

Secretary's Order No. : 2011-CZ-0001

RE: Application of Oceanport, LLC, for a Coastal Zone Act Permit to Offload and Store Potash (Muriate of Potash) at their existing facility located at 6200 Philadelphia Pike, Claymont, Delaware

Date of Issuance: **January 5, 2011**

Effective Date: **January 5, 2011**

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:

The Applicant, Oceanport, LLC, seeks a Coastal Zone Act Permit to offload and store potash (Muriate of Potash) at their existing facility located at 6200 Philadelphia Pike, Claymont, Delaware. Under the Coastal Zone Act, the Oceanport facility is considered to be a “nonconforming use”, meaning a use, whether of land or of a structure, which does not comply with the applicable use provisions of this chapter, where such use was lawfully in existence and in active use prior to June 28, 1971 (7 Del.C., Chapter 70, Coastal Zone Act, §7002[b]).

The proposed project would bring in potash from vessels by clam bucket, which would then be discharged into the pier hopper. The product is in dry, small pellet form. The product would either be stored in an existing storage tank modified to safely hold the product, or some other storage vessel yet to be determined. No dust is expected to be present in the off-loading and transport to the storage vessel. Initial delivery of the product is anticipated at approximately 7,000 tons. The product is utilized as a fertilizer.

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, water quality/water quantity/water use, and the disposal of solid and hazardous wastes. Furthermore, any application for a CZA permit for an activity or facility that will result in any negative environmental impact shall contain an offset proposal, which will more than offset the proposed negative impacts of any proposed project. In the present matter, Oceanport's proposed project will produce no new air emissions, nor no new wastewater or storm water discharges. No water will be needed, thus, water supply is not an issue. No solid or hazardous waste will be generated. There will be no impacts to habitat, and no other adverse environmental impacts are anticipated. Thus, with regard to this project, no environmental offset would be required, as again, no negative environmental impacts are anticipated from this project.

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 October 26, 2010. CZA Regulation 8.3.6 requires that the Secretary shall, within ninety (90) days of receipt of an administratively complete application, reply to the request for a CZA permit by "...either granting the permit, denying the permit, or granting the permit, but with special conditions. The Secretary shall state the reasons for his decision." In the present instance, the ninety (90) day deadline is January 26, 2010.

A duly noticed public hearing was held on November 22, 2010, at the DNREC offices located at 391 Lukens Drive, New Castle, Delaware. No members of the public attended the public hearing, and no comments were received from the public by the Department during any phase of this public hearing process. Subsequent to the public

hearing of November 22, 2010, the Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated December 15, 2010 (Report).

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's application for the permit, as consistent with the CZA and its regulations. I further find that Oceanport's permit application is consistent with the CZA, which is to balance the economic and environmental interests of the State of Delaware. The issuance of the aforementioned permit will allow Oceanport to offload and store potash (Muriate of Potash) at their existing facility located at 6200 Philadelphia Pike, Claymont, Delaware.

Accordingly, I direct that a Coastal Zone permit be issued to the Applicant, and enter 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 November 22, 2010, 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 allow Oceanport to offload and store potash (Muriate of Potash) at their existing facility located at 6200 Philadelphia Pike, Claymont, Delaware;

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'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 Offload and Store Potash (Muriate of Potash) at their existing facility located at 6200 Philadelphia Pike, Claymont, Delaware**

DATE: December 15, 2010

I. BACKGROUND AND PROCEDURAL HISTORY:

On Monday, November 22, 2010 at 6:00 p.m., a public hearing was held at the DNREC 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*.

Pursuant to Oceanport, LLC's CZA permit application dated August 23, 2010¹, the Applicant seeks permission to offload and store potash (Muriate of Potash) at their existing facility located at 6200 Philadelphia Pike, Claymont, Delaware. Under the

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 October 26, 2010, which began a 90 day time period in which the Department must render its decision concerning this matter.

Coastal Zone Act, the Oceanport facility is considered to be a “nonconforming use”, meaning a use, whether of land or of a structure, which does not comply with the applicable use provisions of this chapter, where such use was lawfully in existence and in active use prior to June 28, 1971 (7 Del.C., Chapter 70, Coastal Zone Act, §7002[b]). The proposed project would bring in potash from vessels by clam bucket, which would then be discharged into the pier hopper. The product is in dry, small pellet form. The product would either be stored in an existing storage tank modified to safely hold the product, or some other storage vessel yet to be determined. No dust is expected to be present in the off-loading and transport to the storage vessel. Initial delivery of the product is anticipated at approximately 7,000 tons. The product is utilized as a fertilizer.

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, water quality/water quantity/water use, and the disposal of solid and hazardous wastes. Furthermore, any application for a CZA permit for an activity or facility that will result in any negative environmental impact shall contain an offset proposal. Offset proposals must more than offset the proposed environmental impacts of any proposed project².

In the present matter, Oceanport’s proposed project will produce no new air emissions. There will be no new wastewater or storm water discharges. No water will be needed, thus, water supply is not an issue. No solid or hazardous waste will be generated. There will be no impacts to habitat, and no other adverse environmental impacts are anticipated. Thus, with regard to this project, the Department has determined that no

² CZA Regulation 9.0, “Offset Proposals”.

environmental offset would be required of the Applicant, as again, no negative environmental impacts are anticipated from this project.

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 October 26, 2010. CZA Regulation 8.3.6 requires that the Secretary shall, within ninety (90) days of receipt of an administratively complete application, reply to the request for a CZA permit by "...either granting the permit, denying the permit, or granting the permit, but with special conditions. The Secretary shall state the reasons for his decision." In the present instance, the ninety (90) day deadline is January 26, 2010. Consequently, as noted above, the Department held a public hearing on November 22, 2010, at the DNREC offices located at 391 Lukens Drive, New Castle, Delaware. No members of the public attended the public hearing, and no comments were received from the public by the Department during any phase of this public hearing process.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The public hearing record consists of a verbatim transcript and eight documents introduced at the public hearing and marked by this Hearing Officer as Department Exhibits 1-8. 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. Although there was a representative of Oceanport, LLC present at the hearing, the Applicant did not provide any presentation on the record regarding this proposed project, due to the fact that there were no members of the public in attendance.

Again, the Department received no public comment during any phase of the hearing process regarding this CZA permit application.

III. DISCUSSION AND REASONS:

This application is for a permit issued under the CZA. Preliminarily, I find that Oceanport, LLC'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, as noted previously, Under the Coastal Zone Act, the Oceanport facility is considered to be a "nonconforming use", meaning a use, whether of land or of a structure, which does not comply with the applicable use provisions of this chapter, where such use was lawfully in existence and in active use prior to June 28, 1971 (7 Del.C., Chapter 70, Coastal Zone Act, §7002[b]).

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, with conditions, to the Applicant in this matter. Further, the experts recommended that the application was sufficient, and that the Applicant's proposed project does not require any environmental offsets, as there should be no negative environmental impacts associated with the same. 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 November 22, 2010, 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 offload and store potash (Muriate of Potash) at their existing facility located at 6200 Philadelphia Pike, Claymont, Delaware;
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, LLC'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 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;
17. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary; and
18. 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