



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

OFFICE OF THE
SECRETARY

PHONE: (302) 739-4403
FAX: (302) 739-6242

February 3, 2005

Ms. Lauren Segal
Vice President
Crown Landing LLC
501 West Lake Park Blvd.
Houston, TX 77079

CERTIFIED MAIL
Return Receipt Requested

Re: Coastal Zone Act Status Decision

Dear Ms. Segal:

Based on the public comments, the assessment and recommendations of DNREC staff, and discussions with our legal representatives, I have reached a decision on your application for a coastal zone status request.

I find that your proposed facility represents a prohibited offshore bulk product transfer facility and does not meet the exemption under the bulk product transfer facility definition in that the facility cannot be considered a "manufacturing use" under the Act. Furthermore, I conclude that this facility, as proposed, exhibits characteristics sufficient to deem it a heavy industry, also prohibited under the Act. Finally, the on-shore storage tanks essential to the operation of the facility are prohibited structures.

This decision does not come without some appreciation of the need for additional natural gas supplies in this country nor the relative cleanliness of natural gas compared to other energy fuels. Despite the benefits that increased LNG imports might bring, placement of this facility within the boundaries of Delaware is, in my opinion, clearly a prohibited use within Delaware's coastal zone.

There is a fourteen-day appeal period following the publication of the enclosed legal notice announcement of this decision. If you wish to appeal this decision to the State Coastal Zone Industrial Control Board, please call Dennis Brown at 302-739-3091 for an appeal form. There is a one-hundred dollar appeal fee. If no appeal is received within the appeal period, this decision becomes final.

Sincerely,

John A. Hughes
Secretary

pc: Dennis Brown
David S. Swayze
Michael W. Teichman

Enclosure

Delaware's Good Nature depends on you!

NEWS FROM THE DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Feb. 3, 2005
Vol. 35, No. 32

Please note: Secretary Hughes will be available for media questions at 2 p.m. this afternoon, Feb. 3, in his offices at DNREC in the Richardson and Robbins Building, 89 Kings Highway, Dover.

For further information, contact Dennis Brown, Planning and Compliance Assistance, (302) 739-3091 or Melinda Carl, Public Affairs, (302) 739-4506

DNREC DENIES BP's CROWN LANDING PROPOSED LNG PIER

Department of Natural Resources and Environmental Control Secretary John A. Hughes has determined that the proposed LNG off-loading pier in the Delaware River is prohibited by the State's Coastal Zone Act. The decision is in response to the Dec. 7, 2004 application of Crown Landing LLC to ascertain if a new pier facility to transfer liquefied natural gas (LNG) from ships in the Delaware River to storage tanks in New Jersey is allowable under the Coastal Zone Act.

In his letter of decision to the company, Secretary Hughes writes that his decision "does not come without some appreciation of the need for additional natural gas supplies in this country nor the relative cleanliness of natural gas compared to other energy fuels." However, he finds that despite the possible benefits, under the Act, the proposed facility "represents a prohibited offshore bulk product transfer facility" with no accompanying manufacturing use that would meet the exemption definition. In addition, he concludes that as proposed, the facility "exhibits characteristics sufficient to deem it a heavy industry," which is also prohibited under the Act.

Crown Landing LLC, a subsidiary of BP, proposed an LNG facility with a docking site that lies within Delaware's Coastal Zone. The facility would occupy 19 acres in the Delaware River for a 2000 foot pier with one ship berth. The pier could accommodate LNG carriers from 138,000 cubic meters to 200,000 cubic meters in capacity. The pier would have one 44-inch diameter liquid unloading line to the storage tanks. The pier would convey the LNG to a storage and regassification facility on 40 acres in Logan Township, N.J. where existing gas pipelines would convey the gas to customers in the region.

A 14-day appeal period follows the Feb. 6, 2005 date of publication of the legal notice of this decision. Appeals must be filed to the State Coastal Zone Industrial Control Board. Appeal forms may be acquired by calling Dennis Brown, DNREC Planning and Compliance Assistance, (302) 739-3091. The appeal fee is \$100.

LEGAL NOTICE
COASTAL ZONE ACT
STATUS DECISION

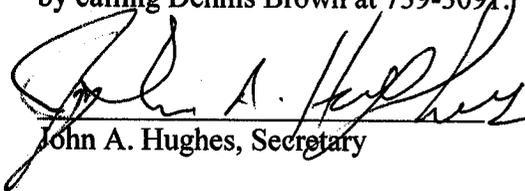
Re: Crown Landing LLC

Under the authority of the Delaware Coastal Zone Act (7 Del. Code, Ch. 70) and the "Regulations Governing Delaware's Coastal Zone", the Secretary of the Department of Natural Resources and Environmental Control (DNREC) has rendered a decision on a Request for a Coastal Zone Act Status Decision application from Crown Landing LLC. The company sought the status decision to ascertain if a new pier facility to transfer liquefied natural gas (LNG) from ships in the Delaware River to storage tanks in New Jersey is allowable under the Coastal Zone Act.

The proposed facility would occupy 19 acres in the Delaware River for a 2000 foot pier with one ship berth. The pier could accommodate LNG carriers from 138,000 cubic meters to 200,000 cubic meters in capacity. The pier would have one 44-inch diameter liquid unloading line to the storage tanks. The pier would convey the LNG to storage tanks on land in Logan Township, New Jersey where existing gas pipelines will convey the gas to customers in the region.

The Secretary's decision on this application is that the proposed facility represents a prohibited offshore bulk product transfer facility and does not meet the exemption under the bulk product transfer facility definition in that the facility cannot be considered a "manufacturing use" under the Act. Furthermore, the Secretary has found that this facility, as proposed, exhibits characteristics sufficient to deem it a heavy industry, also prohibited under the Act. Finally, the Secretary has determined that the on-shore storage tanks essential to the operation of the facility are prohibited structures.

There is a fourteen day appeal period following the date of publication of this legal notice. Anyone desiring to appeal this decision to the State Coastal Zone Industrial Control Board must do so within the appeal period. There is a one-hundred dollar appeal fee. An appeal application may be acquired by calling Dennis Brown at 739-3091. If no appeal is received, this decision becomes final.


John A. Hughes, Secretary

2/3/05
Date

INSTRUCTIONS:

1. Please publish as a legal notice in the DNREC box on _____, 2005.
2. Send bill and affidavit to: Dennis Brown
DNREC
89 Kings Highway
Dover, DE 19901
Ph. No. 739-3091
Billing Code: SD0240

MEMORANDUM

TO: John A. Hughes

THRU: David Small

FROM: Philip Cherry
Dennis Brown

DATE: February 2, 2005

RE: BP/Crown Landing Status Decision Assessment and Recommendations

Please consider this memorandum as our assessment of the BP - Crown Landing LLC status decision application. We have carefully considered the application and supporting legal memorandum, consulted with the Attorney General's Office and reviewed all of the comments received from the public in preparing this assessment. Copies of all public comments are attached hereto as an addendum to this report.

The status decision application from Crown Landing LLC was received on December 7, 2004 and deemed administratively complete with publication of the required legal notice on January 9, 2005. The required 10 day comment period concluded on January 24 and, under the regulations, you have until February 15, 2005 to make a decision.

It should be noted in this assessment that this proposed project could bring significant benefits to Delaware. Natural gas is a welcome alternative to dirtier sources of energy, is needed along the eastern seaboard to maintain reliable and cost competitive supplies and can be a significant help in easing this country's reliance on imported oil. LNG imports will likely figure prominently in meeting the nation's needs for additional energy and this is one of many such proposals across the country. This industry also has an overall impressive safety record and decades of experience in moving and utilizing LNG.

The question before you, however, is not the relative benefits of natural gas, but an even more straightforward one. Is the LNG pier a bulk product transfer facility under the Coastal Zone Act (and prohibited) or can it be exempted under the Act as "...a pier for a single industrial or manufacturing facility for which a permit is granted or which is a non-conforming use."? After careful consideration of the application, we offer the following thoughts in support of a determination that the facility is prohibited under the Act.

1. There seems to be no argument that the movement of LNG from a ship to shore would be considered a bulk product transfer, absent any argument for the single use industrial exemption. It would appear this is exactly the type of activity that is the subject of the CZA - and the prohibition - in the first place.
2. The single use bulk product transfer exemption was intended to accommodate either one of two scenarios - neither of which applies in the BP case. The first is a situation where an existing grandfathered use might want to wharf out over the river to accommodate its existing industrial or manufacturing use at some point in time following passage of the

Act. This clearly doesn't apply in the BP case. The second situation was intended to apply to new manufacturing uses proposed within the zone which might take advantage of Section 7004 (a) which states in part "...manufacturing uses not in existence and in active use on June 28, 1971 are allowed in the Coastal Zone by permit only". The phrase "by permit only" means, in our view, a coastal zone permit issued to a manufacturing facility regulated under the Act. The BP facility cannot be granted a permit under the exemption for a bulk product transfer facility because, simply considered on its merits, this LNG terminal is a bulk product transfer facility, not a manufacturing use.

3. The manufacturing label that the applicant wishes to place upon itself (in order to enjoy the bulk product facility exemption) doesn't apply, in our opinion, for two reasons:
 - It doesn't meet the definition of "manufacturing" which reads in part "...the mechanical or chemical transformation or organic or inorganic substances into new products..." The LNG is a result of pumping natural gas out of the ground at another location, and super cooling it to establish a liquid, making it economical to transport. Regassifying the LNG and adding nitrogen and an odorizer do not, in our opinion, meet the manufacturing test. BP is simply returning the substance to its natural state (with slight modification), not manufacturing it.
 - The US Department of Commerce, Bureau of the Census classifies LNG terminals under the new 2002 North American Industry Classification System (NAICS). The classification code for an establishment storing natural gas, including liquefied natural gas, is 486210, Pipeline Transportation of Natural Gas. The classification of an establishment re-gasifying LNG is the same, Pipeline Transportation of Natural Gas. These codes are not within the NAICS manufacturing designations. Similar results are found under the old SIC code designations.

4. The application suggests an analogous situation with the single use pier allowed for the Logan generating station adjacent to the proposed LNG terminal. In that instance, the Secretary issued a coastal zone permit for the Logan facility under a finding that the generation of power from the burning and consumption of the coal in that process is "manufacturing". Logically then, the pier, to be situated in the Delaware River met the bulk product transfer exemption. For the reasons stated above, the situation found in the BP application is not similar to the Logan station matter and the comparison cannot be applied. In our opinion, BP outlines a process for re-gasification of the LNG, not the manufacture of LNG.

5. The question as to whether this facility as proposed, is a heavy industry is raised in this application and an analysis of whether this facility meets that definition is appropriate. The applicant goes to some length to explain away any possibility that this proposed facility could be considered a heavy industry. The application requires us to analyze the on-shore facility and ascertain whether characteristics found in the definition of "heavy industry use" are sufficiently present in the application to make a definitive determination.

The starting point for this analysis begins again with a definition of "manufacturing use."

"Manufacturing" means the mechanical or chemical transformation of organic or inorganic substances into new products characteristically using power-driven machines and materials handling equipment, and including establishments engaged in assembling component parts of manufactured products, provided the new product is not a structure or fixed improvement.

By its definition, manufacturing use is a process by which new products are produced and is allowable by permit in the Coastal Zone. However, a heavy industry, to be so classified, does not need to qualify under the manufacturing definition as part of the Department's analysis.

The analysis required to determine whether a use is a heavy industry is entirely different, and starts with a careful review of the definition:

"Heavy Industry Use" means a use characteristically involving more than 20 acres, and characteristically employing some but not necessarily all of such equipment such as, but not limited to, smokestacks, tanks, distillation or reaction columns, chemical processing equipment, scrubbing towers, pickling equipment and waste-treatment lagoons; which industry, although conceivably operable without polluting the environment, has the potential to pollute when equipment malfunctions or human error occurs. Examples of heavy industry are oil refineries, basic steel manufacturing plants, basic cellulosic pulp-paper mills, and chemical plants such as petrochemical complexes. An incinerator structure or facility which, including the incinerator, contains 5,000 square feet or more, whether public or private, is "heavy industry" for purpose of this chapter. Generic examples of uses not included in the definition of "heavy industry" are such uses as garment factories, automobile assembly plants and jewelry and leather goods manufacturing establishments, and on-shore facilities, less than 20 acres in size, consisting of warehouses, equipment repair and maintenance structures, open storage areas, office and communications buildings, helipads, parking space and other service or supply structures required for the transfer of materials and workers in support of off-shore research, exploration and development operations; provided, however, that on-shore facilities shall not include tank farms or storage tanks.

Found within Crown Landing's Application are representations that certain of the characteristics in the "heavy industry" definition will be employed at the facility. These characteristics include (1) a smokestack, (2) a distillation tower, (3) three tanks; a small tank farm is present and (4) it is contended that there will be chemical processing equipment. Additionally this facility will utilize approximately forty acres of land and about nineteen acres of Delaware River bed, excluding on-shore buffers and exclusive zones. This clearly utilizes more than the twenty (20) acre threshold discussed in the "heavy industry use" definition. If one looks at this facility in conjunction with the definition of "heavy industry use" on a characteristic basis (as opposed to a process based analysis found in the "manufacturing" definition) one can easily conclude the upland facility represents a new heavy industry use.

6. Another issue for your consideration entails further review of the definition of “Heavy Industry Use”. After listing examples of what the General Assembly believed clearly qualified as a heavy industry use the definition goes on to include generic examples not included in a heavy industry use. These examples describe what the Legislature deemed to be the process employed in classic manufacturing and other on-shore facilities as well as those appurtenances to the facility “provided, however, that on-shore facilities shall not include tank farms or storage tanks.”

Crown Landing, LLC’s Application clearly establishes that a small tank farm will be present on the proposed site. It may be argued that there is no “tank farm” but the tanks described in the application certainly will be used for on-shore storage. This contradicts the Applicant’s position that the upland facility is consistent with the Coastal Zone Act. Uses to be established in the Coastal Zone by permit, or those exempted by the Act, must be those facilities not encompassing a tank farm or on-shore storage tanks as set forth in the Act.

7. Another element to be considered under the heavy industry question is the facility’s “potential to pollute when equipment malfunctions or human error occurs”. The application addresses this issue by suggesting that in the event of a spill there is no potential to pollute, other than temporary thermal alteration of Delaware River water. It might be argued that a spill of LNG on lands adjacent to the River and pier might be considered pollution (destroying flora or fauna through asphyxiation or temperature effects), as might the dissipation of methane (a potent greenhouse gas). Were the boiled off methane to ignite, clearly the potential to pollute would be significant, considering the byproducts of combustion.
8. We’ve also investigated how the four other facilities around the country are classified under applicable land use and zoning laws. Obviously, Delaware’s Coastal Zone Act is a unique one and the manufacturing vs. bulk product transfer question is similarly unique to Delaware, so no comparison to other states can be made concerning that question. It is interesting to note, however, that while the Cove Point facility is located in an area zoned “light industrial” (as highlighted in the application) both the Elba Island, Georgia and Lake Charles, Louisiana facilities are located in areas zoned for heavy industry. The Everett, Massachusetts facility is zoned Industrial.
9. The application cites several instances where previous status determinations have been made that certain activities were governed under the Act, primarily due to a Delaware Supreme Court ruling in 1992 that the Act should be “construed liberally to effectuate its purposes”. In those instances, liberally construing the Act resulted in debatable activities being regulated under the Act. In the present case, the applicant is arguing for a liberal construction of the Act to ease the burden of regulation upon an applicant, in direct contrast to the purpose of the Act which was to “prohibit ...new heavy industry...and control industrial development...” A liberal construction of the Act (“to effectuate its purposes”) in this case would be to determine the activity to be a bulk product transfer facility and hence prohibited, not to classify the land based portion of the facility to be manufacturing so the pier could be exempted.

10. This application has generated a large amount of public commentary. Over 200 pieces of correspondence and/or telephone calls have been received, with all but one being opposed to the project.

The foregoing are our views on the application and the question before you. We have not considered the safety or environmental aspects of this project in this review because they are premature in the context of a status decision application. Should this project be deemed permissible, those issues should be carefully considered, as called for in the Act.

Cc: Keith Trostle