

July 9, 2019

Ms. Lisa Vest
Hearing Officer
Delaware Department of Natural resources and Environmental Control
89 Kings Highway
Dover, DE 19901

Coastal Zone Industrial Control Board
89 Kings Highway
Dover, DE 19901

RE: CZCPA Regulation Comments – Public Comments on the Proposed Changes to 7 Del. Admin C. 101 – Regulations Governing Delaware’s Coastal Zone Register Notice SAN #2017-17/Docket #2019-R-CZ-0013

Dear Hearing Officer Vest and Members of the Coastal Zone Industrial Control Board,

Thank you for this opportunity to provide public comment on the record regarding revisions to the regulations governing Delaware’s Coastal Zone Act. Due to a long-planned family obligation out-of-state, I was unable to attend the joint hearing on June 24, 2019. I am providing these comments on my personal behalf as a resident of Delaware as well as from the point-of-view of a member of the 1998-1999 process to write and reach consensus on the MOU that lead to the creation of the original regulations for the Coastal Zone Act. I also request replies to the many questions I pose throughout the following comments.

Comment #1

I am disappointed to learn upon reading the draft that, in addition to making changes to the regulations in response to the Coastal Zone Conversion Permit Act of 2017, (CZCPA) the Department of Natural Resources and Environmental Control (the Department) has taken the opportunity to change other aspects of the regulations unrelated to the CZCPA. The Department was not given the power by the General Assembly to open the entire regulation to change, only those necessary to implement the CZCPA. In doing so the Department reached beyond its authority and drafted regulations that unsuccessfully tries to mesh together Coastal Zone Permit with the Conversion Permit and further confuses the timing for the processes spelled out in the regulations.

Though I feel that the Department went beyond its authority in making changes to sections not related to the CZCPA, I would like to bring up the following issues that I feel need to be addressed:

- Removing the requirement of the design and collection of Environmental Indicators data to access long-term environmental quality within the Coastal Zone is not within the authority of the Department. As collection of data was not started in 1999, the Department has little science to go on as to the health of this fringe of land bordering the Delaware River and Bay along with numerous tributaries to the Delaware River. The Department can surmise based on other data that may be available from other divisions, but in the end this area hosting heavy industry is relegated to business as usual, much to the detriment of the residents of the numerous communities living within this heavy industry corridor and the original goals outlined in the Coastal Zone Act.
- As a member of EITAC I know that the statement is incorrect in Appendix C, 3.4, Revisions Under the Coastal Zone Conversion Permit Act. Stating that EITAC members “concluded that the resources needed to launch and operate an indicators program would exceed those available to the Department” is wrong. Members of the EITAC did NOT conclude that. We had every hope that DNREC would

carry through on their end of the compromise reached between the Department and members of the Committee as detailed in the MOU. Otherwise I would not have signed the MOU. As it turned out, the General Assembly was silent on the funding for such an effort as I believe the Department did not request and lobby for appropriate funding. No support from the Department, thus no funding for the design and collection of the data. The public comment submitted by Kenneth Kristl, Esq., on July 4, 2019 is endorsed and incorporated within these comments by reference.

- The addition of the definition of ‘Project Site’ in Section 3.0 seems to allow wiggle room for the final boundary of the project site – possibly outside of the boundaries mandated by the Coastal Zone Act’s grandfathered sites. Please confirm that I am interpreting this correctly.
- Changes in Section 7.0 Requests for Status Decisions seems to be of the ‘administrative’ type, yet are not sufficient to make clear the time line for the processing of status decision requests. The use of ‘business days’ as a way to measure time in subsection 7.6 is not consistently used throughout the regulations. As the use of ‘business days’ is a widely understood measure of time, I request that the regulations be changed to use this consistently throughout.
- Section 8.1 the additional reference and data that the applicant is able to provide should be provided as full documents attached to the application, not as web links for the staff of the Department to locate at a later date.
- In section ~~8.3.2~~ 8.5.2 the words ‘effect on’ were removed from neighboring land uses. This changes the assessment being asked of the permit applicant and denigrates the health and welfare of the residential and small business communities located adjacent to this heavy industry corridor. These words should be added back to the regulations.
- A new section 8.6 Permits was added, part of which is unrelated to Conversion Permits. A permit life of 20 years was stipulated. (Useful life of plant as considered at 30 years?) How was this determined? Most permits have a 5-year duration. And, a permit renewal process was outlined that is insufficient for both public and department review. A full application should be submitted, not just sections that have changed. The addition of 8.6.2.2 listing that the Secretary ‘will’ consider an applicant’s compliance record when reviewing a permit renewal request should be changed to ‘shall’ and indicate that additional offset projects will be requested to offset prior permit violations.
- Section 9.0 ~~Offset Proposals~~ Offsets has been updated to include the use of ‘credits’ as an offset to pollution emitted by the plant. This does little to protect neighboring communities and is not an acceptable offset. The use of credits should not be allowed.
- Sub section 9.1.5 notes that the application “shall attempt to offset the release.” What exactly is the definition of the word ‘attempt’? Allowing permittees to attempt an offset is not acceptable.
- The connection between the permits for the implementation of an offset project and the receipt of the permit has been removed. How will the Department hold the permittee responsible if they are not allowed to proceed on an offset project by other government agency? Sections 9.3 Enforcement of Offset Proposals has been removed and 18.2 has been altered to make the Attorney General responsible for enforcing Offset Projects. Please confirm that the Department is taking itself out of the position of enforcing its own regulations.
- For consistency’s sake – are they offset projects or proposals? Please choose one and use it throughout the document.
- Section 19.0 Severability has been changed to focus on Section 5.0 Uses Not Regulated rather than 9.0 Offsets. What is the purpose of this change? This is beyond an administrative change.
- In Appendix C:

- Section 5.1 suggests that the Department “encourage application to engage in meaningful dialogue with those communities in developing potential offset proposals.” The word ‘encourage’ should be changed to ‘requires.’
- Section 5.5 was removed. This is common sense and should remain in the Appendix. Once again, this is beyond an administrative change.
- Section 6.4 should not be removed. The definition of the area that is the Port of Wilmington should remain in the Guidance section of the regulations. Yet again, this is beyond an administrative change.

Comment #2

My comments on the new sections of the regulations related to the new text for Conversion Permits are as follows:

- Preamble – It is not clear how the updated regulations will “ensure the protection of natural resources”, let alone the protection of the Coastal Zone which was the intent of the original Coastal Zone Act. The Department has really lowered the bar with this wording.
- Throughout the document, reports and requirements of working with consultants for third-party verification requirements mandated by the applicant/permittee are listed. Will support for Department staff be increased to effectively and efficiently manage and verify these reports and manage inquiries, status decisions and permit applications/processes on a timely basis as this program moves forward?
- Sub sections 8.4.2.3.2 and 8.4.2.3.3 stipulate permittee must provide a topographic map identifying areas that have a 1.0% and a 0.2% probability of being flooded in any given year. Whose data will be used to determine which areas have these probabilities? FEMA’s? A qualified science-based source for this data should be included here.
- Sub section 8.4.5 – please define what does ‘evidence’ mean?
- Sub section 8.4.6 – an application for a conversion permit for bulk product transfer should also include the frequency for transfers as well as the number expected per week, month and year. The arrival of bulk product at the dock requires that the product be transferred from dock/storage on the site to the coastal zone-based customer by some means of transportation. The frequency of shipping these bulk products to their final destination plays a role in the pollution created by the permittee and should be taken into account. This is also something that the Department staff should verify yearly once the permittee has begun operation.
- Section 12.0 lists requirement of the record keeping mandated by the permittee. Does the Department have sufficient funding, IT support and staff knowledge to ensure Department records of Coastal Zone permits and files are kept securely and that there is an updateable system in place to keep all records organized allowing for ease of access by Department staff and interested public?

Comment #3

The maps included in Appendix A should be updated to include the original name of the business that held the first Coastal Zone permit as well as the subsequent owners. The Uniqema (formally ICI) foot print map seems to have been expanded in recent years to include the Zeneca property that was not a grandfathered heavy industry. This expansion of this footprint should be investigated and confirmed before these regulations are promulgated.

Comment #4

Overall the language of this draft regulation is inconsistent in its use of pronouns. The RAC and Department writers did not take the opportunity to correct this inadequacy. 'He' is sometimes used as is 'he/she'. Some small effort was made to update a few sections, but in this day and age state regulations should be written to be equitable.

Thank you again for this opportunity to present these public comments.

Regards,
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