

## Vest, Lisa A. (DNREC)

---

**From:** Alan Muller <amuller@dca.net>  
**Sent:** Tuesday, July 09, 2019 4:28 PM  
**To:** Vest, Lisa A. (DNREC)  
**Subject:** Comments in re Coastal Zone Act regulations proceeding

Lisa Vest, Hearing Officer  
DNREC

Regarding: Coastal Zone Act regulations proceeding

Dear Lisa:

These are brief comments from Green Delaware.

We have read the draft regulations, the report of the "advisory committee," and the hearing transcript.

Limiting comment to three minutes on complex technical issues is not, in my opinion, holding a public hearing in good faith. It appears to me that the DNREC is seeking to ram this through without meaningful public participation.

There was little representation of the public interest on the advisory body, and I draw your attention to Ms. Whilden's exhibit, in which she indicated that a true vote was not held. This rings true to me as I do not think credible representatives of the public interest would have reached "consensus" on the various questionable recommendations.

The DNREC presentation, the rhetorical content of the draft regulation, and etc, shows little concern for the legislative intent of the Coastal Zone Act or the actual wording thereof. I include this here, hoping you might find it of interest:

*§ 7001 Purpose.*

*It is hereby determined that the coastal areas of Delaware are the most critical areas for the future of the State in terms of the quality of life in the State. It is, therefore, the declared public policy of the State to control the location, extent and type of industrial development in Delaware's coastal areas. In so doing, the State can better protect the natural environment of its bay and coastal areas and safeguard their use primarily for recreation and tourism. Specifically, this chapter seeks to prohibit the construction of new heavy industry in its coastal areas beyond the heavy industry use sites defined in this chapter. The expansion of heavy industry beyond those sites is determined to be incompatible with the protection of that natural environment in those areas. While it is the declared public policy of the State to encourage the introduction of new industry into Delaware, the protection of the environment, natural beauty and recreation potential of the State is also of great concern. In order to strike the correct balance between these 2 policies, careful planning based on a thorough understanding of Delaware's potential and the State's needs is required. Therefore, control of industrial development in the coastal zone of Delaware through a permit system at the state level is called for. It is further determined that offshore bulk product transfer facilities represent a significant danger of pollution to the coastal zone, therefore bulk product transfer facilities are prohibited in the coastal zone, unless approved through a conversion permit at a heavy industry use site that had a docking facility or pier for a single industrial or manufacturing facility on or before June 28, 1971.*

*7 Del. C. 1953, § 7001; 58 Del. Laws, c. 175; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 120, § 1;*

This is a land use statute, characterized by categorical prohibitions and permissible categories. Systems of "offsets" and "indicators" have no place in implementing this Act.

The disgraceful proceeding of 1999-2000 resulted in a set of regulations incompatible with the plain meaning and purpose of the act. subsequently, many CZA permits have been issued that should not have been issued. A very good example is the ethylene oxide unit that was permitted in spite of clear and obvious hazards, and subsequently failed in a very dangerous fashion. This permit was contrary to:

*Sec. 7003 "heavy industry uses of any kind not in operation on June 28, 1971, are prohibited in the coastal zone and no permits may be issued therefor."*

It appears that the draft regulation includes provisions beyond the scope of the Start Action Notice. This seems procedurally wrong, and if the DNREC intends a broader proceeding, which has not been asked for, that I can see, and is not called for by the recent statute, it should begin a new proceeding with proper scope.

The ICI Americas/Uniqema footprint map seems to have been altered, substantially expanded although the statute plainly calls out boundaries as of 1971. The DNREC should provide an explanation of how this occurred and by what authority such changes were made. The boundaries maps of all the "grandfathered sites and the Coastal Zone boundary maps should be reviewed for accuracy.

The DNREC should not adopt the draft regulation but should restart a regulatory development process and carry it out in good faith and in conformity with the wording and original intent of the Coastal Zone Act.

Green Delaware endorses, and includes by reference here, the comments of the Delaware Audubon Society.

Respectfully submitted,

[signed]

Alan Muller  
Green Delaware