

Secretary's Order No. : 2009-CZ-0018

RE: Application of Oceanport, LLC for a Coastal Zone Act Permit to Mix and Produce a Calcium Hydroxide Solution at their existing facility located at 6200 Philadelphia Pike in Claymont, Delaware

Date of Issuance: **May 21, 2009**

Effective Date: **May 21, 2009**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control under 29 Del. C. §§8001 et seq., the following findings and conclusions are entered as an Order of the Secretary:

Oceanport, LLC ("Applicant") is a nonconforming bulk product transfer facility in accordance with a June 25, 1987 Delaware Coastal Zone Act ("CZA") Status Decision. In that capacity, it is authorized to conduct bulk product transfer operations at its facility located at 6200 Philadelphia Pike in Claymont, Delaware. In 1995, Oceanport obtained a Coastal Zone Act permit, which allowed the company to handle 16 bulk products in addition to those granted under the 1987 Status Decision. In 2004, Oceanport was granted a Coastal Zone Act Permit (408P) to handle liquid urea.

Pursuant to Oceanport, LLC's most recent CZA permit application dated December 23, 2008, the Applicant seeks permission for a lime dilution operation, which would take place at their existing facility in Claymont, Delaware. The pilot phase (which is proposed as a three month experimental project) would initially involve 2,500 tons of solid state lime. The solid state lime would arrive at the CSX rail yard in Wilmington, and be transported by truck to the Oceanport site, where it would be stored in a pile on site.

The proposed operation would consist of the Applicant mixing the lime with water to produce a suspension of 50% lime and 50% water (calcium hydroxide). The water for the dilution would be delivered from the DuPont site to Oceanport by tanker truck. The mixing would be accomplished by an agitator in the tank, and placed in tanks of 6,500 gallons. The suspension would then be pumped from storage tanks into a delivery truck, which would transport the product from the Applicant's site in Claymont, Delaware, to the DuPont Chambers Works facility in Deepwater, New Jersey. Initially, there would only be one finished product storage tank. If, however, the proposed pilot phase is successful, then there could be as many of three finished product tanks. No fixed structures would be built at the Oceanport site. The aforementioned pilot phase calls for 3,500 gallons per day for the first week. If the pilot project is successful, then the Applicant proposes to increase that amount, up to 28,000 gallons per day.

The Department requires a CZA Applicant to set forth in its application the proposed project's possible environmental impacts, including, but not limited to, any increased air emissions of pollutants, stormwater runoff, and the disposal of solid and hazardous wastes, as well as to propose an environmental offset equal to or greater than the proposed environmental impacts of any proposed project. In the present matter, however, the Department concurs with the Applicant in its assessment that the environmental impacts of this project are very minor. There will be no new air emissions, no new or increased waste water or storm water discharges, no generation of solid or hazardous wastes, and no loss of, or impacts on, habitat. In terms of water usage, the pilot phase of the project will require 3,500 gallons per day, with an increase of up to 28,000 gallons per day if the pilot is successful. There should be no negative

environmental impacts from this project, and, therefore, no environmental offset would be required of the Applicant with regard to this proposed project.

A duly noticed public hearing was held on March 31, 2009, at the Department's office at Lukens Drive in New Castle, Delaware. Members of the public attended the public hearing, but the Department did not receive any oral or written public comments. Representatives from the Department and the Applicant were in attendance at this hearing, and made presentations to develop the record. Hearing Officer Lisa A. Vest, in a report dated May 8, 2009 ("Report"), and appended hereto and incorporated herein, recommended approval of the permit, subject to the standard and reasonable conditions in a CZA permit that are included to protect Delaware's precious environment.

I find and conclude that the record developed in this matter supports approval of issuing the Applicant a CZA permit, as recommended in the aforementioned Report. Based on the record, and the technical expertise of the Department's personnel who assisted in this application, the record supports approval of Oceanport LLC's application for the permit, as consistent with the CZA and its regulations.

I find that Oceanport's application is consistent with the CZA, which is to balance the economic and environmental interests of the State of Delaware. Given that there should be no negative environmental impacts from this project, and that, as a result, no environmental offset would be required of the Applicant with regard to this proposed project, the proposed project satisfies the strict environmental standards imposed by the CZA. Accordingly, I direct that the permit be issued to the Applicant, and enter the following findings and conclusions:

Further, I recommend the Secretary adopt the following findings and conclusions:

1. The Department has jurisdiction under its statutory authority to issue a CZA Permit to the Applicant, subject to reasonable permit conditions deemed appropriate and consistent with the CZA's purposes;
2. The Department provided adequate and lawful public notice of the Coastal Zone Act Application of Oceanport, LLC, and of the public hearing held on March 31, 2009, and held said hearing to consider public comment on the application, in a manner required by the law and regulations;
3. The permit approved by this Order is for production/manufacturing activities which will take place within the defined Coastal Zone of Delaware, and is for the expansion of existing manufacturing uses of Oceanport, LLC, which requires a CZA permit for the same, to wit: to conduct the proposed lime dilution operation as proposed by the Applicant in its application, and to produce up to 28,000 gallons of the finished product suspension per day, as described in the aforementioned application;
4. The Department has considered the factors required to be weighed in issuing a CZA permit, and finds that the proposed use is appropriate for the Coastal Zone at the proposed location, and that it should be permitted as set forth in Oceanport, LCC's application;
5. The Department shall issue a permit to the Applicant, Oceanport, LLC, and said permit shall include all conditions consistent with the final Order and any other reasonable conditions that the Department includes in a CZA permit, to ensure that Delaware's environment will be protected from harm, consistent with the CZA and its regulations;

6. The Department has carefully considered all the statutory factors to be considered in making a decision on a CZA permit and those required to be considered under the CZA regulations;
7. The Department finds that the proposed use is appropriate for the Coastal Zone at the proposed location, and that it should be permitted as set forth in detail in the application;
8. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
9. The Department shall serve and publish its Order on all affected persons in a manner consistent with the service and publication of Secretary's Orders; and
10. This proposed project will allow the Applicant to continue to expand its manufacturing business, while reducing the overall environmental impacts to the Coastal Zone area, in furtherance of the purposes of 7 Del. C., Ch. 70.

/s/ Collin P. O'Mara

Collin P. O'Mara
Secretary

HEARING OFFICER'S REPORT

TO: The Honorable Collin P. O'Mara
Cabinet Secretary, Department of Natural Resources and Environmental Control

FROM: Lisa A. Vest
Public Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: **Application of Oceanport, LLC for a Coastal Zone Act Permit to Mix and Produce a Calcium Hydroxide Solution at their existing facility located at 6200 Philadelphia Pike in Claymont, Delaware**

DATE: May 8, 2009

I. BACKGROUND AND PROCEDURAL HISTORY:

On Tuesday, March 31, 2009 at 6:00 p.m., a public hearing was held at the Department of Natural Resources and Environmental Control's ("Department" or "DNREC") New Castle office, located at 391 Lukens Drive, New Castle, Delaware, in order to receive comment on Oceanport, LLC's ("Applicant") application for a permit from DNREC under its authority in the Coastal Zone Act ("CZA"), 7 Del. C., Ch. 70. The CZA regulates new, or the expansion of existing manufacturing uses, within Delaware's "coastal zone", which is a geographic area along the Delaware Bay and Atlantic Ocean Coastlines, as defined by the CZA. This hearing was held pursuant to the aforementioned Delaware Coastal Zone Act and Delaware's *Regulations Governing Delaware's Coastal Zone*.

Oceanport, LLC is a nonconforming bulk product transfer facility in accordance with a June 25, 1987 Delaware Coastal Zone Act Status Decision. In that capacity, it is authorized to conduct bulk product transfer operations at its facility located at 6200

Philadelphia Pike in Claymont, Delaware. In 1995, Oceanport obtained a Coastal Zone Act permit, which allowed the company to handle 16 bulk products in addition to those granted under the 1987 Status Decision. In 2004, Oceanport was granted a Coastal Zone Act Permit (408P) to handle liquid urea.

Pursuant to Oceanport, LLC's most recent CZA permit application dated December 23, 2008 (which was then supplemented with additional information at the request of the Department on January 21, 2009 and again on January 29, 2009¹), the Applicant seeks permission for a lime dilution operation, which would take place at their existing facility in Claymont, Delaware. The pilot phase (which is proposed as a three month experimental project) would initially involve 2,500 tons of solid state lime. The solid state lime would arrive at the CSX rail yard in Wilmington, and be transported by truck to the Oceanport site, where it would be stored in a pile on site.

The proposed operation would consist of the Applicant mixing the lime with water to produce a suspension of 50% lime and 50% water (calcium hydroxide). The water for the dilution would be delivered from the DuPont site to Oceanport by tanker truck. The mixing would be accomplished by an agitator in the tank, and placed in tanks of 6,500 gallons. The suspension would then be pumped from storage tanks into a delivery truck, which would transport the product from the Applicant's site in Claymont, Delaware, to the DuPont Chambers Works facility in Deepwater, New Jersey. Initially, there would only be one finished product storage tank. If, however, the proposed pilot phase is successful, then there could be as many of three finished product tanks. No fixed structures would be built at the Oceanport site. The aforementioned pilot phase calls for

¹ The receipt date does not determine when an application is deemed administratively complete, pursuant to CZA Regulations 8.3.1 and 8.3.6. The application was deemed administratively complete on March 3, 2009, which began a 90 day time period in which the Department must render its decision concerning this matter.

3,500 gallons per day for the first week. If the pilot project is successful, then the Applicant proposes to increase that amount, up to 28,000 gallons per day.

The Department requires a CZA Applicant to set forth in its application the proposed project's possible environmental impacts, including, but not limited to, any increased air emissions of pollutants, stormwater runoff, and the disposal of solid and hazardous wastes, as well as to propose an environmental offset equal to or greater than the proposed environmental impacts of any proposed project. In the present matter, however, the Applicant contends that no environmental offset should be required, as there should be no negative environmental impacts from the proposed project.

The proposed site is noted to be located "in the bowels" of the present Oceanport, LLC site, "...remote from any public road, residential area, public park, or other public meeting place". Oceanport's CZA application indicates that the nearest year-round residence to the site of this proposed project is approximately a half-mile from the proposed project site, and that the proposed project will not interfere with the public's use of existing public or private recreational facilities or resources, nor will it interfere with any agricultural areas.

Oceanport's CZA Application additionally indicates that, as previously noted above, the source of water needed for this project will be trucked to the site from DuPont. No wells will be utilized by the Applicant for this process, and the project entails no proposed dredging or filling of wetlands. Oceanport is currently in full compliance with DNREC's Above Ground Storage Tank Section. The site is zoned heavy industrial, and, as the Applicant also notes in its application, from the time of Oceanport's arrival to

Delaware in 1986 to the present day, no threatened or endangered creatures have been reported to frequent this site. Moreover, the Applicant states on page 19 of its CZA Application that the potential of the proposed project to pollute (in the instance of a major equipment malfunction and/or human error occurrence) is “remote to none”.

With regard to the environmental impacts associated with this proposed project, the Secretary’s Environmental Assessment Report² states:

The environmental impacts of this project are very minor. There will be no new air emissions, no new or increased waste water or storm water discharges, no generation of solid or hazardous wastes, and no loss of, or impacts on, habitat. In terms of water usage, the pilot phase of the project will require 3,500 gallons per day, with an increase of up to [28,000] gallons per day if the pilot is successful.

There should be no negative environmental impacts from this project, and, therefore, no environmental offset would be required.

The Department provided public notices of this CZA Application’s submission and the determination of an administratively complete application following the Secretary’s Assessment, which was signed on March 3, 2009. Consequently, as noted above, the Department held a public hearing on March 31, 2009, at the Department’s office at Lukens Drive in New Castle, Delaware.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The public hearing record consists of a verbatim transcript and nine documents introduced at the public hearing and marked by this Hearing Officer as Department Exhibits 1-9. The Department’s person primarily responsible for reviewing the CZA Application, Kevin Coyle, developed the record with the relevant documents in the Department’s files. Additionally, representatives of the Applicant were present at the

² The Secretary’s Assessment is a procedural step in the Department’s application review process, as required by CZA Regulation 9.1.5. The Secretary’s Assessment is a preliminary determination that an application is sufficiently administratively complete in order to schedule a public hearing and receive public comments on the application.

hearing and answered questions. While members of the public attended the public hearing, no one presented formal comments for the public hearing record.

III. DISCUSSION AND REASONS:

This application is for a permit issued under the CZA. Preliminarily, I find that Oceanport's existing facility is located within Delaware's "Coastal Zone", and that the proposed project would be an expansion of existing manufacturing uses within the Coastal Zone of Delaware. Additionally, the proposed lime dilution operation is not a prohibited use, as it will not be "heavy industry use" or an "offshore bulk transfer facility".

The Department is to evaluate a CZA application based upon a consideration of the CZA's balancing of economic and environmental factors. The CZA requires the Department to consider the following issues of any given proposed project: (1) environmental impacts; (2) economic impacts; (3) aesthetic impacts; (4) the number and type of supporting facilities required and their impacts on all other factors; (5) the impact on neighboring land uses; and (6) the county and municipal comprehensive plans. 7 Del.C. §7004. The record developed in this matter indicates that the Department's experts have considered these factors, and have recommended issuance of a permit to the Applicant in this matter. Further, the experts recommended that the application was sufficient, that there should be no negative environmental impacts from this project, and that no environmental offset would be required. I agree with the recommendations of the Department's experts.

IV. RECOMMENDED FINDINGS AND CONCLUSIONS:

Based on the record developed, I find and conclude that the Applicant has adequately demonstrated its compliance with all requirements of the Delaware Coastal Zone Act Regulations and Statutes, as noted herein, and that the record supports approval of Oceanport, LLC's CZA permit application. In conclusion, I recommend that a Coastal Zone Permit consistent with the record developed in this matter be issued by the Department in the customary form, and with appropriate conditions, to ensure continued improvement of environmental quality in the Coastal Zone of the State of Delaware.

Further, I recommend the Secretary adopt the following findings and conclusions:

11. The Department has jurisdiction under its statutory authority to issue a CZA Permit to the Applicant, subject to reasonable permit conditions deemed appropriate and consistent with the CZA's purposes;
12. The Department provided adequate and lawful public notice of the Coastal Zone Act Application of Oceanport, LLC, and of the public hearing held on March 31, 2009, and held said hearing to consider public comment on the application, in a manner required by the law and regulations;
13. The permit applied for by Oceanport, LLC, is for production/manufacturing activities which will take place within the defined Coastal Zone of Delaware, and is for the expansion of existing manufacturing uses, which requires a CZA permit for the same, to wit: to conduct the proposed lime dilution operation as proposed by the Applicant in its application, and to produce up to 28,000 gallons of the finished product suspension per day, as described in the aforementioned application;

14. The Department has considered the factors required to be weighed in issuing a CZA permit, and finds that the proposed use is appropriate for the Coastal Zone at the proposed location, and that it should be permitted as set forth in Oceanport, LCC's application;
15. The Department shall issue a permit to the Applicant, Oceanport, LLC, and said permit shall include all conditions consistent with the final Order and any other reasonable conditions that the Department includes in a CZA permit, to ensure that Delaware's environment will be protected from harm, consistent with the CZA and its regulations;
16. The issuance of the aforementioned permit will allow the Applicant to conduct the proposed lime dilution operation as proposed in its application, and to produce up to 28,000 gallons per day, as described in the application;
17. The Department carefully has considered all the statutory factors to be considered in making a decision on a CZA permit and those required to be considered under the CZA regulations;
18. The Department finds that the proposed use is appropriate for the Coastal Zone at the proposed location, and that it should be permitted as set forth in detail in the application;
19. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary; and
20. The Department shall serve and publish its Order on all affected persons in a manner consistent with the service and publication of Secretary's Orders.

/s/ Lisa A. Vest .
Lisa A. Vest
Public Hearing Officer

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