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Via E-Mail and First Class Mail

Lisa Vest
Hearing Officer
Delaware Department of Natural Resources
And Environmental Control
89 Kings Highway
Diver, DE 19901

RE: Proposed Amendments to Regulations Governing Delaware's Coastal Zone, 7 De. Admin C. § 101

Dear Ms. Vest,

This Firm represents Sunoco Partners Marketing & Terminals L.P. ("SPMT"), a member of the group of companies owned and operated by Energy Transfer Operating, L.P., and D2 Management, L.P. ("D2") (together, the "Objectors"). Please allow this letter to serve as the Objectors comments and objections to the proposed amendments to the above regulations (the "Proposed Amendments") recently promulgated by the Department of Natural Resources and Environmental Control, and ultimately subject to adoption by the Coastal Zone Industrial Control Board (the "Board"). For the reasons set forth below, we recommend that the Board reject these Proposed Amendments as drafted, and develop and promulgate new regulations that faithfully carry out the statutory mandate to encourage revitalization of underutilized sites within the coastal zone.

SPMT is an energy and pipeline company with facilities nationwide. SPMT owns the Marcus Hook natural gas liquids terminal, which is the former Sun Oil refinery, located on this site since 1902. The Marcus Hook facility includes a 45 acre parcel in Delaware. Since at least the mid-1960s, this Delaware parcel has been the site of an ethylene facility designed to recover ethylene and other chemical compounds from the former refinery's operations. This "ethylene complex" has been inactive for a number of years, although a portion of the pier complex that serves the Marcus Hook facility is located in Delaware. This pier complex is the only part of the facility in Delaware that is in active use.

D2 is a real estate development and investment firm focusing on the redevelopment, remediation, and monetization of excess, obsolete, or environmentally challenged properties. Through thorough research and due diligence D2 identifies strategic redevelopment opportunities and creatively reimagines these properties into more efficient and economically feasible ventures. D2, through SPE Drawbridge Claymont, LLC, is the equitable owner of the former General Chemical site located adjacent to the SPMT property. The General Chemical property was used in the manufacture of chemical products from the late 1890s until approximately 2002. The site, including its 750 foot pier, has been idle for many years. Like the SPMT property, the General Chemical site is one of the 13 grandfathered sites in the coastal zone in New Castle County.

Both SPMT and D2, representing 130 acres of land in the coastal zone, are actively planning to reactivate these respective sites if not thwarted by regulatory burdens that create indeterminate economic risk to potential investors and developers. The respective footprints of these sites are attached hereto as Exhibit A and Exhibit B.

The Proposed Amendments purport to implement HB 190 of the 149th General Assembly, the Coastal Zone Conversion Permit Act ("the Conversion Act"), which was intended to incentivize the development and productive usage of former heavy industry and bulk product transfer sites within the Coastal Zone that have fallen into disuse. As noted in the synopsis to HB 190:

> *[T]he CZA has also allowed property that has been in use by heavy industry for nearly 50 years, most suitable for similar industrial uses, to go unused unless the owner is willing to engage in the same heavy industry use or to use the property for manufacturing. This Act establishes a procedure to allow for the responsible, productive reuse of the 14 existing sites of heavy industry use within the coastal zone.*

In fact, the Proposed Amendments in their present form are in conflict with the above expressed intent of the Conversion Act, and tend to discourage rather than encourage productive development of these sites. The Objectors recognize that the Conversion Act does impose additional requirements for conversion permit applicants, such as a sea level rise plan and evidence of compliance with Delaware's Hazardous Substances Cleanup Act; however, the Proposed Amendments impose unnecessarily burdensome requirements, and add layers of bureaucracy, that are not needed in order to achieve the protective requirements of the Conversion Act. These burdens will likely stifle serious consideration by potential developers of the 13 heavy industry sites in the coastal zone, the preponderance of which are underutilized and blighted. Some examples follow:

1. Section 8.6 of the amended regulations purports to limit the duration of a Coastal Zone Act permit to 20 years. This limitation, which is NOT limited to conversion permits, has no basis in the Coastal Zone Act, either prior to or subsequent to its amendment by the Conversion Act. It also has no basis in prior practice, as all Coastal Zone Act permits issued to date have issued without any attempt to make these permits expire after a certain time period. An applicant considering spending hundreds of millions, if not billions, in connection with a proposed conversion of a site within the coastal zone will think twice before committing these

assets and resources if there is a risk that a renewal permit will not issue following the expiry of this twenty year period. If the Board does nothing else, it should reject the proposed amendments to Section 8.6.

2. The definition of "catastrophic incident," which is used in connection with the Environmental Remediation and Stabilization Plan, includes any release whatsoever, of any hydrocarbon (*e.g.*, any release of natural gas constituents). Releases of natural gas constituents is not catastrophic and should not be included in this definition. Moreover, one wonders if the Department will use this definition to impose, as a permit condition, a prohibition on even *de minimis* releases of hydrocarbons. Full compliance with the permit will be well-nigh impossible. Given the vague standard for renewals under Section 8.6.2 (only permittees that can demonstrate "a record of compliance" may seek renewal), it seems likely that many permit renewal requests, discussed above, will be challenged and perhaps denied.

3. Under Section 8.4.4 of the Proposed Amendments, a conversion permit application must include a *Department approved* Environmental Remediation and Stabilization Plan. Thus, in order to even submit an application for a conversion permit, with no guaranty that the conversion permit would be issued, an applicant would first be required to spend many thousands on environmental engineers and consultants to develop a site remediation plan, and would, presumably, be required to enter into a brownfield development agreement with the Department. No third party contemplating acquisition and development of a coastal zone site is likely to commit the money, time and resources developing a remediation plan and getting Department approval without knowing whether it will ever be able to use the site.

4. Under Section 8.4.7 of the Proposed Amendments, the financial assurance amount is calculated based upon both the costs associated with the Environmental Remediation and Stabilization Plan, as well as the costs for implementing the Sea Level Rise and Coastal Storms Plan. Given that financial assurance appears to be required for the duration of the permittee's use of the site, this amount is excessive. One would normally expect an Environmental Remediation and Stabilization Plan to be implemented in the first five or ten years of a coastal zone conversion project. Maintaining amounts in a financial assurance instrument equivalent to costs already expended in the implementation of such a plan is unnecessary and burdensome. At a minimum, the financial assurance amount should be adjusted downward once site environmental remediation is completed.

5. Section 8.3 requires the applicant obtain an economic effects analysis prepared by the Delaware Division of Small Business. Neither this review, nor this Division, is referenced in the Conversion Act. We do not know whether the Division was consulted before it was tasked with this additional responsibility; however, conducting economic effects analyses does not appear to be a part of its statutory mission, and with a staff of just five, we expect that the preparation of such an analysis by the Division will add significant delay to the conversion permit application process.

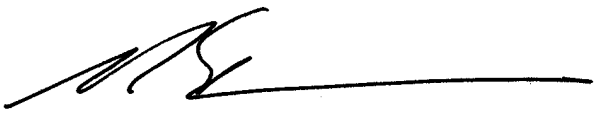
6. Offset proposals under Section 9.2 require the applicant to propose quantitative and qualitative measurements of the "success" or "failure" of the offset project and requires third party

verification of the projects "operation, completion and efficacy." These requirements essentially mean that the validity of a coastal zone permit is, *ad infinitum*, subject to a third party's subjective determination as to whether the offset project is a "success" over the long term.

7. Section 8.2.2 requires, in the environmental impact statement filed with a coastal zone permit application, an "assessment of the project's *potential impact* on coastal zone environmental goals." In a seemingly innocuous change, the Proposed Amendments have inserted the phrase "potential impact" in place of the former term, "likely impact." This change opens the door for mischief on the part of persons whose only goal is to scuttle revitalization of heavy industry sites in the coastal zone by requiring a discussion, in the environmental impact statement, of any impact, no matter how remote, as opposed to addressing only those impacts deemed likely to occur. Remote, but theoretically possible impacts will be set upon by opponents of progress as necessitating denial of a permit application.

The foregoing are indicative of the overly burdensome approach embodied in the current draft. If the Proposed Amendments are adopted in their present form, the burdens associated with a conversion permit make it unlikely that the areas in the coastal zone that are the intended beneficiaries of the Conversion Act will ever be returned to productive industrial use. For the foregoing reasons, we respectfully suggest that the Proposed Amendments be substantially revised so as to streamline, rather than frustrate, the conversion act permitting process. Simply put, the Department and the Board should not take away that which the General Assembly granted in HB 190.

Very truly yours,



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MWT:
cc: Curtis Stambaugh, Esquire
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