

BEFORE THE COASTAL ZONE INDUSTRIAL CONTROL BOARD

OF THE STATE OF DELAWARE

In The Matter of An Appeal By) Coastal Zone Act
Delaware Terminal Company,) Project No. 253D
Filed On July 30, 1991) (Delaware Terminal Company)

STIPULATION OF DISMISSAL

IT IS HEREBY STIPULATED by and between the parties, appellant Delaware Terminal Company ("DTC"), and appellee, State of Delaware Department of Natural Resources and Environmental Control ("DNREC"), and the Coastal Zone Industrial Control Board of the State of Delaware, through their respective undersigned counsel, as follows:

WHEREAS, on November 6, 1990, DTC filed a status decision application with the Secretary of DNREC requesting a determination that an oil pier ("Oil Pier") to be constructed by DTC near Pigeon Point within the City of Wilmington is exempt from regulation under the Delaware Coastal Zone Act, 7 Del. C. §§ 7001 et seq., (the "Act"), because the Oil Pier would be "a docking facility for the Port of Wilmington" and therefore would not constitute a bulk product transfer facility; and

WHEREAS, by letter dated July 15, 1991, the Secretary rendered a decision that the Oil Pier constitutes a bulk product transfer facility and as such is prohibited in the Coastal Zone; and

WHEREAS, the Secretary's decision was announced on July 17, 1991; and

WHEREAS, DTC filed with the Coastal Zone Industrial Control Board (the "Board") an appeal from the Secretary's decision on July 30, 1991 on grounds that the Secretary's decision was erroneous; and

WHEREAS, on August 16, 1991, DTC and the City of Wilmington entered into a letter of intent, pursuant to which the City would: acquire from DTC an option to purchase a certain parcel of land at Pigeon Point; purchase the parcel; grant DTC an easement on and across such parcel so as to allow DTC to design and construct the Oil Pier thereon and in adjacent waters of the Delaware River; and, in the future, design and construct a car unloading facility on and across such parcel and in adjacent waters of the Delaware River; and

WHEREAS, DTC seeks to submit a new or amended status decision application to the Secretary requesting that he reconsider the proposal to build the Oil Pier in light of the Letter of Intent, and other relevant evidence, but does not want to dismiss its present appeal if the Secretary's July 15, 1991 decision would be allowed to be binding upon DTC as to findings of fact or conclusions of law with respect to any future application or supplement to an application submitted to the Secretary by DTC or by DTC jointly with the City of Wilmington.

NOW, THEREFORE, the parties agree,

1. DTC's appeal of the Secretary's July 15, 1991 decision is hereby dismissed.

2. Notwithstanding such dismissal, the Secretary's status decision, dated July 15, 1991, shall have no precedential, res judicata, collateral estoppel, preclusive or other effect upon (and shall not be binding as to findings of facts or conclusions of law with respect to) any future application or supplement to an application to construct a pier at Pigeon Point or in the area immediately south of DTC's existing pier at the mouth of the Christina River submitted to the Secretary by DTC jointly with the City of Wilmington or by the City of Wilmington.


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Dated: September 6, 1991

PAEC-36842