



STATE OF DELAWARE  
**DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL**  
89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

Office of the  
Secretary

Phone: (302) 739-9000  
Fax: (302) 739-6242

**Secretary's Order No. 2016-CZ-0050**

**Re: Delaware City Refining Company, LLC's Application for a Coastal Zone Act Permit for its Ethanol Marketing Project, at the Delaware City Refinery, 4550 Wrangle Hill Road, New Castle, New Castle County (CZA Permit No. 427P)**

Date of Issuance: December 27, 2016  
Effective Date: December 27, 2016

Pursuant to the Coastal Zone Act ("CZA"), 7 Del. C. Ch. 70, the Department's Regulations Governing Delaware's Coastal Zone, 7 Del. Admin. Code 101 ("CZA Regulations"), and other relevant authority, the Secretary of the Department of Natural Resources and Environmental Control ("Department") enters this Order following the public hearing held on October 26, 2016, the submission of written comments by interested persons, and consideration of the attached report and recommendations of the Hearing Officer ("Report"), on the application for a CZA permit filed on August 19, 2016, ("Application") by the Delaware City Refining Company, LLC ("Applicant").

The Department finds that the record established in the Report supports granting the Applicant a CZA permit for the Ethanol Marketing Project ("Project") proposed by the Application, as described below. The Department adopts the Report in all respects and makes additional findings as outlined below.

*Delaware's Good Nature depends on you!*

## **The Proposed Project**

The Project involves the utilization of existing tanks and existing marine loading equipment at the refinery to enable denatured ethanol to be loaded from storage tanks to marine vessels and shipped to offsite facilities. The Project will use the existing equipment at the refinery's docking facility, which requires only minor modifications to ship ethanol since the docking facility currently receives shipments of ethanol. The anticipated ethanol shipment at the piers will be up to 10,000 barrels per day on an annual average basis as stated in the Application. The Project will not cause the crude unit throughput rate to exceed the benchmark of 191,100 barrels per day set by CZA Permit No. 355.

In 2005, the federal Environmental Protection Agency created a program that requires the use of renewable fuels (such as ethanol) in gasoline and other petroleum-based products. In 2006, the Department issued a status decision determining that the refinery was not required to obtain a CZA permit to receive ethanol (as a substitute for MTBE) by barge, to store and move ethanol on-site, to blend ethanol as a fuel additive, and to conduct related operations. The Department finds that the Project expands on existing marine operations by allowing the docking facility to load ethanol on to marine vessels to ship to off-site locations.

## **Findings On Legal Issues**

The Department finds that the Project falls within the scope of permissible expansion of the Applicant's nonconforming use(s) under the CZA. In reaching this conclusion, the Department has considered alternative, opposing interpretations advanced by the Applicant and by persons and non-profit entities opposing the Application. The Applicant claims that the Project requires no CZA permit because it is consistent with

historic petroleum refining practices at the refinery. Conversely, persons opposing the Application contend that the Project, due to its off-site shipment by marine vessel, creates a new, prohibited bulk product transfer facility under the CZA. The Department finds that neither of these alternative interpretations is consistent with the CZA and its Regulations.

A. The Refinery And Its Integrated Docking Facility May Be Expanded By Permit.

Under Section 7002(f) of the CZA, a “nonconforming use” means “a use, whether of land or of a structure, which does not comply with the applicable use provisions in this chapter where such use was lawfully in existence and in active use prior to June 28, 1971.” The refinery is a nonconforming, otherwise-prohibited heavy industry use with an integrated docking facility - both of which were lawfully in existence and in active use prior to June 28, 1971. Under Section 7004(a) of the CZA, nonconforming uses may be expanded by permit. *7 Del. C. § 7004(a)* (“all expansion or extension of nonconforming uses . . . [are] allowed only by permit.”).

The CZA regulations also contemplate the expansion of nonconforming uses by permit. CZA Regulation 6.3 states that a permit is required for “[a]ny new activity, with the exception of those listed in Section 5.0 of these regulations [uses not regulated] . . . proposed to be initiated after promulgation of these regulations by an existing heavy industry,” provided that the applicant satisfy the Department in addressing any “negative impact” on the six factors set forth in Section 7004(b). More generally, the Regulations confirm that the dual purpose of the CZA is to ensure environmental improvement in the Coastal Zone while at the same time providing industry with the needed flexibility to remain competitive in a global marketplace. CZA Regulations, Preamble, App. C, § 1.1. Reflecting that dual purpose, the Department’s Guidance For Implementation and

Interpretation of the Regulations Governing Delaware's Coastal Zone ("Guidance"), which is attached to the CZA Regulations, states that "each nonconforming use and new manufacturing uses can add new products, change existing products, increase production capacity, add new processes and modify existing processes or do any other activity so long as these activities are undertaken in a way that assures environmental improvement in the Coastal Zone; and undertaken in such a way that they meet the six criteria outlined in the Coastal Zone Act." CZA Regulations, App. C, § 1.2.

The Department also considered the decision of the Delaware Superior Court in a previous CZA matter involving the refinery, which construed Sections 7004(a) and (b) as follows:

Section 7004(a) of the Act provides that "all expansion or extension of nonconforming uses, as defined herein, and all expansion or extension of uses for which a permit is issued pursuant to this chapter, are likewise allowed only by permit." Subsection (b) provides that, when the Secretary makes a permitting decision, he must consider, "Economic effect, including the number of jobs created and the income which will be generated by the wages and salaries of these jobs in relation to the amount of land required, and the amount of tax revenue potentially accruing to state and local government."

This language makes it clear that the General Assembly did not intend to doom every existing, non-conforming use in the coastal zone to extinction by attrition. Instead, the legislature clearly expects the Secretary to make a judgment call on any proposed expansions, balancing environmental and economic factors to reach the best result for Delaware and its citizens. The reason for writing the Act this way is obvious. At issue is not a bar or junkyard whose loss would go unnoticed; it is a massive refinery [the DCRC refinery] directly or indirectly employing hundreds of people and providing millions of dollars in state tax revenues. Deciding to close it down by disallowing all competitive expansion, particularly expansion that lessens its pollution output, without considering all relevant factors, would contravene legislative intent."

*Kearney v. Coastal Zone Industrial Control Board*, 2005 WL 3844219, \*5-6 (Del. Super. Ct. March 18, 2005), *aff'd*, 897 A.2d 767 (Table) (Del. 2006).

Applying these statutory provisions and regulations, and in light of the *Kearney* decision and other relevant authority, the Department concludes that the Application proposes activities that constitute an expansion or extension of the nonconforming use(s) at the refinery and its integrated docking facility. This expansion is allowable, where, as here, the Application satisfies the Section 7004(b) requirements necessary to obtain a CZA permit.

**B. A CZA Permit Is Required**

The Applicant contends that no CZA permit is required because the Refinery's nonconforming docking facility will transfer the same products and materials as it did in 1971 – defined broadly as petroleum products. The Department rejects this contention for two reasons. First, while ethanol may be considered a blendstock for petroleum products, the Applicant has not demonstrated that the storing and shipment of ethanol to or from the refinery's docking facility by barge was occurring in 1971 so as to be within the scope of its initial nonconforming use. Second, while a 2006 CZA status decision held that the off-loading of ethanol for the purpose of blending it with gasoline was not subject to CZA regulation, the Project contemplated by the Application would involve an expansion of operations to include shipment of ethanol beyond existing refining operations. In light of these considerations, the Project represents an operational expansion that requires the Applicant to meet the standards for permitting under CZA Section 7004 and CZA Regulation 6.3.

**C. No New Bulk Product Transfer Facility Is Created**

Public comments by persons opposed to the Project contend that the anticipated shipment of up to 10,000 barrels per day of ethanol (on an average annual basis) from the

Applicant's existing nonconforming uses (the refinery and its integrated docking facility) would convert the existing docking facility into a new bulk product transfer facility that is prohibited under the CZA. This contention is unpersuasive because it conflicts with the plain terms of the CZA.

Section 7002(b) of the CZA, which defines a "bulk product transfer facility" as "any port or dock facility, whether an artificial island or attached to shore by any means, for the transfer of bulk quantities of any substance from vessel to onshore facility or vice versa," expressly excludes from this definition a "docking facility or pier for a single industrial or manufacturing facility for which a permit is granted or which is a nonconforming use." Therefore, the integrated docking facility at the refinery is not a prohibited bulk product transfer facility but rather is a legally existing nonconforming use and a use for which a permit may be granted. The CZA does not prohibit the expansion of operations at a legally existing nonconforming refinery with an integrated docking facility. On the contrary, as noted above, Section 7004 specifically permits the expansion and extension of nonconforming uses so long as certain statutory criteria, designed to result in environmental improvements, are met.

The public comments by persons opposed to the Project mistakenly rely on CZA Regulation 4.6, which lists, as one of the prohibited uses or activities in the Coastal Zone, the "conversion or use of existing unregulated, exempt, or permitted docking facilities for the transfer of bulk products." Regulation 4.6 would prohibit, for example, the conversion of a legally existing docking facility into a new use as a bulk product transfer facility. However, Regulation 4.6 cannot reasonably be read to prohibit any operation by which the refinery's nonconforming docking facility, which historically has transferred petroleum-

related products, seeks to ship a blendstock because no “conversion” or new “use” of the facility is taking place. The Project will use the existing equipment at the refinery’s docking facility, which requires only minor modifications to ship ethanol since the docking facility currently receives shipments of ethanol. A broader reading of Regulation 4.6 would run contrary to Section 7004, Regulation 6.3, and the Guidance for Interpreting the Regulations. When read in harmony with the CZA and the Regulations as a whole, Regulation 4.6 does not prohibit the expanded operations contemplated by the Project, if a permit is obtained consistent with Section 7004.

Finally, public comments from the Delaware Audubon Society also state that “further CZA permitting for the DCRC should be suspended” due to alleged violations of a 2013 Secretary’s Air Permit Order addressing the shipment of crude oil from the refinery. However, as noted in the Technical Response Memorandum (“TRM”), the shipment of crude oil is a matter unrelated to this pending permit application for the Project and is being addressed separately.<sup>1</sup> This permitting process solely addresses whether the Project as proposed satisfies the requirements of the CZA and its regulations and is not intended to be a separate enforcement mechanism.

#### D. The Section 7004 Factors Are Satisfied

The Project is allowable only if the Department is satisfied that all of the six factors identified in Section 7004(b) are adequately addressed. As noted by the Department’s TRM, which is incorporated herein by reference, all Section 7004(b) factors are satisfied, including the requirement that applicants are required to more than offset the negative impacts of the project or activity that is the subject of the application for a Coastal Zone

---

<sup>1</sup> The alleged violation discussed by Delaware Audubon’s public comments is being addressed by a notice of violation issued by DNREC to DCRC on December 23, 2016.

permit. *See* CZA Regulation § 9.1.2. In particular, for the reasons set forth in the Secretary's Environmental Assessment Report dated September 28, 2016, the Department finds that the total anticipated increase in fugitive volatile organic compound ("VOC") emissions (0.8 tons per year) will be more than offset by the installation of a new vapor capture system at the trucking terminal that will result in the reduction of VOCs by 1.1 tons per year. The Department has also determined that no new information has been introduced into the record through the public comment period to warrant changing its position on the adequacy of the environmental offset. Therefore, the offset is approved as part of the approval of the CZA permit.

### **Conclusions**

Accordingly, the Department finds and concludes that the record supports approval of the Application because it complies with the CZA and the CZA Regulations and supports the requested expansion or extension of use of a nonconforming use(s). The Department directs that the CZA permit be issued to the Applicant. The Department also enters the following conclusions:

1. The Department has jurisdiction and authority to issue a CZA Permit to the Applicant subject to the reasonable permit conditions deemed appropriate and consistent with the CZA's purposes included in the permit prepared by the CZA Program;
2. Ethanol throughput shipped out from Applicant's loading piers, Piers 2 and 3, shall not exceed 10,000 barrels per day on an annual average basis;
3. The Department's findings are based upon the record as presented. A change in these factors or the use of the Facility may result in a different determination. As such, the

Applicant should request a Coastal Zone Status Decision if future physical or operational changes are intended or implemented;

4. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and its regulations;

5. The Department held a public hearing in a manner required by the law and its regulations;

6. The Department considered all timely and relevant public comments in making its determination;

7. The Department carefully has considered all the factors to be considered in making a decision on a CZA permit application under the CZA and its Regulations; and

8. The Department shall publish legal notice of this Order and otherwise provide notice as to all affected persons in a manner consistent with the public notice required by the law and the Department's CZA Regulations, and shall publish the Order on the Department's web site.



David S. Small  
Secretary

## HEARING OFFICER'S REPORT

TO: The Honorable David S. Small  
Secretary, Department of Natural Resources and Environmental Control

FROM: Robert P. Haynes, Esquire  
Senior Hearing Officer, Office of the Secretary  
Department of Natural Resources and Environmental Control

RE: **Delaware City Refining Company, LLC's Application for a Coastal Zone Act Permit for its Ethanol Marketing Project at its Delaware City Refinery, 4550 Wrangle Hill Road, New Castle, New Castle County**

DATE: December 27, 2016

### I. PROCEDURAL HISTORY

This Report considers the Record established for the Secretary of the Department of Natural Resources and Environmental Control's ("Department") decision on Delaware City Refining Company, LLC's ("Applicant" or "DCRC") August 19, 2016 Coastal Zone Act<sup>1</sup> ("CZA") permit application ("Application"). The Application seeks a CZA permit for Applicant's Ethanol Marketing Project ("Project"), which proposes to expand the nonconforming use(s) at the Applicant's petroleum refining complex located at 4550 Wrangle Hill Road, New Castle, New Castle County ("Facility") in order to store and ship ethanol to other locations.

The Department's Coastal Zone Act Program ("CZA Program") published public notices of the Application. In addition, the CZA Program requested additional information from the Applicant, which the Applicant provided. The CZA Program also requested comments from the Department's other regulatory programs, and the Division of Air Quality confirmed the proposed air emissions from the two storage tanks, and that the Applicant does not seek any change in the existing permit limits for the existing marine vapor recovery system.

---

<sup>1</sup> 7 Del. C. Chap. 70.

On September 28, 2016, Secretary David S. Small signed the Secretary's Environmental Assessment Report pursuant to CZA Regulation. The CZA Program provided public notice of the completed Application in the News Journal and New Castle Weekly on October 2 and October 5, 2016, respectively stating that the Department would hold a public hearing on October 28, 2016 at the Department's offices at 391 Lukens Drive, New Castle, New Castle County, which is near the Facility.

I presided over the public hearing, which approximately twenty persons attended, including several persons from the Department and members of the public. The Applicant's representatives present were Tom Godlewski, Environmental Supervisor, and Larry Boyd, Sr. Environmental Engineer. Based upon a request to keep the public comment period open, I granted an extension in the public comment period for written comments until 4:30 p.m. November 4, 2016.

Following the public hearing, the CZA Program provided its Technical Response Memorandum ("TRM"), in which the CZA Program provides its expert review of the Application and its recommendation that the Department issue the CZA permit prepared by the CZA Program.

## **II. SUMMARY OF THE RECORD<sup>2</sup>**

This Report establishes the following Record: 1) the documents introduced as exhibits at the public hearing and identified below, 2) the verbatim transcript of the public hearing, and 3) the information in this Report and the documents and information identified herein, including the attached CZA Program TRM.

---

<sup>2</sup> This summary merely summarizes the Record and does not establish facts.

Attending the public hearing for the Department were former Division Director Phil Cherry, Division of Energy and Climate ("DEC") and Kevin Coyle, AICP CEP, Principal Planner, DEC, who was the CZA Program's representative. In addition, representatives from the Department's Division of Air Quality were present. Mr. Coyle made preliminary remarks that briefly described the Project and submitted the following documents<sup>3</sup> from the Department's files, which I summarize below:

DNREC Exhibit 1-The signed Application received on August 19, 2016;

DNREC Exhibit 2-Affidavit of Publication of the public notice of the Application in the August 28, 2016 *The News Journal*;

DNREC Exhibit 3-Affidavit of Publication of the public notice of the Application in the August 31, 2016 *New Castle Weekly*;

DNREC Exhibit 4-Affidavit of Publication of the revised public notice of the Application in the September 4, 2016 *The News Journal*;

DNREC Exhibit 5-September 15, 2016 e-mail from Kevin Coyle, DNREC, to Thomas Godlewski, Delaware City Refining Company, LLC, requesting additional information;

DNREC Exhibit 6-September 21, 2016 e-mail from Larry Boyd, Delaware City Refining Company, LLC, to Secretary David Small responding to Mr. Coyle's request for information;

DNREC Exhibit 7-Secretary's Environmental Assessment Report, signed on September 28, 2016 that determined that the Application is sufficiently complete to provide public notice of it and to hold a public hearing on it;

DNREC Exhibit 8-Affidavit of Publication of the public notice of the Application and the public hearing in the October 2, 2016 *The News Journal*; and

DNREC Exhibit 9-Affidavit of Publication of the public notice of the Application and the public hearing in the October 5, 2016 *New Castle Weekly*.

---

<sup>3</sup> The Department provides documents for the record at the public hearing solely to assist the public in making public comments. The Department does not have a burden of proof to develop a record during the public hearing.

The public hearing sign in sheet is included as DNREC Exhibit 10. Mr. Coyle also provided for the record two written comments the CZA Program received, which I summarize below:

Riverkeeper Ex. 1-Delaware Riverkeeper Network's October 26, 2016 email to Kevin Coyle opposing the Application;

Riverkeeper Ex. 2 Delaware Riverkeeper Network's supplemental October 26, 2016 letter to Kevin Coyle opposing the Application and provided a report on Atlantic Sturgeon.

The Applicant's Larry Boyd made a slide presentation that summarized the Project. Applicant Ex. 1. He indicated that the Applicant proposed to repurpose an existing rail unloading facility to change it from unloading crude oil to unloading denatured ethanol, which he described as ethanol that has gasoline additives in it that makes it unfit for human consumption. He described the United States Environmental Protection Agency's fuel standard, which required the use of renewable fuels, such as ethanol, in gasoline and that since approximately 2006 the Facility has received ethanol by barge and rail. He stated that the Facility uses ethanol to blend into the gasoline products. The Project will add marine loading of ethanol at the piers in order to allow its shipment offsite up to an annual average basis of 10,000 barrels per day. He indicated that the Project would use existing equipment and the Facility currently uses one storage tank for ethanol and a second existing storage tank will be converted for use to store ethanol. He described the marine loading equipment as requiring a short pipe to connect the pier to the existing ethanol pipe on shore. The Project will upgrade a pump to double seals that will reduce leakage and hence emissions. He indicated that the proposed offset entails installing a vapor vacuum control system to better control volatile organic compound

("VOC") emissions from transfers at the Facility's truck marketing terminal. He claimed the offset would more than offset the Project's proposed increase emissions.

He commented that the Facility's piers and the movement of material across them is an existing non-conforming use under the CZA. The Facility has been shipping and receiving materials relating to the petroleum fuel manufacturing and blending since 1957, including ethanol since 2006. He explained the Facility existing storage tank was permitted to emit 0.59 tons per year of VOCs and that the Project would increase this by 0.3 tons. The use of the second storage tank for ethanol would emit 0.8 tons of VOCs annually. Thus, he claimed a total increase of 1.1 tons of VOCs from the Project.

He stated that the piers were regulated by an air permit and controlled by a vapor combustor and that the air permit will not be changed. He described the water and land usage impacts as negligible.

He provided a description of the vapor control system offset to be installed at the truck terminal that should improve vapor recovery during loading of the tanker trucks from its current 98.7% capture efficiency to 100%. He indicated that it would provide 1.5 tons of offset in VOC emissions or more than offset the 1.1 tons that the Project would add. He stated that while the vapor recovery system should provide 100% capture efficiency, for purposes of calculating the offset but the Applicant only used 90% in its calculations to be conservative.

He went on to indicate that the Project would require 20-25 workers during a 18-20 week construction period at a weekly payroll cost of approximately \$110,000, which would produce \$113,000 in state personal income taxes. In addition, he estimated that the purchase of supplies and services would be \$7 million in Delaware.

The following members of the public spoke at the public hearing:

1. Martin Willis spoke in support of the Application, and then asked the Department to consider amending its CZA Regulations. He would like to see the CZA Regulations be changed to increase the re-use of old brownfield sites.
2. Amy Roe spoke as a representative of the Audubon Society and opposed the Application. She first requested a 30-day extension to the public comment period because of her difficulties in obtaining documents under the Freedom of Information Act (“FOIA”). She then set forth reasons for her opposition to any CZA permit for the Project. First, she claimed that the Project is a new bulk products transfer prohibited by the CZA. She cited the CZA’s prohibition against offshore gas, liquid or solid bulk product transfer facilities which are not in operation on June 28, 1971 are prohibited in the Coastal Zone and no permit may be issued therefore. She also stated that converting the existing dock facilities to allow shipment of ethanol is not allowed under CZA Regulation 4.6, which states that conversion or use of existing, unregulated, exempt or permitted docking facilities for the transfer of products. She noted that no ethanol was transferred prior to June 28, 1971, and that ethanol only began to be used at the Facility in 2006. She also commented that the Department approved ethanol shipments to the Facility without any public notice, which she claimed violated the CZA. She commented that the Department and the Applicant allowed crude oil shipments to be made to other locations than allowed in the permit. Ms. Roe stated that the Applicant’s parent corporation informed the public of its plans to ship crude oil to other locations than approved in the Department permit. Finally, she claimed that the Applicant does not own the facilities to be used to store and ship ethanol, but instead an affiliate, PBF Logistics created in 2014 to own facilities, is the owner. Her written statement was marked as Audubon Ex. 1.

3. Bernard August spoke in opposition to the Application. He stated that he was a member of the Audubon Society's conservation committee. He concurred with Ms. Roe's comments.
4. Peggy Shultz spoke as a representative of the League of Women Voters of Delaware in opposition to the Application. She questioned whether the Application should have been determined to be administratively complete because the Application seeks to establish a new bulk products transfer for ethanol. Her written comments were marked as League of Women Voters Ex. 1.
5. Stephanie Herron spoke in opposition to the Application based upon the proposed ethanol shipment that she claimed would violate the CZA as a new bulk products transfer.
6. Coralie Pryde spoke on behalf of the Sierra Club of Delaware in opposition to the Application. She considers the Project to be a new bulk product transfer that the CZA prohibits. She commented on the shipment of ethanol denatured with 2-2.5 % gasoline is not part of the Facility's core business. She mentioned that if the ethanol shipments were proposed from a new facility, then the violation of the CZA would be easy to oppose. She opposed the Application because of the possible adverse impact from spills in the Delaware River. Her written comments were marked as Sierra Club Ex 1.
7. Gail Heuth spoke in opposition to the Application because of her concerns with air pollution from the trains and shipping

Following the public comments, I discussed with the Department's staff about the request to keep the public comment period open. I granted an extension to November 4, 2016, based upon when the transcripts would be available so that the extension would not unduly delay the required CZA permit decision.

Following the public hearing, the Department received the Applicant's presentation (Applicant Ex. 1) and its response to public comments (Applicant Ex. 2), which at the public hearing I had allowed the Applicant to submit.

The Department received the following public comments during the extended public comment period:

1) November 4, 2016 email from Jeanne E. Sadot who included Ms. Roe's statement from the public hearing and opposed the Application on environmental grounds as a 29- year resident of Delaware City. Sadot Ex. 1.

2) Amy Roe submitted a revised and supplemental comment with two appendices that included additional emails on the crude oil shipments from the Facility. Audubon Ex. 2.

The Applicant submitted a November 10, 2016 letter that sought to supplement the Application to reflect higher emissions than presented at the hearing (1.1 tpy as opposed to 0.8 tpy in the Application). Applicant Ex. 3. The CZA Program discussed with the Applicant that the supplement would be considered an amendment consistent with Section 10.2 of CZA Regulation 101, 7 DE Admin. Code 101. In a November 22, 2016 letter, the Applicant withdrew the proposed supplement and explained the different numbers as attributable to a proposed change to use a different storage tank than originally proposed. Applicant Ex. 4. The November 22, 2016 letter re-affirmed that the Application reflected the correct numbers and the proposed use of the original two tanks, identified as Tanks 206 and 225. The letter also provided more detail on the offset, which is a vapor recovery system at the truck terminal that will lower VOC emissions by 26.9 tons per year, of which 1.1 will be used as the offset and the remaining balance 25.8 tons per year available for future use as an offset. This letter also refers to the two pending air permit applications, one for the Project's ethanol marketing equipment changes and

one for the offset component to the Project's truck terminal vapor recovery system. The letter further explained the differences in the two air applications and the Application.

I requested assistance from the Department's CZA experts, who provided the attached Technical Response Memorandum ("TRM"). The TRM recommends issuance of CZA Program's draft permit because the Applicant satisfied the regulatory requirements for a CZA permit. The CZA Program provided a draft CZA permit should the Secretary decide to issue a CZA permit.

### **III. FINDINGS OF FACT**

I find that the above Record supports the issuance of a CZA permit. This finding is based upon the Application, exhibits, testimony, and the CZA Program's TRM.

As a preliminary matter, I find that the Facility is a "nonconforming use," as defined by Section 7002 of the CZA. The Facility's overall nonconforming use could be viewed as including two categories of nonconforming uses, namely, Section 7002's defined "heavy industry use" and potentially "bulk product transfer facilities" ("BPTF"). Whether viewed as a single use or as two uses, I find that these nonconforming use(s) were in operation before the CZA's June 28, 1971 date for determining the existence of a nonconforming use. The Department has recognized the Facility's overall nonconforming use in several CZA permit decisions.

I find that the Application seeks to expand<sup>4</sup> the nonconforming use(s). The Project's proposed use of two storage tanks, identified as tanks 206 and 225, is an expansion of the heavy industry use because they will store ethanol that will not be blended with gasoline at the Facility.

---

<sup>4</sup> CZA Section 7004(a) uses "all expansion or extension nonconforming uses." This Report will use expansion for simplicity without interpreting if an expansion or an extension are different.

Similarly, the Project proposed use of the docks to ship ethanol to other locations as a product is an expansion of the docks' current use, which receives ethanol for use at the Facility. The Applicant proposes to use storage tanks on tax parcel 3B-1-12-008.00-015 and marine loading docks on Parcel 3A-22-003.00-001.

CZA Section 7004(a) allows the Department to grant a CZA permit for expansions of nonconforming uses. The proposed expansion of the storage tanks' use to include ethanol will not entail any new equipment, but the new storage usage of ethanol will increase the Facility's VOC emissions by 0.8 tons annually. The proposed expansion of the docks to allow loading of ethanol onto vessels will require the installation of a new pipe from the loading pier to the existing ethanol pipeline, which the Facility uses to transport ethanol unloaded at the dock to the refinery. Hence, the proposed expansion will add loading of ethanol to marine vessels to the current approved unloading of ethanol. Based upon the limited change to the Coastal Zone, I find that the proposed expansion of these nonconforming uses supported by the record, particularly with the environmental offset that will result in cleaner air in the Coastal Zone than existed prior to the Project's emissions.

The CZA Program reviewed the Application and determined that it provided the necessary information and that the Project's impacts were minor, with only the 0.8 ton per year VOC emission increase from the storage tanks' usage requiring an environmental offset for its negative impact to the Coastal Zone. The Applicant provided 1.1 tons per year in VOC reductions from its truck terminal vapor recovery system improvements, which more than offset the increased emissions. Thus, I find that the Applicant has supported its Application for a CZA permit.

I have considered but find unpersuasive the Applicant's contention that the Project is an unregulated activity that does not require a permit under Section 7004. For the reasons set forth above, I find that the Project does involve an expansion or extension of the conforming use(s) and therefore is subject to the permitting requirements of the CZA.

Turning to the public comments that objected to the Application, I find that they dispute that the Project represents an expansion of a nonconforming use. The commenters claim the Project would be a new BPTF, and, as such, the Department is prohibited from issuing the Project a CZA permit. As discussed above, the Project will not involve any new BPTF. Instead, the Project will use the existing docks and existing storage tanks.

The Project proposes to expand the Facility's nonconforming use by storing and shipping ethanol from the Facility by marine vessel. The storage use would be the same as the storage of the ethanol blend into gasoline products. The shipment use would utilize the existing docks that currently receive ethanol. The CZA should not be interpreted to prohibit such a reasonable expansion of nonconforming uses. To the contrary, in addressing "expansion or extension of nonconforming uses" in Section 7004, the CZA states that they are "allowed only by permit," if the Department is satisfied that the project should be permitted following analysis of six statutory factors set forth in Section 7004(b) and in Regulation 6.3.

Audubon's comments seek to have the Department interpret the CZA to regulate the docks in a manner that would not allow such a reasonable expansion of the use to include the storage and shipment of ethanol consistent with the Facility's current receipt of ethanol at the docks and its storage in tanks. The Audubon interpretation is unreasonable and inconsistent with the plain language of the CZA, its regulations, and precedent construing the CZA. The expansion will allow ethanol already received at the Facility (often unloaded at the docks) to be

shipped from the Facility using the docks. There is no attempt to convert the docks into a general port facility for shipping any type of non-refinery related bulk products. Any denial of a CZA permit for such an expansion of a nonconforming use would be clearly contrary to the dual purpose of the CZA to ensure environmental improvement in the Coastal Zone while at the same time providing industry with the needed flexibility to remain competitive in a global marketplace. CZA Regulations, Preamble, App. C, § 1.1.

Audubon also raised an issue with the ownership of the Facilities tanks and docks. Based upon the Application and the Applicant's response, I find unconvincing the allegations, which even if true, would not change the merits of the Project. The Facility has changed ownership numerous times over the years and such changes are subject to certain filings and Department oversight. The Application represents the best evidence on the ownership, which the Applicant verified in its post hearing submission.

I also reject the Audubon's request to have the Department deny the Application because of allegations that the Applicant shipped crude oil to locations other than DCRC's sister facility in Paulsboro, NJ. This is an issue unrelated to the Application, which is the subject of this proceeding. Audubon's comments also questioned the Department's 2006 status decision on ethanol. Both of these positions raise issues beyond the scope of this proceeding, which is limited to reviewing the Application within the CZA's ninety-day period. I recommend rejecting the comments that seek to deny the Application on the grounds of alleged violations of permits or alleged problems with past decisions as unrelated to the Application and beyond the scope of this proceeding.

#### **IV. Conclusions and Reasons**

Accordingly, I conclude that the record supports approval of the Application because it complies with the CZA and the CZA Regulations and supports the requested expansion or extension of use of the Facility's CZA authorized operations. I recommend that the Department adopt the following ordering paragraphs:

1. The Department has jurisdiction and authority to issue a CZA Permit to the Applicant subject to the reasonable permit conditions deemed appropriate and consistent with the CZA's purposes included in the permit prepared by the CZA Program;

2. Ethanol throughput shipped out of DCRC's loading piers, Piers 2 and 3, shall not exceed 10,000 barrels per day on an annual average basis;

3. The Department's findings were made based upon the Record as presented. A change in these factors or the use of the Facility may result in a different determination. As such Applicant should request a Coastal Zone Status Decision if future physical or operational changes are intended or implemented;

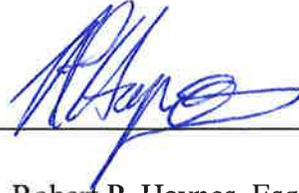
4. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and its regulations;

5. The Department held a public hearing in a manner required by the law and its regulations;

6. The Department considered all timely and relevant public comments in making its determination;

7. The Department carefully has considered all the factors to be considered in making a decision on a CZA permit application under the CZA and its CZA Regulations; and

8. The Department shall publish legal notice of this Order and otherwise provide notice as to all affected persons in a manner consistent with the public notice required by the law and the Department's CZA Regulations, and shall publish the Order on the Department's web site.



---

Robert P. Haynes, Esquire  
Senior Hearing Officer



STATE OF DELAWARE  
**DIVISION OF ENERGY & CLIMATE**  
100 W. WATER STREET  
SUITE 5A  
DOVER, DELAWARE 19904

Department of Natural Resources  
And Environmental Control

[www.DNREC.delaware.gov/energy](http://www.DNREC.delaware.gov/energy)  
Phone: (302) 735-3480

**Technical Response Memorandum**  
**Delaware City Refining Company, LLC Coastal Zone Permit**

TO: Robert P. Haynes, Esq., DNREC Hearing Officer  
FROM: Susan E. Love, AICP, Division of Energy and Climate *KLL For Susan Love*  
RE: Coastal Zone Act Permit for the DCRC Ethanol Marketing Project  
DATE: December 27, 2016

You have requested a Technical Response Memorandum that addresses the procedural history, statutory criteria and public comments for the Delaware City Refining Company, LLC ("DCRC") Ethanol Marketing Project ("the Project") and seek our recommendation regarding permit issuance.

The Project involves the utilization of existing tanks and existing marine loading equipment at the DCRC to enable denatured ethanol to be loaded from storage tanks to marine vessels and shipped to offsite facilities. The project will utilize the existing docking facilities at the refinery; no new major pieces of equipment are required, however minor upgrades may be necessary to pollution control equipment at the docks. The anticipated ethanol shipment at the piers will be up to 10,000 barrels per day on an annual average basis. Anticipated environmental impacts associated with this project are 0.8 tons per year of increased volatile organic carbon (VOC) emissions; the proposal includes construction of a vapor capture system project at the truck marketing terminal that would decrease VOC emissions at the refinery by 1.1 tons per year.

Procedural History

DCRC submitted an Application for a Coastal Zone Act Permit on August 19, 2016, to the Department's Coastal Zone Act (CZA) program. On August 26, 2016, the CZA program sent an e-mail to various DNREC staff soliciting review of and comment on the Project. Legal notices announcing the receipt and availability of the Coastal Zone Act Permit application were published in the News Journal and New Castle Weekly on August 28 and August 31, 2016, respectively. The Secretary signed the Secretary's Environmental Assessment Report on September 28, 2016, deeming the application preliminarily administratively complete and ready to proceed to a public hearing. Legal notices announcing the public hearing and the availability of the Coastal Zone Act Permit application were published in the News

*Delaware's Good Nature depends on you!*

Journal and New Castle Weekly on October 2 and October 5, 2016, respectively. A public hearing was held on October 26, 2016, in New Castle, Delaware. At the public hearing, DCRC staff presented slides describing the Project. Among them was a slide indicating that emissions of VOCs would be 1.1 tons per year and would require an offset of 1.5 tons per year. This differed from the numbers presented in the application: VOC emissions of 0.8 tons per year, requiring an offset of 1.1 tons per year. On November 10, 2016, after being informed that CZA Program staff had noted the discrepancy between the numbers in the application and the numbers presented at the public hearing, DCRC submitted "supplemental information" to address the discrepancy. According to the Regulations Governing Delaware's Coastal Zone, once public notice announcing a public hearing is advertised, no revisions to any application will be permitted (10.2). On November 22, 2016, DCRC submitted a letter requesting the withdrawal of the supplemental information, stating that the numbers presented in the application submission are, in fact, correct. The referenced letters from DCRC are attached hereto as Attachment A.

### The Six Statutory Criteria

Title 7, Delaware Code, § 7004(b) requires the Secretary of the Department of Natural Resources and Environmental Control to consider six factors when deciding Coastal Zone Act permit requests:

(1) Environmental impact: The anticipated environmental impacts from the Project are primarily air emissions associated with the control of displaced vapors from loading Piers 2 and 3, for which an adequate Offset Project has been proposed. There will be no increase in water usage, wastewater generation, or storm water flow. Solid waste generated during operation of equipment installed as part of the Project is expected to be minimal and consistent with the waste streams currently generated by the existing process. There will be no hazardous wastes, no impact to wetlands, flora or fauna, no change in glare, heat, noise or vibration, or impact from radiation, electromagnetic interference and noxious odors.

(2) Economic effect: The net economic impact is expected to be positive. The application states that it is currently anticipated that approximately 20 to 25 workers will be engaged in direct Project construction activities. The weekly payroll is estimated to be \$110,000 for approximately 18 to 20 weeks. An estimated \$7,000,000 of construction services and supplies is to be purchased in Delaware.

(3) Aesthetic effect: Aesthetic effects are minimal. Minor modifications to existing equipment will maintain the equipment as of a similar kind, character, scope and appearance as existing equipment at the facility, and therefore will be aesthetically compatible with the existing facility and the surrounding land use.

(4) Number and type of supporting facilities required: No new facilities are required for this project. Existing above ground storage tanks and docking facilities will be utilized. No new roads, bridges, piers and/or docks, railroads, microwave towers, special fire protection services, traffic signals, sewer expansion, energy-related facilities expansion, pipelines, bulk hydrogen loading, or laydown areas will be required to support the proposed project.

(5) Effect on neighboring land uses: The proposed facility will be constructed within the footprint of an existing non-conforming use. Effects on neighboring uses will be minimal.

(6) County and municipal comprehensive plans: The proposed facility and operation is consistent with New Castle County's and Delaware City's Comprehensive Plans.

## Public Comments

Comments received during the public comment period primarily focused on whether the proposed action would constitute a new prohibited bulk transfer facility, whether DCRC is the proper permit applicant, and effects on Atlantic Sturgeon populations.

The proposed action does not constitute a “new” prohibited bulk product transfer facility. Transfer of petroleum products was occurring at this location prior to 1971, and this heavy industry use and its integrated docking facility are considered pre-existing, nonconforming use(s) under the Coastal Zone Act and its regulations. The DCRC is proposing to make minor upgrades to existing facilities to handle the transfer of ethanol to ships. Such upgrades are allowed under the Act and its regulations as an expansion or extension of the nonconforming use; DCRC has properly applied to the DNREC for a permit for these upgrades.

Ethanol is currently used as a blendstock at the Delaware City Refinery. In 2006, DNREC issued a Status Decision under the Coastal Zone Act which confirmed that receipt of ethanol at the existing Refinery docking facility was authorized under the CZA and did not need a permit. It also confirmed that the storage and blending of ethanol in Refinery equipment was not regulated by the CZA and did not need a permit. “New” activities at existing heavy industries that are not otherwise exempt under the CZA Regulations require a permit; DCRC has properly applied for a permit.

Concerns were raised about whether DCRC is the proper party to apply for the permit. The application indicates that DCRC owns the facility and previous DNREC permits have been issued to DCRC. DCRC confirmed its ownership in the post-hearing submission dated November 4, 2016 (attached hereto as Attachment 2). Based on these submissions, the concern that the wrong entity has applied for the permit is without merit on the current record.

In addition to the issues noted above, the Delaware Riverkeeper Network comments, dated October 26, 2016, discuss Atlantic Sturgeon mortalities. While the Department is certainly concerned about sturgeon populations, there appears to be little or no direct or indirect link between this project and sturgeon populations and the program received no comments or concerns from DNREC’s Division of Fish and Wildlife, the relevant DNREC Division on sturgeon issues, regarding this issue.

Finally, a concern was raised regarding crude oil shipments made by DCRC that exceeded permitted limits and allowable destinations. The shipment of crude oil is a matter unrelated to this pending permit application for the Ethanol Marketing Project and is being addressed separately.

## Conclusion and Recommendation

In signing the Secretary’s Environmental Assessment Report on September 28, 2016, the Secretary affirmed that the six criteria had been sufficiently addressed. As noted in the Procedural History, DNREC staff was notified of the Project and their review and comments were solicited; DNREC staff identified no additional issues in the comments that were received.

The Coastal Zone Act Program has reviewed the file regarding the CZA Permit Application from DCRC. The Program has no further comments or concerns. We recommend that the CZA Permit be issued.

**DELAWARE  
COASTAL ZONE ACT PERMIT**

NUMBER: 427

ISSUED TO: Delaware City Refining Company, LLC

TO PERMIT: The utilization of existing tanks and existing marine loading equipment at their existing facilities at 4550 Wrangle Hill Road, Delaware City, to enable denatured ethanol to be loaded from storage tanks to marine vessels and shipped to offsite facilities.

SITE LOCATION: 4550 Wrangle Hill Road, Delaware City, Delaware 19706

Conditions Incorporated and Made Part of this Permit:

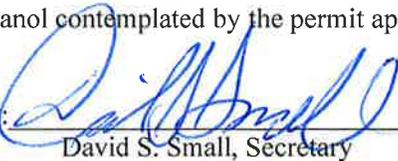
Standard:

1. This permit is conditional upon the Permittee's compliance with all other applicable permit requirements, regulations and laws of the State of Delaware.
2. Issuance of this permit does not relieve the Permittee of the legal obligation of complying with all building permits, subdivision and other applicable code requirements of the county or municipality wherein the permitted project is located.
3. If there are significant deviations from the plan and operations approved by the Secretary, the Permittee shall notify the Secretary as soon as possible. If the Secretary receives information which he or she believes may significantly alter the scope of the project, the Secretary may revoke the permit or require the Permittee to submit a new application to reflect the altered nature of the project.

Special Conditions:

1. Ethanol throughput shipped out from DCRC's loading piers, Piers 2 and 3, shall not exceed 10,000 barrels per day on an annual average basis.
2. As discussed in the Secretary's Environmental Assessment Report dated September 28, 2016, DCRC will install and maintain a new vapor capture system at the facility's truck loading rack as an offset for the increased air emissions associated with this project prior to the barge shipments of ethanol contemplated by the permit application.

Signature: \_\_\_\_\_

  
David S. Small, Secretary

Date: \_\_\_\_\_



Department of Natural Resources & Environmental Control