



# SIERRA CLUB

## DELAWARE CHAPTER

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,

On behalf of the Delaware Chapter of the Sierra Club, thank you for this opportunity to provide public comment on the record regarding revisions the regulations Governing Delaware’s Coastal Zone Act. The public comment submitted by Kenneth Kristl, Esq., on July 4, 2019 is endorsed and incorporated within these comments by reference.

**Comment #1:** A major overall concern about the implementation of the new conversion permit statute and regulations is that DNREC does not have sufficient resources to fully implement the regulations and to perform the review and oversight responsibilities specified by the statute and regulations. New heavy industry uses have the potential of introducing significant risk of environmental harm as well as harm to human health and life. For instance, some industrial processes introduce the possibility of major releases of toxic chemicals and major explosions, and other heavy industry uses have the potential to cause irremediable harm to the environment. Heavy industrial sites represent a constant source of worry to those who live near them. Given the serious impacts and risks involved, DNREC must have access to the expertise and resources they need to accurately assess the economic, environmental, and human health risks of any proposed heavy industry use. In addition, DNREC will require the appropriate expertise and resources needed to oversee the operations of any new heavy industry uses and rigorously enforce the CZA regulations and other environmental, health, and safety laws. Unfortunately, past experience suggests that DNREC will not have the resources it needs to fully implement the regulations or rigorously enforce the heavy industrial uses allowed.

**Comment #2:** To follow up on Comment #1, the only specific provision in the proposed regulations for a third-party expert contracted by DNREC, and paid for by the applicant, applies to certain Financial Assurances pursuant to section 17.4 of the proposed regulations. The regulations should allow for the Secretary to require an applicant to pay for a third-party experts

to review the Environmental Impact Statement, the Environmental Remediation and Stabilization Plan, the Economic Effects Analysis, and the Sea Level Rise and Coastal Storm Plan if the necessary expertise to review the plans is not available within DNREC.

**Comment #3:** According to instructions provided to the public at the hearing held on June 24, 2019, changes to the CZA regulations, and therefore comments from the public, were to be limited to changes related to the CZCPA enacted in 2018. Despite the limited scope of the regulations initiated by the CZCPA of 2018, the proposed regulations include multiple changes unrelated to the regulation of conversion permits. Of particular concern is the change in the requirement that DNREC develop environmental goals and indicators, which was incorporated into the original regulations adopted in 1999. The Delaware Chapter of the Sierra Club only agreed to the regulations in 1999 based on the inclusion of this requirement for, and promises made surrounding, the development of environmental goals and indicators. DNREC has no authority under the current regulatory change process to modify the 1999 regulations beyond the changes needed to implement the CZCPA. Therefore Section 8.2.2 must continue to state that goals and indicators “shall” be developed by the Department. In addition, the Secretary shall consider the impacts on any goals and indicators during the Application Review Process, pursuant to the current regulation section 8.3.3.

**Comment #4:** Section 8.3.2.4 limits the comparison of the net benefit/loss of the proposed conversion to the most recent heavy industry use. The proposed heavy industry use should also be compared to the most recent use of any type, including uses that may have had a lesser environmental impact on the Coastal Zone. In addition, 8.3.2 should consider the economic impacts on the surrounding businesses and communities, since conversion to a heavy industry use may have negative economic impacts on nearby residents and businesses.

**Comment #5:** The Environmental Impact Statement defined by section 8.2 should consider indirect impacts, including those outside the Coastal Zone of the proposed project such as increased truck or train traffic and potential exposure to hazardous substances transported to/from or generated by the heavy industry use, as well as the cumulative past, present, and future impacts of the proposed project. The Secretary should also consider indirect impacts in addition to the direct and cumulative impacts required by proposed section 8.5.2.

**Comment #6:** It is not clear from proposed regulation 8.6.4.1 who has the authority to choose the appropriate form(s) of Financial Assurance for a particular project. Section 8.6.4.1.1 suggests that “approval” from an unspecified authority (perhaps the Secretary?) is required for a permittee to use a Fully Funded Trust Fund, whereas proposed sections 8.6.4.1.2, 8.6.4.1.3, and 8.6.5 state that the permittee “chooses” to provide a Letter of Credit, Insurance Policy, or Surety Bond as part of its Financial Assurance. The Secretary should retain the authority to approve which forms of FA are acceptable for a particular project.

**Comment #7:** Current regulation 9.3 Enforcement of Offset Proposals is deleted without explanation in the proposed new regulations. The offset requirements will be meaningless without enforcement.

**Comment #8:** Proposed section 8.4.2.6 requires consideration of the potential effects of sustained winds up to 95 mph. The adoption of 95 mph as the maximum fails to consider more powerful hurricanes impacting the Delaware Coastal Zone as a result of climate change.

**Corrections to text:** Section 9.2 refers to the Secretary as “him.” Gender neutral language should be used. Section 16.1.3 refers to “applicants” needing to file a notice of appeal within 14 days but this should refer to “appellants,” since any person aggrieved may appeal a permit or other decision of the Secretary (16.1.1). Section 17.4 refers to “financial insurance” instead of “financial assurance.”

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

Respectfully,

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