

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
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November 19, 2007

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**RE: Delaware Department of Natural Resources and Environmental
Control, et al. v. Vane Line Bunkering, Inc., et al.**
06A-12-001-ESB
Amended Letter Opinion

Date Submitted: August 15, 2007

Dear Counsel:

This is my decision on the appeals filed by the Department of Natural Resources and Environmental Control (“DNREC”) and Delaware Nature Society (“DNS”) of the Coastal Zone Industrial Control Board’s (the “Board”) conclusion that Vane Line Bunkering, Inc.’s (“Vane”) proposed vessel-to-vessel oil lightering facility in the coastal zone is a nonconforming use that is not prohibited by the Coastal Zone Act. The Coastal Zone Act and the regulations promulgated pursuant to it prohibit bulk product transfer facilities in the coastal zone unless they were in

operation on June 28, 1971.¹ The vessel-to-vessel transfer of a bulk product constitutes a bulk product transfer facility.² All bulk product transfer facilities in operation on that date became nonconforming uses.³ Vane was not operating a vessel-to-vessel oil lightering facility in the coastal zone on June 28, 1971. Nevertheless, the Board concluded that Vane's proposed vessel-to-vessel oil lightering facility is a nonconforming use because there were other vessel-to-vessel oil lightering facilities in the coastal zone in operation on June 28, 1971. I have reversed the Board's decision because it conflicts with the plain language of the Coastal Zone Act and its regulations.

Statement of Facts

Vane wants to lighter oil at at the Big Stone Anchorage in the Delaware Bay. This involves the transfer of crude oil and No. 6 fuel oil from large ocean going vessels to smaller vessels for transport up the Delaware River. The oil lightering is accomplished by having the large vessel and small vessel meet at the Big Stone Anchorage. The large vessel drops it anchor. The small vessel then ties up to the large vessel. The crewmen then connect hoses between the vessels and pump oil from the large vessel to the small vessel. The Big Stone Anchorage is in the coastal zone. Oil lightering was done in the coastal zone by a predecessor of Maritrans Operating Partners, L.P. ("Maritrans") and other entities before June 28, 1971. Vane did not lighter oil in the coastal zone before June 28, 1971.

¹ 7 Del.C. §§ 7002(a), 7003 and 7 Del. Admin. C. § 101-4.3.

² *Coastal Barge v. Coastal Zone Indus. Control Bd.*, 492 A.2d 1242, 1249 (Del. 1985).

³ 7 Del.C. §§ 7002(b) and 7003 and 7 Del. Admin. C. § 101-5.9.

Vane filed a request with DNREC seeking a determination of whether its proposed oil lighting facility is prohibited by the Coastal Zone Act. The Coastal Zone Act was enacted on June 28, 1971. It prohibits in the coastal zone (1) heavy industrial uses of any kind that were not in operation on June 28, 1971, and (2) bulk product transfer facilities that were not in operation on June 28, 1971.⁴ Those heavy industrial uses and bulk product transfer facilities that were in operation on that date became nonconforming uses, the expansion and extension of which is governed by a permitting process.⁵ The Secretary of DNREC ruled that Vane's proposed vessel-to-vessel oil lighting facility is a prohibited bulk transfer facility because it was not in operation on June 28, 1971. Vane filed an appeal with the Board. The Board reversed the Secretary's decision, concluding that Vane's proposed vessel-to-vessel oil lightering facility is not a new bulk product transfer facility and that vessel-to-vessel oil lightering facilities are a permissible nonconforming use under the Coastal Zone Act. DNREC and DNS then filed separate appeals.

Standard of Review

⁴ 7 *Del. C.* § 7003 and 7 *Del. Admin. C.* § 101-4.3.

⁵ 7 *Del. C.* §§ 7002(b), 7003 and 7004 and 7 *Del. Admin. C.* § 101-5.9.

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. On appeal from a decision of the Board, this Court is limited to a determination of “whether the Board abused its discretion in applying standards set forth by this chapter and regulations issued pursuant thereto to the facts of the particular case.” In making a decision the Court must determine if there is substantial evidence in the record sufficient to support the Board’s findings, and that such findings are free from legal error.⁶ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.⁷ The Board’s findings are conclusive and will be affirmed if supported by “competent evidence having probative value.”⁸ The appellate court does not weigh the evidence,

⁶ *Employment Ins. Appeals Board of the Dept. of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975); *Longobardi v. Unemployment Ins. Appeal Board*, 287 A.2d 690, 692 (Del. Super. 1971), *aff’d* 293 A.2d 295 (Del. 1972).

⁷ *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. 1986), *app. disp.*, 515 A.2d 397 (Del. 1986) (TABLE).

⁸ *Geegan v. Unemployment Compensation Commission*, 76 A.2d 116, 117 (Del. Super. 1950).

determine questions of credibility, or make its own factual findings.⁹ It merely determines if the evidence is legally adequate to support the agency's factual findings.¹⁰ Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.¹¹

Discussion

⁹ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

¹⁰ 29 *Del.C.* § 10142(d).

¹¹ *Dellachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. 1958).

The Coastal Zone Act prohibits bulk product transfer facilities in the coastal zone unless they were in operation on June 28, 1971.¹² The Delaware Supreme Court in *Coastal Barge* held that the vessel-to-vessel transfer of a bulk product constitutes a bulk product transfer facility. Notwithstanding these clear statements of the applicable statutory and case law, the Board concluded that the Coastal Zone Act is ambiguous and that Vane’s proposed vessel-to-vessel transfer of oil is not a new bulk product transfer facility. The Board concluded that the Coastal Zone Act is ambiguous because, according to the Board, it is not clear whether “oil lightering is a ‘nonconforming use’ or whether oil lightering constitutes a ‘bulk product transfer facility.’” In other words, again according to the Board, “is the activity of oil lightering defined by the CZA in terms of a ‘use’ or in terms of an entity engaged in the activity (i.e. the ‘user’)?”

The Board framed the issues in this manner because of the arguments made by Vane and DNREC. Vane argued that its proposed oil lightering facility is a nonconforming use that is not prohibited by the Coastal Zone Act because there were other entities operating oil lightering facilities in the coastal zone on June 28, 1971. DNREC argued that Vane’s proposed oil lightering facility is a new bulk product transfer facility that is prohibited by the Coastal Zone Act because it was not in operation on June 28, 1971. The Board noted that there were some entities operating oil lightering facilities in the coastal zone on June 28, 1971. The Board also noted that Vane was not one of these entities. Given the parties’ arguments, and these undisputed facts, the Board stated that the issue was:

“‘Use vs. user:’ whether oil lightering, as a ‘nonconforming use,’ is grandfathered under §§ 7003 and 7004, thereby allowing Vane to engage in oil lightering despite the fact that neither Vane nor its

¹² 7 *Del.C.* § 7003 and 7 *Del. Admin. C.* §101-4.3.

corporate predecessor was engaged in such activity in 1971 *or* whether Vane’s proposed oil lightering operation is a new ‘bulk product transfer facility’ that was not in operation on or before June 28, 1971 and, therefore, prohibited (and not subject to grandfather rights) under § 7003.”

The Board then concluded that Vane’s proposed oil lightering facility is not a new bulk product transfer facility because it found that oil lightering is a nonconforming use that is permitted by the Coastal Zone Act. The Board’s rationale for this is straightforward. The Board concluded that § 7002(b) addresses nonconforming uses. The Board also concluded that the activity of oil lightering was going on in the coastal zone before the Coastal Zone Act was enacted. Therefore, according to the Board, the “activity of oil lightering” is a nonconforming use, allowing Vane to operate a new oil lightering facility in the coastal zone now as a nonconforming use.

There is nothing at all ambiguous about the three sections of the Coastal Zone Act that are applicable to this case. The Board simply did not understand them. Similarly, the Board’s conclusions about Vane’s proposed oil lightering facility are wrong because they are contrary to the plain language of the Coastal Zone Act, its regulations, and the Supreme Court’s holding in *Coastal Barge*.

The Board’s misunderstanding arose out of its confusion over the relationship between §§ 7002(b), 7003 and 7004 and its focus on § 7002(b) to the exclusion of § 7003. § 7003 prohibits bulk product transfer facilities in the coastal zone unless they were in operation on June 28, 1971.¹³ Four conclusions follow from this simple statement of the law. One, the logical corollary to § 7003’s prohibition against bulk transfer facilities that were not in operation on June 28, 1971, is that a bulk

¹³ 7 Del. Admin C. § 101-4.3 restates the prohibition set forth in § 7003 that is applicable to bulk product transfer facilities.

product transfer facility that was in operation on that date is a nonconforming use that may continue to operate. Two, “facility in operation on June 28, 1971” and “nonconforming use” are the same thing. Three, § 7003 addresses facilities, not oil lightering as a general practice or activity, as the Board concluded. Four, § 7003 fixed the number of such nonconforming uses (i.e. facilities) as of June 28, 1971.

§7002(b) defines a nonconforming use as a “use, whether of land or a structure, which does not comply with the applicable use provision in this chapter where such use was lawfully in existence and in active use prior to June 28, 1971.” This definition makes explicit, and is consistent with, what § 7003 implies. It does not expand the definition of a “nonconforming use” to mean anything other than a bulk product transfer *facility* that was in *operation* on June 28, 1971. If it did, as the Board concluded, then §§ 7002(b) and 7003 would not be compatible with each other.¹⁴

§ 7004 states that any nonconforming use in existence and in active use on June 28, 1971 shall not be prohibited by this chapter and all extensions or expansions of nonconforming uses shall only be allowed by permit. This definition also makes explicit, and is also consistent with, what § 7003 implies. A bulk product transfer facility that was in operation on June 28, 1971 may continue to operate. The only thing that § 7004 adds to § 7003 is that it makes it clear that the expansion or extension of the facility is governed by a permitting process.

When you read these three sections together, the only conclusion you can reach is that a nonconforming use is a bulk product transfer facility that was in operation on June 28, 1971, and that

¹⁴ See *Coastal Barge*, 492 A.2d at 1245-46; See also *City of Wilmington v. Parcel of Land*, 607 A.2d 1163, 1166-67 (Del. 1992).

the extension or expansion of the facility is governed by a permitting process.

Given this framework, you only have to ask and answer two questions in order to determine if Vane's proposed oil lightering facility is prohibited by the Coastal Zone Act. The first question is whether Vane's proposed vessel-to-vessel oil lightering facility is a bulk product transfer facility. The answer is "yes." The Delaware Supreme Court in *Coastal Barge* held that the transfer of bulk quantities from vessel-to-vessel constitutes a bulk product transfer facility.¹⁵ The second question is whether Vane's proposed bulk product transfer facility was in operation on June 28, 1971. The answer is "no." § 7003 and 7 Del. Admin. C. § 101-4.3 prohibit all bulk product transfer facilities in the coastal zone unless they were in operation on that date. Obviously, it was not in operation on that date because it is merely "proposed." Therefore, Vane's proposed vessel-to-vessel oil lightering facility is prohibited in the coastal zone by the Coastal Zone Act because it was not in operation on June 28, 1971. Instead of following this simple two question analysis, the Board tried to understand the meaning of "nonconforming use" in a vacuum, resulting in the logical quagmire that is the Board's decision.

The Board's Conclusions

The Board reached four conclusions and supported them with a five-part rationale.

Conclusion One

"Vane's proposed oil lightering operation is not a new 'bulk product transfer facility' as defined by § 7002(f)."

¹⁵ *Coastal Barge*, 492 A.2d at 1247.

The Board stated two reasons for this conclusion.¹⁶ One, the Board stated that there is nothing “new” about Vane’s proposed oil lightering operation because oil lightering had been conducted in the coastal zone before the Coastal Zone Act was enacted. Two, the Board stated that *Coastal Barge* can be distinguished from this case because it dealt with coal lightering, which had not been conducted in the coastal zone before the Coastal Zone Act was enacted. The Board is wrong. Vane’s proposed oil lightering operation is both “new” and a “bulk product transfer facility.” Vane proposes to lighter oil with two to-be built 145,000 barrel tank barges. Thus, Vane’s oil lightering operation is certainly “new” in the sense that it does not yet exist. The Delaware Supreme Court in *Coastal Barge* held that the vessel-to-vessel transfer of bulk quantities constitutes a bulk product transfer facility. Vane wants to transfer oil, a bulk product,¹⁷ from vessel-to-vessel. Thus, its proposed oil lightering operation is certainly a bulk product transfer facility. *Coastal Barge* can not be distinguished from this case on the basis that coal lightering had not been done in the coastal zone before the Coastal Zone Act was enacted. The issue in *Coastal Barge* had nothing to do with this. The issue was, according to the Supreme Court, whether *Coastal Barge*’s “proposed coal lightering operation constitutes a ‘bulk product transfer facility’ prohibited by the Coastal Zone Act.” The Supreme Court held that the “transfer of bulk quantities from vessel-to-vessel” is included in the definition of bulk product transfer facility. The type of bulk product being transferred and the fact

¹⁶ The two reasons are set forth in the Board’s third rationale.

¹⁷ 7 Del. Admin. C. § 101-3.0.

that oil lightering had not been conducted in the coastal zone before the Coastal Zone Act was enacted are irrelevant to the Supreme Court's holding.¹⁸

Conclusion Two

“Oil lightering is a ‘nonconforming use’ as defined by § 7002(b).”

¹⁸ Although it was not stated in the case, it appears that the only way that *Coastal Barge* could avoid the Coastal Zone Act was to argue that its coal lightering operation was not a bulk product transfer facility.

The Board stated five reasons for this conclusion.¹⁹ One, the Board found that § 7002(b) addresses nonconforming *uses*, rather than nonconforming *users*. Two, the Board noted that the United States Third Circuit Court of Appeals in the *Norfolk Southern* case²⁰ stated that oil lightering is grandfathered under the Coastal Zone Act. Three, the Board stated that DNREC's failure to stop unauthorized oil lightering in the coastal zone means that it believes that oil lightering is a nonconforming use. Four, the Board reasoned that the activity of oil lightering can be a nonconforming use even though the vessel-to-vessel transfer of oil may constitute a bulk product transfer facility. Five, the Board found that new oil refineries and chemical plants are prohibited in the coastal zone because they were not in operation on June 28, 1971.

The Board is wrong. Oil lightering, in the context that the Board uses the term, is not a nonconforming use. Oil lightering is the vessel-to-vessel transfer of oil. The vessel-to-vessel transfer of oil constitutes a bulk product transfer facility. A bulk product transfer facility that was in operation on June 28, 1971 is a nonconforming use as defined by §§ 7002(b) and 7003. As I said before, § 7003 addresses bulk product transfer facilities that were in operation on June 28, 1971. It does speak in general terms of oil or coal lightering. It instead addresses, and

¹⁹ The five reasons are set forth in the Board's first, second, and fifth rationales.

²⁰ *Norfolk Southern v. Oberly*, 822 F.2d 388 (3rd Cir. 1987).

prohibits, those bulk product transfer facilities where the oil or coal would be transferred unless those facilities were in operation on June 28, 1971. The Board, throughout its analysis of the issues in this case, has treated oil lightering as an activity that is somehow distinct from the facilities where the oil is transferred. In doing this, the Board ignores, without explanation, § 7003's prohibition against all bulk product transfer *facilities* that were not in *operation* on June 28, 1971. Vane does not own an oil lightering facility that was in operation on June 28, 1971. Indeed, it merely proposes to build a new oil lightering facility now. § 7003 certainly does not mean, as the Board concluded, that Vane can operate an oil lightering facility now because some other entity was operating an oil lightering facility on June 28, 1971. It is only that other entity, or that other entity's successor in interest like Maritrans, that can operate the oil lightering facility now.

- (a) § 7002(b) addresses nonconforming *uses*, rather than nonconforming *users*.

This distinction, while true, is meaningless. The Coastal Zone Act does not address nonconforming users. It addresses, and defines, nonconforming uses. A nonconforming

use is a bulk
product

transfer facility
that was in
operation on
June 28, 1971.

Obviously, the
facility must be
owned and
operated by
some entity,
which can be
called the
“user” of the
facility.

Therefore,
while it is
certainly
logical to call
the operator of
a
nonconforming

use a
nonconforming
user, the
Board's
distinction is
meaningless
and does not
support the
Board's
conclusion.

(b) The *Norfolk Southern* case.

This case involved a commerce clause challenge to the Coastal Zone Act by six companies that wanted to start a coal lightering operation in the coastal zone. The United States Third Circuit Court of Appeals, when discussing the Big Stone Anchorage, stated in a footnote that, “oil lightering is not subject to the CZA because it was an existing use at the time of the CZA’s enactment and is thus covered by the grandfather provision.” If the Third Circuit Court of Appeals, when it stated this, meant that any entity can operate an oil lightering facility now because some other entity was operating an oil lightering facility on June 28, 1971, then it is wrong. § 7003 prohibits all bulk product transfer facilities in the coastal zone unless they were in operation on June 28, 1971. It does not allow another entity’s new facility to “piggyback” on some other entity’s grandfathered facility.

- (c) DNREC's failure to stop oil lightering creates an inference that DNREC deemed oil lightering to be a grandfathered use.

This is a rationale that the Board used to flesh out the definition of "nonconforming use." The record indicates that DNREC was aware of the fact that some entities may have been illegally lightering oil in the coastal zone. DNREC knew this because Maritran's application for the renewal of its air quality permit mentioned it. The record also indicates that DNREC did not do anything to stop this. Based on this, the Board concluded that DNREC did nothing because it thought that oil lightering was a grandfathered use. The record simply does not support the Board's conclusion. DNREC did investigate the possibility that some entities may have been illegally lightering oil in the coastal zone. It sent out letters in 2005 to Vane, Penn Maritime, Inc. and K-Sea requesting information about their oil lightering activities in the coastal zone. Vane and Penn Maritime, Inc. did not respond. K-Sea said that it had done very little oil lightering in the coastal zone in the past and had no plans to do any in the future. Thus, contrary to the Board's conclusion, DNREC did investigate the matter. It did not take any enforcement action because there was apparently no need to do so. Moreover, I would think that if DNREC believed that oil lightering was a nonconforming use permitted by the Coastal Zone Act, in the context that the Board suggests, then DNREC would not have required Vane to file an application to determine if its proposed oil lightering facility is prohibited by the Coastal Zone Act.

- (d) The Board reasoned that the activity of oil lightering can be a nonconforming use even though the vessel-to-vessel transfer

of oil may constitute a bulk product transfer facility.

This is a rationale that the Board reached after rejecting DNREC's primary argument. DNREC argued to the Board that Vane's oil lightering facility was prohibited in the coastal zone because it was not in operation on June 28, 1971. This argument was based on § 7003 and *Coastal Barge*. § 7003 prohibits bulk product transfer facilities in the coastal zone unless they were in operation on June 28, 1971. *Coastal Barge* held that the vessel-to vessel transfer of a bulk product constitutes a bulk product transfer facility. Therefore, according to DNREC, if Vane's proposed oil lightering facility is a bulk product transfer facility, then it is prohibited by the Coastal Zone Act because it was not in operation on June 28, 1971. The Board disagreed with this and instead looked at the definition of "nonconforming use" in § 7002(b) and "bulk product transfer facility" in § 7002(f) and reasoned that even though "the Supreme Court's holding in *Coastal Barge* warrants the conclusion that the physical connection of one of Vane's vessels to another vessel at the Big Stone Anchorage for the purpose of transferring oil between those two vessels, constitutes a 'bulk product transfer facility,' that does not preclude the Board from finding that the *activity* of oil lightering constitutes a 'nonconforming use' under the CZA." The Board obviously continues to believe that the activity of oil lightering is something distinct from what is done in a bulk product transfer facility. This belief and distinction make no sense. The vessel-to-vessel transfer of oil, as the Supreme Court has held and the Board recognized, constitutes a bulk product transfer facility. Whether or not a bulk product transfer facility is a nonconforming use depends solely

on whether or not it was in operation on June 28, 1971. It does not depend, as the Board believed, on whether or not some other entity was operating an oil lightering facility on June 28, 1971. The Board's statement would be correct if it could be interpreted to mean that a bulk product transfer facility can be a nonconforming use if it was in operation on June 28, 1971. Indeed, in order to be a nonconforming use in the first place, you have to be a bulk product transfer facility. The Coastal Zone Act only prohibits heavy industrial uses and bulk product transfer facilities that were not in operation on June 28, 1971. Obviously, as I have stated before, the "heavy industrial uses" and "bulk product transfer facilities" that were in operation on June 28, 1971 are the only things that can be nonconforming uses. However, not all bulk product transfer facilities are nonconforming uses. Only those bulk product transfer facilities that were in operation on June 28, 1971 are nonconforming uses. The Board simply never understood this.

- (e) New refineries and chemical plants are prohibited by § 7003, as well as § 7004(a), and the expansion or extension of which are permissible by permit in accordance with § 7004(a).

This is the Board's response to DNREC's argument that if nonconforming use means what the Board says it does, then new oil refineries and chemical plants would be nonconforming uses because entities were operating oil refineries and chemical plants on June 28, 1971. DNREC was merely taking the Board's rationale and applying it to heavy industrial uses to make a point. The Board missed the point. The Board's response was that DNREC's argument was incorrect because § 7003

clearly prohibits all “heavy industry uses” in the coastal zone unless they were in operation on June 28, 1971. If the Board can understand that new refineries and chemical plants, which are “heavy industrial uses,” are prohibited by § 7003 because they were not in operation on June 28, 1971, then I am at a total loss as to why the Board can not also understand why Vane’s new vessel-to-vessel oil lightering facility is also prohibited by § 7003 because it was not in operation on June 28, 1971.

Conclusion Three

“Oil lightering, as a ‘nonconforming use,’ is permissible under the CZA at levels exceeding those in place on or before June 28, 1971 only by virtue of a permit, in accordance with § 7004(a), which covers all nonconforming uses and does not pertain solely to ‘heavy industry uses,’ as defined by § 7002(e).”

The Board stated one reason to support this conclusion.²¹ It stated that § 7004(a) governs the extension and expansion of nonconforming uses. This is really two conclusions in one. The first part merely restates the Board’s conclusion that oil lightering is a nonconforming use. The second part states that the extension and expansion of nonconforming uses are governed by a permitting process. As I have stated before, the activity of oil lightering, as the Board uses the phrase, is not a nonconforming use. It is only an oil lightering facility that was in operation on June 28, 1971 that is a nonconforming use. As such, it is not prohibited by the Coastal Zone Act and may be expanded and extended by permit. However, the Coastal Zone Act is facility specific. § 7004(a) refers to the extension or expansion of a bulk product transfer facility that was in operation on June 28, 1971. It does not refer to

²¹ The one reason is set forth in the Board’s fourth rationale.

the entire oil lightering industry.

Conclusion Four

“It is the activity of oil lightering itself that was grandfathered as an existing use, rather than any specific user (currently Maritrans).”

This conclusion merely repeats in a somewhat different form what the Board stated in Conclusion Two and its underlying rationale. The Board is wrong. As I have stated before in this decision, it is only an oil lightering facility that was in operation on June 28, 1971 that is “grandfathered.” The activity of oil lightering is not “grandfathered.” Maritrans is allowed to operate an oil lightering facility in the coastal zone now because it owns an oil lightering facility that was in operation on June 28, 1971. If it did not own one, then it would not be allowed to do oil lightering in the coastal zone.²² This distinction simply does not support the Board’s

²² In an effort to expand the definition of “grandfathered,” Vane states that vessel-to-vessel oil lightering is a dynamic operation that involves a tanker and barge coming together for a relatively brief time and then separating. Given this, Vane argues that all of the vessel-to-vessel oil lightering facilities that were in operation on June 28, 1971 are long gone. Therefore, according to Vane, there is no specific facility to “grandfather” and instead the oil lightering industry should be grandfathered. This argument does not help Vane. Indeed, it would be an excellent argument against “grandfathering” all vessel-to-vessel bulk product transfer facilities. Until the General Assembly and/or the Supreme Court change the definition of a bulk product

conclusion.

Conclusion

I have reversed the Coastal Zone Industrial Control Board's decision for the reasons discussed herein.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

transfer facility to exclude the vessel-to-vessel transfer of bulk products, Vane will not be allowed to start a new oil lightering facility in the coastal zone. Moreover, regardless of how fleeting vessel-to-vessel bulk product transfer facilities may be, it is undisputed that Vane did not have one in the coastal zone on June 28, 1971.