

In The Matter Of:
Delaware Coastal Zone

DNREC Hearing
June 24, 2019

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H E A R I N G

DELAWARE DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

In Re: REGULATIONS GOVERNING)
 DELAWARE'S COASTAL ZONE)
)
 7 DE ADMIN CODE 101)

DNREC
391 Lukens Drive
New Castle, Delaware 19720

Monday, June 24, 2019
6:00 p.m.

BEFORE: LISA A. VEST, Hearing Officer

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1 MS. VEST: We are going to go
2 ahead and start the proceedings tonight. I
3 want to thank everybody for coming out and
4 taking the time from your busy schedules to
5 be here. The date is Monday, June 24th,
6 2019, and this is the public hearing being
7 held jointly between the Department of
8 Natural Resources and Environmental Control,
9 or DNREC, and the Coastal Zone Industrial
10 Control Board, or the CZICB.

11 We are here this evening to
12 provide a formal platform for both DNREC and
13 the CZICB to receive public comment on the
14 proposed regulatory amendments to 7 DE Admin
15 Code 101, which are commonly known as the
16 regulations governing Delaware's Coastal
17 Zone.

18 With regard to the holding of
19 public hearings as required by law for
20 regulatory actions such as this, both DNREC
21 and the CZICB are governed by the provisions
22 of the Administrative Procedures Act, or
23 otherwise known as the APA.

24 This hearing is being held



1 pursuant to 29 Delaware Code Section 10117,
2 Subpart 1, which empowers a hearing officer
3 to conduct such proceedings. For those of
4 you that may not know me, my name is Lisa
5 Vest, and I will be serving as the hearing
6 officer for tonight's joint public hearing.

7 It should be noted that
8 attendance of the members of the CZICB was
9 not mandatory for tonight's joint hearing.
10 However, this hearing is being held by both
11 DNREC and the CZICB as noticed, and the
12 CZICB will be provided with copies of the
13 hearing record generated in this matter,
14 including, but certainly not limited to all
15 the exhibits and the public comment that are
16 received this evening and all will be taken
17 into consideration by both entities, DNREC
18 and the CZICB, prior to any final decision
19 being made with regard to this proposed
20 regulatory promulgation.

21 For those of you that may not
22 have seen it, there are sign-in sheets for
23 the hearing. If you have not already done
24 so, I would ask that you please take time to



1 sign in and indicate on the sheet whether
2 you wish to submit comment at tonight's
3 hearing. Those persons wishing to offer
4 comment for the record will be given an
5 opportunity to do so following the
6 presentation to be given by DNREC and will
7 be recognized by me accordingly at that
8 time.

9 Even if you do not wish to offer
10 comment, it is important that we have an
11 accurate record of attendance at tonight's
12 hearing. So again, I would ask you to sign
13 in if you have not already done so.

14 At the conclusion of these
15 remarks, I will be turning the floor over to
16 DNREC staff. They have a brief presentation
17 to kind of help everybody understand the
18 specific scope of tonight's hearing, which,
19 again, are the proposed amendments to
20 Delaware's Coastal Zone found at 7 Delaware
21 Admin Code 101.

22 Following that presentation, I
23 will then begin to accept comment for the
24 record. The order of commentators will be



1 taken directly from the sign-in sheets. So
2 again, if you haven't signed in, please do
3 so.

4 With regard to the comment
5 wishing to be offered at tonight's joint
6 hearing, there are, as is the case for all
7 DNREC public hearings, formal protocols
8 which must be adhered to. Please be advised
9 of the following rules which are in place
10 for tonight's proceedings:

11 Consistent with all hearings
12 held by DNREC, all comment must be limited
13 solely to the subject matter of tonight's
14 hearing, which, again, are the proposed
15 amendments to Delaware's Coastal Zone regs.
16 Pursuant to the subject matter of this
17 hearing, all comments pertinent to those
18 amendments will be incorporated into the
19 formal hearing record being generated in
20 this matter.

21 As is DNREC's policy at all
22 hearings such as this, each person wishing
23 to offer comment is asked to do so in as
24 precise a manner as possible. In order to



1 treat everyone equally tonight, as is the
2 case across the board with all of our
3 hearings, each person is granted a total of
4 three minutes of time in which to offer
5 their comment. To facilitate that protocol
6 and to ensure fairness with regard to the
7 amount of time each person is allotted to
8 comment, there will be a visual timer in
9 place -- it will be right behind me here --
10 to help everyone be aware of their time
11 remaining while they are commenting.

12 Please be mindful that if you
13 have already submitted written comment to me
14 via e-mail prior to tonight's hearing, that
15 information is already in the record.

16 Keeping in mind the time
17 restraints that we are under this evening,
18 it is not necessary to offer the same
19 comment verbally at the proceeding.

20 If you have brought written
21 comments or statements with you, I would ask
22 that you present the same to me when you
23 have been recognized as the next commenter.
24 I will then mark the same and enter them



1 into the hearing record that is being
2 generated. You can then take your
3 three-minute time allotment to offer a brief
4 summary of the comments today for the
5 benefit of those in attendance. If you do
6 speak without written comment, you can
7 always submit additional comment subsequent
8 to tonight's hearing, as I will explain.

9 The three-minute time allotment
10 for each person wishing to offer comment
11 will be strictly enforced. There is a
12 limited amount of time available this
13 evening, so enforcement of the protocol will
14 ensure that all persons in attendance are
15 treated both equally and respectfully.

16 There will be no yielding of
17 time from one commenter to another, again,
18 to ensure fairness and equality for each
19 person offering comment. Each person will
20 be granted three minutes total; no
21 exceptions.

22 Consistent with DNREC's policy
23 at all of its public hearings and pursuant
24 to current Delaware Law, all persons wishing



1 to offer verbal comment at tonight's hearing
2 must be physically present tonight in order
3 to be recognized. Those unable to appear
4 personally tonight may submit their comments
5 in writing subsequent to the conclusion of
6 tonight's hearing if they so wish.

7 If any commenter who is
8 physically present here wishes to read
9 another's into the record, they are allowed
10 to do so provided that the commenter who is
11 present fully identifies the absent person
12 by name at the time such comment is offered.

13 In that instance, the speaker
14 who is physically present tonight still only
15 gets three minutes total. No one will be
16 granted an additional three minutes for
17 their own views after verbally entering the
18 comments of someone else into the record.

19 In order to ensure that everyone
20 who wishes to give comment for the
21 secretary's consideration is accommodated,
22 the hearing record shall remain open for a
23 full 15 days following tonight's proceedings
24 or through the close of business, which is



1 4:30 p.m. on Tuesday, July 9th, 2019. The
2 hearing record being left open for receipt
3 of comment through the 9th will ensure that
4 those who are not able to physically be here
5 in attendance will still be able provide
6 comment for the record. Additionally, there
7 may be those who provide comment tonight and
8 then wish to supplement their comment with
9 additional information. There may be others
10 who decide to submit comment after not
11 having done so at the time of the hearing.

12 Leaving the hearing record open
13 through the 9th will ensure compliance with
14 current Delaware Law and also make sure that
15 no one was prevented in any manner from
16 offering comment on these pending
17 amendments, and also that the public was
18 given ample opportunity to offer comment for
19 inclusion into the hearing record.

20 You should note there is only
21 one authenticated record for this formal
22 proceeding tonight and it is the official
23 court reporter's verbatim transcript.
24 Please remember that this transcript is



1 being created to memorialize tonight's joint
2 hearing with DNREC and the CZICB by the
3 court reporter. She can only hear and
4 accurately transcribe one voice at a time.

5 In order to ensure accuracy of
6 the transcript and to be mindful of all of
7 the above protocols, please do not speak
8 while another is speaking and do not call
9 out from the audience for any reason.

10 If there are members of the news
11 media or others that are here that wish to
12 record, they are not prohibited from doing
13 so. We do ask, however, that any equipment
14 being used for that purpose is done so in a
15 way that is unobtrusive and does not
16 interfere with the ability of others to see
17 and hear what is being said.

18 Whether listening or speaking,
19 we ask that everyone here today be
20 respectful and considerate of all comment
21 offered with regard to these proposed
22 amendments even though some comment may in
23 fact differ from your own. Additionally, I
24 would ask that all cell phones be either



1 muted or turned off for the duration of
2 tonight's proceedings.

3 The statutory purpose of
4 tonight's hearing is to allow citizens to
5 offer comment on the proposed amendments to
6 the regulations governing Delaware's Coastal
7 Zone. A record consisting of the transcript
8 of the verbal comments given tonight, any
9 and all written comments received, either
10 prior or subsequent to tonight, the exhibits
11 and my report will be thoroughly reviewed by
12 both DNREC and the CZICB prior to any formal
13 decision being made in this matter.

14 Myself and other DNREC staff are
15 present to facilitate public comment, but
16 not to participate in the proceedings.
17 There will be no Q&A session permitted
18 during the course of tonight's matter.

19 Lastly, it is important to note
20 that no decision has already been made, nor
21 will any decision be made tonight with
22 regard to these proposed amendments to the
23 Coastal Zone regs. Again, the purpose of
24 tonight's joint hearing between DNREC and



1 the CZICB is to provide a formal platform
2 for the public to come and offer comment
3 specifically related to the aforementioned
4 proposed amendments, and for that comment to
5 be incorporated into the hearing record.

6 Once again, the record will
7 remain open for an additional 15 days.
8 Written comment may be received up through
9 the close of business on July 9th, 2019. It
10 should be noted that all comment, whether
11 offered verbally tonight at this joint
12 hearing or received via e-mail or via US
13 mail on or before 4:30 p.m. on the 9th will
14 bear the exact same weight and all will be
15 considered equally prior to a final decision
16 being made in this matter.

17 This hearing tonight acts as a
18 mechanism to enable both DNREC and the CZICB
19 to thoroughly vet these proposed amendments
20 to the public and to provide platform for
21 the public to provide comment for
22 consideration if so desired.

23 That being said, I will now turn
24 the floor over to DNREC staff, who I believe



1 wish to do a brief presentation.

2 MS. JUDY JORDAN: Good evening.
3 My name is Judy Jordan. I am the Coastal
4 Zone program manager for DNREC, and I am
5 offering a PowerPoint presentation to
6 provide information about both the process
7 and the substantive content of the proposed
8 regulations.

9 Beginning with the reason for
10 the revisions to the regulations, by way of
11 background, the General Assembly passed the
12 Coastal Zone Act back in 1971, and that Act
13 established the boundaries of the Coastal
14 Zone, which can be seen there on the map.

15 And the CZA was amended, though,
16 by the legislature in 2017, and at that
17 point, the General Assembly required DNREC
18 to make changes to the regulations that
19 DNREC had in place.

20 More background: A couple of
21 things that are not regulated by the
22 original Coastal Zone nor by the amended Act
23 are residential development, commercial
24 development. And the original Coastal Zone



1 Act prohibited new heavy industrial use
2 beyond 14 sites that were in use on
3 June 28th of 1971. Those 14 sites are what
4 are called non-conforming uses under the
5 Coastal Zone Act and under the regulations.

6 Both the regulations and the
7 statutes allow manufacturing in the Coastal
8 Zone, but only by permit, and the new
9 regulations allow new activity on those
10 14 non-conforming use sites.

11 When the legislature passed the
12 original act, they described characteristics
13 of heavy industry use. They did not define
14 it, but they described characteristics, and
15 these are some of them. There would be
16 facilities that had structures like smoke
17 stacks and chemical processing equipment,
18 and they said typically they would take up
19 20 acres or more of the land. Some heavy
20 industry use, however, cannot be built in
21 Coastal Zone period, and that includes oil
22 refineries, incinerators, paper mills, LNG
23 gas terminals or LNG terminals and steel
24 manufacturing plants.



1 In 1999, DNREC passed
2 regulations to implement that original 1971
3 Coastal Zone Act, and those regulations
4 prohibited bulk product transfer facilities,
5 again using that critical date of June 28th,
6 1971. Those regulations also prohibited
7 conversion of an existing facility, one of
8 those non-conforming use sites, one of those
9 14 grandfathered sites. Those could not be
10 converted to a new heavy industry use.

11 And there were sites that were
12 abandoned and those sites also could not be
13 put to further heavy industry use.

14 Where permits would be issued,
15 there was a requirement that there be an
16 analysis of environmental impact, economic
17 effects, aesthetics, supporting facilities,
18 affects on neighboring properties, local
19 comprehensive plans, and there was a
20 requirement that there be an offset for
21 environmental impacts.

22 When the legislature amended the
23 Coastal Zone Act in 2017, they required
24 DNREC to revise those regulations to



1 describe how new heavy industrial use could
2 be put on those 14 non-conforming sites.

3 Specifically, the Act required
4 also DNREC to begin a public workshop
5 process by October 1, 2017, and to
6 promulgate these regulations by October 1,
7 2019.

8 So DNREC has put together a
9 process to promulgate those regulations in
10 compliance with what their legislature
11 required of us. So Secretary Garvin signed
12 a start action notice to begin the formal
13 process in September 2017. We held two
14 public workshops in November of 2017. And
15 the secretary convened a regulatory advisory
16 committee, or RAC, to provide
17 recommendations on certain aspects of those
18 regulations.

19 The RAC's first meeting was in
20 the summer of 2018, and it continued to meet
21 monthly through April of 2019. The RAC also
22 convened its own technical work groups to
23 provide specific technical information to it
24 to advise it on how it could go about



1 advising DNREC. So the RAC was a group of
2 representatives of different interests, and
3 the technical work groups actually provided
4 more in-depth analysis from a technical
5 standpoint of those issues, including
6 economic effects, environmental impacts,
7 risk evaluation and financial assurance, and
8 offsets.

9 The RAC issued preliminary
10 recommendations, and they finalized the
11 recommendations in April of 2019 and DNREC
12 released their report in May of 2019.

13 We published the revised
14 regulations in the Registrar of Regulations
15 on June 1st, 2019.

16 With regard to conversion
17 permits, Section 7014(a) of the Delaware
18 Code of the statute that the legislature
19 passed directing DNREC to revise the
20 regulations specifically stated that an
21 owner/operator or a prospective purchaser of
22 a heavy industrial use site may submit an
23 application for an alternative heavy
24 industry use or an additional heavy industry



1 use, and that's what the regulations are
2 primarily focused on.

3 As I mentioned, the RAC was
4 composed of representatives of different
5 interests throughout the state, and it was
6 actually chaired by retired Supreme Court
7 Justice Randy Holland. The technical work
8 groups gave expert input to the RAC, and the
9 RAC developed its recommendations to DNREC
10 by consensus.

11 The RAC also held public
12 workshops on their preliminary
13 recommendations and those were in February
14 held at the locations shown on the screen
15 there. And based on the feedback that they
16 got at the public workshops, they considered
17 that information and finalized their
18 recommendations to DNREC.

19 The next few slides are going to
20 focus on some examples of how the
21 regulations were revised in accordance with
22 the recommendations that the RAC gave to the
23 secretary.

24 One of the first issues was what



1 the length of a permit should be and the RAC
2 recommended that a permit last for 20 years.
3 The proposed regulatory revision is in 8.6.1
4 specifically allowing 20 years for a permit
5 and for the secretary to limit that to less
6 than 20 years in his discretion.

7 The RAC recommended that direct
8 and cumulative impacts be considered for
9 conversion permits, and in accordance with
10 that direction, 8.5.2 in the proposed
11 revisions states that the secretary will
12 consider the project's direct and cumulative
13 environmental impact specifically.

14 The statute required DNREC to
15 consider for environmental impacts and
16 economic effects the existing or previous
17 use and the RAC recommended to DNREC that
18 that mean the same as the most recent heavy
19 industry use.

20 So in 8.3.2 of the revisions, we
21 specifically stated that in 8.3.1 that the
22 applicant would have to submit that
23 information for the most recent heavy
24 industry use in accordance with that



1 recommendation.

2 With regard to offsets, the RAC
3 recommended that the offsets favor Delaware,
4 and in 9.1.1 we drafted the regulations as
5 proposed to require an offset for a project
6 that would benefit Delaware.

7 One of the key aspects of the
8 statutory revisions was to require a
9 conversion permittee to have financial
10 assurance, and the RAC recommended that the
11 form and amount of financial assurance be
12 reviewed at periodic intervals.

13 DNREC chose a yearly interval
14 for that, so in 12.1.7, our proposed
15 regulatory revision is that the conversion
16 permittees annually, within 30 days of the
17 anniversary of the permit, submit evidence
18 of the financial assurance and ensure that
19 all of the necessary actions be taken to
20 make sure that the financial assurance is in
21 place.

22 With regard to sea level rise,
23 one of the key recommendations of the RAC
24 was that a permittee's sea level and coastal



1 storms plan plan for the combined effects of
2 predicted sea level rise and a flood that
3 would occur on a one percent statistical
4 basis. So in 8.4.2, we revised the proposed
5 regulations to state that the plan identify
6 areas that have a one percent probability of
7 being flooded, in combination with the high
8 sea level rise scenario. And that's as
9 that's defined by the Delaware sea level
10 rise advisory committee.

11 Those are a few examples of the
12 changes that we proposed to make within the
13 regulations in accordance with the direction
14 that the RAC or the recommendations that the
15 RAC made to the secretary.

16 So the RAC made its final
17 recommendations, as I mentioned earlier, in
18 April 2019. DNREC had the proposed
19 regulations published on June 1st, 2019.
20 Obviously public comment may be submitted
21 this evening. And as Lisa mentioned, the
22 comment period is open until July 9th. And
23 then the process between July and September
24 is that DNREC will consider the comments



1 that are made and we will make revisions to
2 the regulations if those comments require us
3 to do so.

4 And the schedule then would be
5 in September of 2019 we submit the revised
6 final regulations to the registrar for
7 promulgation on October 1st, 2019.

8 With that, I want to offer some
9 exhibits from the department.

10 MS. VEST: Proceed.

11 MS. JORDAN: The first exhibit
12 is the Coastal Zone Conversion Act.

13 Exhibit No. 2 is the Start
14 Action Notice.

15 The third exhibit is the
16 Regulatory Flexibility Act Analysis and
17 Impact Statement.

18 Exhibit 4, Final Report and
19 Recommendations of the CZCPA Regulatory
20 Advisory Committee.

21 Exhibit 5, Affidavit of
22 publication of the legal notice in the
23 Delaware State News for this hearing.

24 Exhibit 6, affidavit of



1 publication of the legal notice in The News
2 Journal for this hearing.

3 Exhibit 7, Notice of public
4 hearing as it appeared on Delaware
5 State-wide calendar.

6 Exhibit 8, Notice of public
7 hearing as it appears on DNREC's public
8 notices' website.

9 Exhibit 9, a copy of public
10 notice for a hearing as e-mailed to the list
11 of interested parties for Coastal Zone
12 issues.

13 Exhibit 10, Registered Notice
14 and Proposed Amended Regulations Governing
15 Delaware's Coastal Zone as they appeared in
16 the June 1, 2019, Delaware Register of
17 Regulations.

18 And final Exhibit No. 11, the
19 presentation that I just offered in
20 PowerPoint.

21 Here is a list of exhibits.

22 MS. VEST: Does that conclude
23 the Department's statements for the record
24 at this time?



1 MS. JORDAN: Yes, that does
2 conclude the Department's statements.

3 MS. VEST: A little housekeeping
4 here.

5 Let the record reflect that
6 Exhibits 1 through 11 as identified now by
7 the Department are hereby entered into the
8 formal hearing record.

9 And thank you, Ms. Jordan.

10 At this point, we are going to
11 now proceed into the public comment portion.
12 Again, the scope of the comment being
13 received tonight must have to do with those
14 sections of the regs which are being
15 proposed to be amended.

16 I am just going to go in the
17 order that people signed up on these sheets,
18 and first up, Bill Dunn.

19 MR. BILL DUNN: Where do you
20 want me?

21 MS. VEST: You know, we don't
22 have a microphone, but it is a small group.
23 If you could stand here and project that way
24 while still being mindful of the timer. If



1 you have your comments in writing, I can
2 take them as exhibits as well.

3 MR. DUNN: I will give them to
4 you at the end.

5 At this point in time, before we
6 get started, because of the holiday week,
7 I'd like to request that the record remain
8 open until the 12th, which would be the
9 following Friday. A lot of people are away
10 on holiday that week and I know there's -- I
11 have obligations elsewhere as well.

12 MS. VEST: Okay.

13 MS. DUNN: I make that a formal
14 request.

15 I'm Bill Dunn representing the
16 Civic League for New Castle County, and
17 along with others, went through the
18 interview process with CBI, attended two of
19 three public workshops, and stated my
20 interest in being on the RAC.

21 I am a retired staff
22 technologist at DuPont. During my tenure, I
23 did hundreds of lab scale chemical reactions
24 and polymerizations, and was the instrument



1 point person for a quality control lab at a
2 new polymer facility for 18 months in
3 Charleston, South Carolina, and did
4 instrument support and installation at a
5 half dozen facilities, as well as visited 13
6 different production facilities in the US,
7 Canada and Europe.

8 Despite my operational
9 experience and background and the Civic
10 League's long, recognized standing
11 representing communities across New Castle
12 County, I was not offered a position on the
13 RAC. The one person that had more prominent
14 and recognizable background in both
15 chemistry and civic participation was Eugene
16 McCoy.

17 Tragically, Dr. McCoy passed
18 away days after the first RAC meeting, and
19 the secretary, rather than replacing
20 Dr. McCoy with another person with similar
21 experience and background, chose a person
22 with no technical background and only
23 limited community involvement.

24 In the end, though, I was



1 verbally offered an opportunity to
2 participate in the subgroup level. I was
3 fully aware that the decision making was
4 going to occur at the RAC level and decided
5 to focus my time attending those meetings in
6 which I attended 11.

7 In this report regarding
8 environmental impact, they state, "The
9 Coastal Zone provides a detailed list of
10 environmental impacts that must be addressed
11 by applicants for the Coastal Zone Permit or
12 Conversion Permit.

13 If you Google that sentence, it
14 will lead you to a DNREC website in which
15 the top line is a pdf that says, "Regulatory
16 Flexibility Act Form" on the first form at
17 the top.

18 Under that it says, once you
19 open it, "What is regulatory flexibility
20 analysis?" "In each RFA, the agency must
21 consider where applicable lawful, feasible
22 and desirable specific methods of reducing
23 the burden of regulations on individuals
24 and/or small business, including, one,



1 establishing less stringent requirements and
2 deadlines; two, establishing performance
3 standards to replace design standards,
4 exempting individual's small business from
5 all or part of the regulations, and" --

6 MS. VEST: Mr. Dunn --

7 MR. DUNN: I am going as quickly
8 as I can.

9 MS. VEST: I know.

10 MS. DUNN: I'm getting close.

11 "Examining other ways to
12 accomplish that regulatory purpose, while
13 minimizing the impact on the individual or
14 small business."

15 You are approving the reuse or
16 expanded use of just under 4,000 acres of
17 Delaware coastline. These are not
18 industrial process engineering regulations
19 and jeopardize the safety of the citizens of
20 Delaware. We need stringent, responsible,
21 professionally developed engineering
22 regulations.

23 Thank you.

24 MS. VEST: Thank you.



1 For the record, I'm going to
2 mark Mr. Dunn's written comments as Dunn
3 Exhibit 1. And thank you, Mr. Dunn.

4 Laura Michelle Kaplan.

5 MS. LAURA MICHELLE KAPLAN: Good
6 evening. My name is Laura Michelle Kaplan.

7 I am a member of the Delaware Advocacy
8 Committee and a member of the Subcommittee
9 of the Coastal Zone Act under Helen Comer
10 (phonetically), who is not here tonight.

11 But I am really here -- I wasn't sent here
12 to speak -- I am just representing myself.

13 I studied environmental law, I
14 specialized in that, and I worked in
15 different areas, and I am here to comment on
16 the permit recordkeeping and reporting
17 Section 12.1.6. I have an objection to
18 something in it.

19 I feel that in the State of
20 Delaware heightened observation and
21 preplanning is due to observed changes in
22 the projective rate of sea level rise which
23 has been escalating. In the past year since
24 2017, just in those two years, the



1 trajectory has changed quite a bit. And I
2 feel that the section calls for conversion
3 permittees to update the project sea level
4 rise in coastal storm plan every ten years
5 to reflect any changes to the factors listed
6 in 8.4.2, which says they should recommend
7 changes if there's a probability of a one
8 percent or two percent probability of
9 flooding or being exposed in the high sea
10 level rise scenario, including
11 infrastructure operations, facilities, which
12 would not have been flooded according to the
13 previous sea level rise in coastal storms
14 plan, but would accordingly be updated
15 information to request a major modification
16 describing any capital improvements that
17 must be made in order to avoid potential
18 environmental damage, according to
19 Section 8.4.24.

20 So what this means is that I
21 feel that this ten-year requirement is way
22 too long for the present situation of
23 escalating climate change and sea level
24 rise, especially because Delaware is one of



1 the most susceptible states, as we all know,
2 with below sea level. And so that is my
3 comment.

4 MS. VEST: Do you have written
5 comment that you wish to put in?

6 MS. KAPLAN: I can submit this.

7 MS. VEST: Okay, if you wish.

8 If anyone, I forgot to
9 mention -- my apologies -- but if anyone
10 does wish to submit written comment between
11 now and the 9th, feel free to come up at the
12 end of the hearing. I have my business
13 cards and it has my e-mail on there, so it
14 would be easy for you to get them to me.

15 And thank you, Miss Kaplan.

16 Matthew Sarver.

17 MR. MATTHEW SARVER: So I'm Matt
18 Sarver. Just for the record, I was
19 nominated as a potential RAC member by the
20 Delaware Ecological Society organization
21 that I'm affiliated with. I also was asked
22 to serve on the Environmental Impact Working
23 Group, which I did, with DNREC. I'm
24 speaking tonight as an individual. The



1 Ecological Society will most likely submit
2 written comment prior to the deadline.

3 I just wanted to briefly point
4 out a few concerns that I had particularly
5 with Section 8.2 regarding the environmental
6 impact statement.

7 The first of those is that the
8 certification requirement by a Delaware
9 registered professional engineer or a
10 professional geologist, I don't at all
11 dispute the importance of having those
12 professions represented in an environmental
13 impact statement for this type of
14 application. However, I do note the lack of
15 an ecological perspective or a wildlife
16 perspective with a professional from one of
17 those fields, wildlife toxicology, wildlife
18 biologist, or ecologist, wetlands scientist,
19 and so forth.

20 So I am a little concerned that
21 this is encouraging applicants to have less
22 emphasis on those disciplines within their
23 environmental impact statement.

24 And I did, during my service



1 with the working group on environmental
2 impact suggest, I think, some appropriate
3 certification programs from a number of the
4 professional societies, but I would
5 reiterate that there are a number of those
6 available, certified wildlife biologist
7 that's administered by the Wildlife Society,
8 certified ecologist program through the
9 Ecological Society of America, the
10 Professional Wetlands Scientist
11 certification through the Society for
12 Wetlands Scientists, are just a few that
13 immediately come to mind.

14 So I would strongly encourage
15 DNREC to explore adding discipline
16 requirements to reflect the disciplines that
17 best understand the potential impacts to
18 wildlife and habitats from the applications.

19 The other major point is that
20 under -- let me find it -- 8.2.8, the effect
21 of a proposed project on threatened and
22 endangered species as defined, et cetera.
23 I'm not able to find anywhere in Section 8.2
24 a requirement to describe impacts on all



1 fauna species. It is in 8.2.3, destruction
2 of wetlands flora and fauna that will result
3 as a part of construction and activity, but
4 not other impacts, indirect impacts short of
5 actual destruction at the time of the
6 facility operation.

7 I will submit further comments
8 in writing, but those were points I wanted
9 to bring up publicly today.

10 MS. VEST: Okay. Thank you,
11 Mr. Sarver.

12 Martin Willis.

13 MR. MARTIN WILLIS: My name is
14 Martin Willis. I live in New Castle,
15 Delaware. I would like to make a summary,
16 oral summary of my written comments.

17 Section 8.0, permitting.
18 Section 8.3.1, there is no mention or
19 description of any local hiring on the
20 onsite construction jobs. The submission is
21 significant, and I feel it is vital that the
22 final regulations required in Section 8.3.1
23 and similar language should be found that is
24 in Section 8.3.2 for conversion permits.



1 I found in Section 8.3.2.5 the
2 following, "A description of any local
3 hiring or purchasing preference, investments
4 in community benefit agreements, workforce
5 development or educational programs that the
6 applicant has implemented."

7 Basically all I'd like to see in
8 the final regulations is for DNREC to make
9 it clear in writing that any construction
10 project inside Delaware's Coastal Zone, the
11 workforce will be locally hired. The
12 community economic benefits should start
13 with the first shovel of dirt.

14 I can tell you firsthand
15 knowledge that my community is always left
16 out on the outside of far too many onsite
17 construction projects inside the State of
18 Delaware, and now we have the opportunity to
19 fix that.

20 Also, in Section 8.6.1, I object
21 to the secretary making a permit less than
22 20 years.

23 Section 8.6.3, permit
24 modifications, I object that the secretary



1 can make any minor modification without
2 public notice for any purpose.

3 Also in Appendix C, the aerial
4 photographs and the business entities' names
5 appear as they did on May 11th, 1999. These
6 photographs and names of the entities should
7 reflect their current name and status. For
8 example, Croda is labeled as Iniqema,
9 U-N-I-Q-E-M-A. This should be updated. The
10 Delaware City Refinery is reflected as Star
11 Enterprises. There is no excuse for this.

12 Also, throughout the
13 regulations, the Diamond State Port
14 Corporation, there is no mention of
15 Gulftainer. Gulftainer has exclusive rights
16 to operate the Port of Wilmington for the
17 next 50 years. I feel as though that should
18 be reflected in the final regulations.

19 Thank you.

20 MS. VEST: Thank you,
21 Mr. Willis.

22 At this point, I've gone through
23 the sign-up sheets and everyone that
24 indicated yes, they'd like to offer comment



1 has done so.

2 Is there anyone here this
3 evening that maybe wrote no initially and
4 now has changed their mind and wishes?

5 Could you stand and give your
6 name for the record.

7 MS. NANCY WILLING: Nancy
8 Willing. I'm president of the Civic League
9 for New Castle County.

10 This is a joint hearing with the
11 Coastal Zone Industrial Control Board.

12 While none are present, no staff person is
13 present, and no explanation has been given
14 of their role at this hearing, I do not
15 understand what their role is. We have
16 heard of why DNREC is holding a hearing. We
17 haven't heard a single word of what the role
18 for the Industrial Control Board has here in
19 a joint hearing, and I think we deserve to
20 hear what their role is, you know, why this
21 is a joint hearing.

22 I know this is not a Q&A
23 opportunity, but I will go away from here
24 sorely lacking I think information I deserve



1 if I can't hear from somebody what their
2 role is.

3 Bill Dunn had actually explained
4 a little bit that he thought it was improper
5 for it to be a joint hearing because of the
6 different roles and the time frame. So
7 having absolutely nothing mentioned and
8 their presence not being here, I think it is
9 a gap that I'd like to see filled. Thanks.

10 MS. VEST: Thank you,
11 Miss Willing.

12 Yes, ma'am.

13 MS. DONNIE SHANKIE: Just for
14 the record, my name is Donnie Shankie. I'm
15 also on the Civic Board with Nancy.

16 I'm really surprised that there
17 is no one hear from the Coastal Zone
18 Industrial Control Board. If you advertised
19 it as a public hearing, as a joint public
20 hearing, they should be represented here,
21 and I find I want to make sure that you know
22 that I file an objection to the fact that
23 they are not here.

24 Thank you.



1 MS. VEST: So noted.

2 Yes, ma'am.

3 MS. DEE WHILDIN: I've had a
4 very amiable and valued relationship with
5 everyone at DNREC.

6 MS. VEST: Ma'am, could I get
7 your name for the record?

8 MS. WHILDIN: Excuse me?

9 MS. VEST: Could I get your name
10 for the record?

11 MS. WHILDIN: Oh. Dee Whildin,
12 W-H-I-L-D-I-N, Dee Whildin.

13 MS. VEST: Go ahead.

14 MS. WHILDIN: I sent in my
15 application to be on the RAC not fully
16 knowing what everything was involved, and I
17 was selected, and I'm just lost with a lot
18 of this technicalities that's going on.

19 But my concerns were that
20 Claymont had never had any permanent
21 monitors. The closest one is located five
22 miles south of Claymont in Bellevue Park
23 measuring only for ozone and SO2. Sadly,
24 this problem was never addressed at the RAC



1 meeting, meetings even though I brought it
2 up. All of the RAC meetings were open to
3 the public with comment periods open after
4 the meeting to those attending online.
5 There were no time limits set on the
6 comments until Bill Dunn's comments were
7 considered to be too lengthy and detailed,
8 which we all needed to hear. When comments
9 were cut to three minutes, it was -- anyway,
10 Bill Dunn had applied and wasn't selected
11 for the RAC, while I was selected with
12 nothing to offer except for the success of
13 the Claymont Dust study.

14 Bill's Dunn's credentials are
15 listed next, and I can't understand why Bill
16 Dunn was not selected to be on the RAC
17 committee. Even though Bill Dunn was not
18 selected to be on the RAC, he attended, I
19 believe, every meeting and commented on the
20 dangers of Croda. These issues were never
21 acted on. Bill had great concerns for not
22 only his communities, but the health and
23 welfare of the residents of South Bridge and
24 neighboring communities.



1 I had made it clear at several
2 earlier meetings that I didn't belong on the
3 RAC. I didn't understand some of the
4 details, especially what the offset groups
5 were supposed to be doing.

6 Remember, November 18th, the
7 horrific Croda traffic jam? Nobody would
8 listen or care to respond to Bill Dunn's
9 reports addressing the Croda issues, and now
10 they have done it again in 2019. Croda has
11 earnings of over \$1 billion plus, yet it
12 looks like Croda is dipping into their slush
13 or petty cash fund to satisfy the puny fines
14 leveled on Croda. Croda must be considering
15 this as the cost of doing business with
16 disregard for the amount of pollution they
17 are generating and to costs related to the
18 health and welfare of those affected.

19 I am very embarrassed to think
20 that my name is on the RAC list of people as
21 voting for those documents. The voting
22 procedure was handled, I believe, legally,
23 certainly not ethically. When a sheet of
24 paper was passed around to RAC members with



1 their names underlined and no place to
2 accept or reject the RAC documents, just to
3 be initialed. This appeared to me and some
4 others to be a sign-in sheet documenting our
5 presence.

6 MS. VEST: Ma'am, your three
7 minutes is up. If I could just get you to
8 sum up.

9 MS. WHILDIN: A devil's food
10 cake was brought out, and while we were
11 partaking of the devil's food cake, I
12 overheard several RAC members ask, when are
13 we going to vote? And we were told we
14 already had voted.

15 The one thing I felt good with
16 was the placement of two monitors in
17 Woodshaven-Kruse Park on Darley Road in
18 Claymont. We really need monitors. The
19 13th of April there were two monitors placed
20 there and the samples were to be picked up
21 every three days for six months. We have
22 not received a report on any of the sample
23 results and what they were measuring for.
24 What happens when the six months are gone if



1 there are no negative readings up until
2 then? I believe the industries do have
3 safety measures in place, but what happens
4 when there are computer glitches,
5 malfunctions, human error, faulty material,
6 and so forth. We need those monitors all
7 the time.

8 MS. VEST: Thank you, ma'am.

9 For the record, I will mark that
10 as a formal exhibit as Whildin Exhibit 1.

11 And thank you again, ma'am.

12 Again, at this point, I have
13 gone through everyone that wishes to offer
14 comment.

15 With regard to Mr. Dunn's
16 request for an extension of the comment
17 period, I will take that under advisement.
18 For now, the record will remain open
19 pursuant to current Delaware law for an
20 additional 15 days. If anyone wishes to get
21 my card to have my e-mail address, you can
22 certainly do so. I have some up here.

23 But there being no additional
24 comment being offered at this time, I am



1 going to go ahead and conclude the
2 proceedings. I want to thank everyone for
3 coming out. This joint meeting is
4 adjourned.

5 - - -

6 (The hearing adjourned at
7 6:51 p.m.)

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I N D E X

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2	Opening Remarks by Ms. Vest.....	Page 2
3	Presentation by Ms. Jordan.....	Page 13

E X H I B I T S

5	EXHIBITS	MARKED
6	Exhibit 1 Coastal Zone Conversion Act	22/24
7	Exhibit 2 Start Action Notice	22/24
8		
9	Exhibit 3 Regulatory Flexibility Act	22/24
10	Analysis and Impact Statement	
11	Exhibit 4 Final Report and	22/24
12	Recommendations of the CZCPA	
13	Regulatory Advisory Committee	
14	Exhibit 5 Affidavit of publication	22/24
15	in Delaware State News	
16	Exhibit 6 Affidavit of publication	22/24
17	in The News Journal	
18	Exhibit 7 Notice of public hearing in	23/24
19	Delaware State-wide calendar	
20	Exhibit 8 Notice of public hearing in	23/24
21	DNREC's public notices' website	
22	Exhibit 9 Public notice for hearing	23/24
23	e-mailed to list of interested	
24	parties for Coastal Zone issues	



1	I N D E X		
2	E X H I B I T S		
3	EXHIBITS		MARKED
4	Exhibit 10 Registered Notice and		23/24
5	Proposed Amended Regulations		
6	Governing Delaware's Coastal		
7	Zone in June 1, 2019, Delaware		
8	Register of Regulations.		
9	Exhibit 11 PowerPoint Presentation		23/24
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11	Dunn Exhibit 1	Written Comments	29
12	Kaplan Exhibit 1	Written Comments	31
13	Whildin Exhibit 1	Written Comments	43
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24			



1 State of Delaware)
2 New Castle County)

3

4

5

CERTIFICATE OF REPORTER

6

7 I, Terry Barbano Burke, RMR-CRR and
8 Notary Public, do hereby certify that the
9 foregoing record, pages 2 to 44 inclusive,
10 is a true and accurate transcript of my
11 stenographic notes taken on Monday, June 24,
12 2019, in the above-captioned matter.

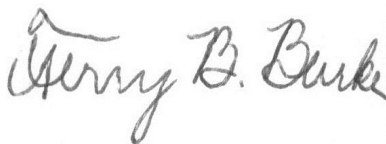
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Terry Barbano Burke, RMR-CRR

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