Permit is required to transfer oil in the Delaware Bay from large tankers to their fleet of flat deck double-hulled barges.

Description of the Project

Bouchard intends to lighter oil in the Delaware Bay at Big Stone Anchorage, utilizing vapor recovery, closed gauging, and high-level alarm mechanisms. This lightering activity would entail the offloading of oil from large, ocean-going tankers to Bouchard's fleet of flat deck barges. The barges are moved upriver to be unloaded at oil refining or storage facilities throughout the Delaware River estuary.

Delaware's Good Nature depends on you!

Project Analysis

Bouchard Affiliates asserts in an affidavit provided in their application that it was lightering in Delaware Bay prior to 1971 and qualifies as a "nonconforming use in existence and in active use on June 28, 1971." Therefore, the company contends that it is seeking to continue with a pre-existing use.

A letter from the Deputy Attorney General assigned to represent the Department with respect to matters arising under the Coastal Zone Act, dated August 4, 2009, requested that Bouchard provide additional documentation of its petroleum products lightering activities at the Big Stone Anchorage in the period before June 28, 1971.

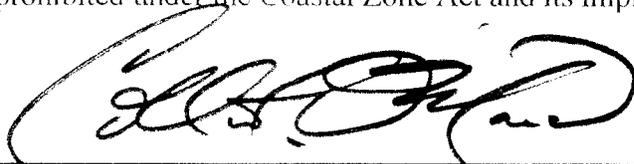
In a response letter from the applicant's attorney, dated September 18, 2009, the attorney stated that they had "contacted their client regarding additional documentation to support Bouchard Affiliates' oil lightering operations at the Big Stone Anchorage before June 28, 1971; and at this time, we have no additional materials to provide."

Public Commentary

The Department has received letters (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, and David S. Swayze, representing Overseas Shipping Group, Inc. In short, both letters express an objection to the Status Decision application on the grounds that the proposed oil lightering operation is prohibited under the Coastal Zone Act, notwithstanding the applicant's affidavit that it was lightering in Delaware Bay prior to 1971 and qualifies as a "nonconforming use in existence and in active use on June 28, 1971."

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 memo dated November 3, 2009 (see attached), the applicant provides scant evidence to support their claim that they were conducting oil lightering operations at Big Stone Anchorage before, on, or after June 28, 1971. Without this critical information, Bouchard's proposal to commence oil lightering operations in the Delaware Bay would constitute the establishment of a new offshore bulk product transfer facility, which is absolutely prohibited under the Coastal Zone Act and its implementing regulations.



12 November 2009

Approved, Collin P. O'Mara, Secretary

Date