

**COASTAL ZONE CONVERSION PERMIT ACT REGULATORY ADVISORY COMMITTEE MEETING #10
 MARCH 12, 2019**

APPROVED BY THE CZCPA RAC ON APRIL 16, 2019

Disclaimer: This meeting summary was prepared by the Consensus Building Institute (CBI), a non-profit entity contracted by the Delaware Department of Natural Resources and Environmental Control (DNREC) to facilitate the Coastal Zone Conversion Permit Act (CZCPA) Regulatory Advisory Committee (RAC) meetings and draft meeting summaries. This summary is not intended to be a meeting transcript. Rather, it focuses on the main points covered during the meeting without attribution.

MEETING IN BRIEF

At its March 12, 2019 meeting, the CZCPA RAC discussed key issues related to its charge to advise DNREC on drafting regulations to implement the CZCPA. The RAC reviewed and approved the meeting summary from its February 19 meeting, reviewed public feedback from the Open Houses held on its preliminary recommendations, and sought consensus on final recommendations. The meeting closed with a brief discussion of next steps. The meeting also provided an opportunity for the public to comment on the topics being discussed by the RAC. A list of meeting participants is attached to the end of this summary in Appendix A. Presentation slides are available at de.gov/czcparac.

ACTION ITEMS

Who	What
RAC members	<ul style="list-style-type: none"> • Review all relevant draft materials prior to the April 16 meeting • Review draft meeting summary prior to the April 16 meeting
DNREC/DOJ	<ul style="list-style-type: none"> • Post all presentation slides, background materials, and the approved February 19 meeting summary to the CZCPA RAC webpage at de.gov/czcparac. • Distribute draft March 12 meeting summary to CZCPA RAC for review (will finalize at the April 16 meeting). • With CBI, develop draft agenda for April 16 meeting.
CBI	<ul style="list-style-type: none"> • Prepare the approved final CZPCA RAC recommendations for transmittal to the Chair and Secretary. • Prepare draft meeting summary. • Prepare draft Final Report.

UPCOMING MEETINGS AND EVENTS

Event	Date	Venue
RAC Meeting #11 (final meeting)	April 16, 2019, 9:00am-5:00pm	Buena Vista Conference Center (Buck Library), 661 S. DuPont Hwy, New Castle, DE 19720

The most detailed and up-to-date information on upcoming CZCPA meetings and events is posted on the Delaware Public Meeting Calendar at de.gov/czcpameetings.

DISCUSSION

Below is a summary of key topics discussed during the meeting. All presentation slides are available at de.gov/czcparac.

RAC Business

The February 19 meeting summary was approved by the RAC with no changes.

Public Feedback Review & Final Recommendation Development

The RAC reviewed public feedback from the Open Houses, submitted on and in response to their preliminary recommendations on key issues. RAC members also discussed any changes to their preliminary recommendations to be made before finalizing them for submission to DNREC. Please see Appendix B for the RAC's Final Recommendations to DNREC. The comments below are from RAC members unless otherwise specified.

Cross-Cutting Issues

On the Definition of "Project Site"

- Several RAC members reiterated their concern regarding subdivision of the 14 parcels, as well as inquiring as to whether the definition addressed public feedback about the potential expansion to adjacent properties.
 - DNREC Response: One cannot put a heavy industry use on an adjacent property; the only places that heavy industry uses can exist in the coastal zone are within the designated 14 parcels.
 - DOJ Response: When the law was passed, the General Assembly envisioned subdivision being a possibility for these sites. Any proposed heavy industry uses or bulk product transfer project, however, must get a Conversion Permit. The RAC could recommend against subdivision, but the Secretary cannot, by the authority granted to him, enact a regulation that would make that possible.
 - Facilitator Response: We will note RAC member concerns over subdivision in the RAC's Final Report.
- RAC members expressed concern over having different types of heavy industry use sites adjacent to one another. In particular, RAC members wanted to know whether the Secretary had discretion to factor the synergistic and/or cumulative effects of neighboring heavy industry uses (that may, for example, not be conducive to a safe operating environment if placed in close proximity to one other) into permit decisions.
 - DOJ Response: The Secretary does have the discretion to consider factors like incompatibility of industries, in which case the second permit applicant would have to make a case for those two industries being next to each other.
 - DNREC Response: Factoring in cumulative effects would come into play under financial assurance. Applicants would have to look at what is around them and what could happen. If the RAC wants financial assurance to consider something that goes beyond the boundary of the site, it needs to make a recommendation. The CZA does not focus on neighboring properties with regards to financial assurance.
- Do county and local government zoning laws supersede the CZA, as far as allowable uses on the site go? For example, if, in the future, one of the 14 sites were to be zoned out of heavy industry use by a local or county authority, would that prevent a heavy industry use from being built on that site?

- DOJ Response: The CZA requires compliance with local, county, state, and federal regulations. If the county or municipality decided to be proactive and initiate restrictions, applicants would have to be compliant with the county.

On the Definition of “Useful Life”

The RAC only discussed “Useful Life” in relation to Permit Duration. See this discussion below.

On Permit Duration

- What is the reasoning behind a 20-year permit duration and a 30-year useful facility life? Why wouldn't we just line these two values up?
 - DNREC Response: Useful life is primarily for the purpose of planning for sea level rise. A 20-year permit life was decided upon for compatibility with financial assurance and other business-related planning. Operationally speaking, this permit timeframe made more sense.
- RAC members requested that their recommendations explicitly state that permit duration is contingent upon compliance with all other reporting requirements, and that during the course of a permit, elements such as SLR planning and financial assurance will need to be “refreshed.”
- At the suggestion of the RAC, for clarity purposes, the sequencing of final recommendations on cross-cutting issues was adjusted to the following order:
 - Definition of “Project Site”
 - Definition of “Useful Life”
 - Permit Duration
 - Permit Monitoring and Reporting Post-Approval
 - Permit Revocation
 - Permit Modification
 - Permit Renewal

On Permit Modification

- How will the public know when permit modification decisions are made? There's a public review process for major modifications, but for minor modifications, what is the transparency obligation?
 - DNREC Response: All permit modification information is subject to Freedom of Information Act (FOIA) requests. There is no impact of consequence with a minor modification. Anything that would be greater than an administrative correction, would fall under a major modification. Major modifications, as presently recommended, have a public notice and review component. DNREC can put a process in place to post minor modification notices on its website and listservs.
- Could subdivision fall under a major modification? Could this be something that triggers a new permit? It could be a chance for review and public notice of the property. There may be things that fall outside of the original permit.
 - DNREC Response: Changing the boundary of a property would absolutely fall under a major modification or a new permit. It depends upon what the effect of the subdivision would be.

On Permit Renewal

- RAC members expressed diverging opinions over recommendation language that indicated a “presumption that a permit will be renewed” if a permittee's compliance record was positive.

Some RAC members felt that including “presumption” language implied that the onus to prove noncompliance was on the public, when the burden should instead always be on the permittee to prove compliance. Other RAC members felt that, given the transactions costs of the permit process, having recommendation language that indicated a “presumption that the permit will be renewed” offered assurance to the business community that if they comply with the requirements set before them, conversion permits will be renewed. Other RAC members felt that the inclusion or exclusion of such language was immaterial, given that DNREC would likely carry out its permit renewal process in line with the “presumption” language regardless.

- DOJ Response: Any challenge on a permit renewal decision by the Secretary, if brought to the courts, would be judged on whether there was an “abuse of discretion” by the Secretary in making the permit decision. This discretion is not abstract. There are checks and balances on how the Secretary exercises his authority.
- Renewal is not something that currently exists, and this is something new that RAC has come up with. Would changing the term from “renewal” to “update” illustrate the idea that we are “refreshing” the permit and are updating it for current parameters? If I understood the RAC’s intent, it was to make sure that everything is always current. If this is done, would that change the perception of renewal?
 - DNREC Response: The difference between the existing, “standard” CZA permits and conversion permits is the ongoing cost of monitoring compliance due to offsets, financial assurance, and other reporting requirements. There is no way a one-time permit fee is going to cover the Department’s cost. So, there is a nuts and bolts reason for permit renewals.
- Facilitator clarification: DNREC/DOJ will work on the language surrounding permit renewals for the regulations. With regards to final recommendations, we will bracket this language off as something the RAC couldn’t come to consensus on and address the issue further in the RAC’s Final Report.

On Permit Revocation

- What does the “other” under revocation mean? Is this a placeholder, a catchall, etc.?
 - DOJ Response: We should review these criteria, which are likely to become permanent conditions. Is the RAC recommending an “including, but not limited to” or a concrete list?
- The RAC agreed to adjust this language as “including but not limited to” and removing a reference to “other.”

On Permit Monitoring and Reporting Post-Approval

- The RAC did not discuss any changes to their preliminary recommendation regarding permit monitoring and reporting post-approval. DNREC clarified that this section dictates the monitoring of whatever the other sections require (e.g., sea level rise, financial assurance, offsets, etc.).

Bulk Product Transfer Facilities

The RAC did not discuss any changes to their preliminary recommendations regarding Bulk Product Transfer Facilities.

Plans for Potential Impacts of Sea Level Rise and Coastal Storms

On FEMA Maps

- I would like to address the public comment that notes concern about the validity of the FEMA maps. Is DNREC bound by FEMA maps for its review of Sea Level Rise and Coastal Storm Plans? Or can some kind of flexibility be added to the recommendations that allows for inclusion of “best available data” if DNREC’s flood maps differ from FEMA maps?
 - DOJ Response: Based on case law, we lack the flexibility we would ordinarily like to have to incorporate into regulations the reference standards we have. The Secretary is in a box where he will need to figure out which criteria based on which maps he would like to use as the foundation for the regulations. This prevents backsliding, but the disadvantage is that we cannot amend and adapt to changes (for example, what is on FEMA maps) without also amending the regulations. Everyone should understand that the Secretary will have to make a decision as to which criteria he will apply to these regulations and this decision is frozen unless changed through a regulation amendment process.

On Sea Level Rise and Coastal Storm Plan Updates

- What authority would prevent an applicant from submitting the same report every 10 years? What avenue does DNREC have to enforce the requirements of the updates so that updating the plan is not a “copy-paste” job?
 - DNREC Response: The same authority that allows DNREC to say, “this is not correct” with regards to something like a toxicology report. There is nothing that stops the Department from exercising technical discretion. DNREC has the authority to say, “This is not correct or up to date and we expect you to revise the report with the latest data available.”
- Do these 10-year reports go out for public comment every cycle? If permittees make changes, would this trigger a public comment process? In some permit decisions, for example, the Secretary can determine whether or not an update warrants a public hearing, and if not, the public has 20 days to comment.
 - The RAC agreed to add language to their final recommendations to ask that updates to a permittee’s Sea Level Rise and Coastal Storm Plan be posted on the DNREC website and be subject to written public comment.

On Other Issues

- In response to feedback from the public, the RAC agreed that it should add language about requiring a permittee to illustrate how they will safely “shut down” (i.e., temporarily suspend) facility operations in the event of a disaster or dangerous coastal storm. It was noted that such plans would be tailored for different facility needs.
- The RAC agreed that including “Category 1” hurricanes as a term for the measure of wind speed to prepare for was unnecessary. The 95-mph wind speed was accepted as a sufficient baseline.

Economic Effect

- Evaluation of economic effect should take into account the current use of the site, as well, especially if that current use is not a heavy industry use. This was brought up in the public feedback, and I think it’s an important point.

- I am concerned about permittee accountability with respect to the creation of jobs permittees promise in their applications. Could we set a percentage or number onto income generated in order to make it a more tangible metric?
 - DNREC Response: Perhaps this is something that comes into play when looking at renewal? What is the Secretary's authority other than looking at the economic data and making a decision?
 - DOJ Response: Frankly, from a resource standpoint, how far the RAC can push the DNREC Secretary to monitor economic information is unclear, but such monitoring is beyond the scope of the Act.
 - The RAC discussed this previously. The state cannot mandate any kind of percentage of local jobs created. This can be done through a specific project labor agreement. It cannot be done any other way. Only the union can dictate these numbers through these voluntary agreements.
 - DNREC Response: Noting and tracking economic development, as a result of conversion permit development, is under the purview of the Division of Small Business
- RAC members expressed differing opinions on whether or not conversion permit applicants should be required to disclose possible negative economic impacts. Some felt negative impacts, like the loss of nearby property values, are reasonable to take into account. Others felt it contradicted the spirit of the CZCPA to force applicants to provide this information, given that the Act was passed to help spur economic development. One RAC member stated that the onus should be on DNREC to ask for this information if necessary, for permit decision-making.
- Will DNREC ensure it takes into account potential negative economic impacts when evaluating conversion permits? How will DNREC prove to the public that they have addressed this issue?
 - DNREC Response: The RAC can make a recommendation for DNREC to factor such information into its evaluation of a conversion permit application. The public can also make public comments on this issue. If a meritorious public comment is made, then DNREC will have to respond to it in a technical response memo.

Financial Assurance

- How can the drafting team look at “synergistic effects” of two heavy industry use facilities located next to each other? The legislation just says “cumulative impacts” need to be taken into account.
 - DOJ Response: This notion is already addressed in the existing CZA regulations; see Section 8.3.2 of the Regulations Governing Delaware's Coastal Zone.
- What are the checks and balances in place to prevent, say, an “acid” facility and a “base” facility being placed next to each other and causing a catastrophic incident?
 - DNREC Response: This is covered under financial assurance. The applicant and insurer must evaluate the worst case scenario, asking what is needed to prevent and/or mitigate such an event and what is needed to get financial assurance for it. DNREC can then look at this to see if the financial assurances are adequate to cover such cases. Incompatible uses and synergistic effects will be captured in environmental impacts and financial assurance.

Environmental Impacts and Offsets

- In situations where there is no direct offset that matches the impact, could there be an offset option that allows for creating a project that provides recreational or community uplift, along with ecological uplift, so that at least the affected community is provided some sort of benefit?
- Should we ensure companies have the most up-to-date technology to monitor emissions from their own plants? Can we take this into account when considering environmental impacts and offsets?
 - DRNEC Response: This consideration would be included under the air permit process.

Decisions

The RAC came to general consensus and made final recommendations on all six topic areas addressed in its preliminary recommendations: Cross-Cutting Issues, Bulk Product Transfer Facilities, Plans for Potential Impacts of Sea Level Rise and Coastal Storms, Economic Effect, Financial Assurance, and Environmental Impacts and Offsets. The RAC’s final recommendations to DNREC are found in Appendix B¹.

The CZCPA RAC Final Report will include information on how changing project site boundaries are a major permit modification, address concerns about subdivision of heavy industry use sites, and touch on the disagreement among RAC members on expected permit renewal language.

Next Steps

Patrick Field (CBI) reviewed the next steps in the RAC process and action items (listed on page 1). Between March and April, the CZCPA RAC Final Report will be written and will summarize the RAC process, as well as detail the final recommendations. DNREC noted that its staff has been working on drafting regulations based on the RAC’s preliminary recommendations. DNREC also indicated that they met with the Coastal Zone Industrial Control Board (CZICB) about the Board’s role in the regulation development process. The CZICB was open to the idea of holding a joint public hearing with DNREC on the draft regulations and then meeting publicly again (perhaps the same day) to hold a vote on the draft regulations. DNREC also noted that this public hearing (and others, if scheduled), along with public comments received, could result in DNREC making changes to the draft regulations. The public hearing is currently scheduled for **Monday, June 24, 2019 at 7:00pm**. DNREC said it hopes to be able share draft regulations at the April 16 RAC meeting.

CZCPA Regulations – Tentative Timeline for Promulgation (2019)	
May 10	Submit regulations to DNREC Registrar
May 30	Submit notice of public hearing to newspapers
June 24	Public Hearing
July 9	Public Comment Period closes
July 9 –September 15	DNREC prepares technical response memo and makes changes to the regulation in response to comments; DNREC Regulatory Specialist prepares a Hearing Officer’s Report with a recommendation to the Secretary; Secretary drafts an Order with decision on regulations; final regulations submitted to DNREC Registrar

¹ Appendix B reflects the editing suggestions made during the RAC’s discussions.

September 15	Deadline for DNREC Registrar to submit final regulations to State Registrar
October 1	Publication in the Register of Regulations

RAC members had the following questions:

- Could we add an extra week to the Public Comment Period? The period closes around the 4th of July and the end of the legislative session, which is a busy season. We especially owe the public this, given that the 2017 public workshops and comment period were held during the holiday season, RAC meetings have been during the day, and the public feedback period for the Open Houses was less than a week long. Moreover, people often use the public hearing to formulate and clarify the comments they may want to make.
 - DNREC Response: We are on a very tight timeline to make the legislatively mandated October 1, 2019 deadline. It is possible that the public comment period could be extended and a second public hearing could be held, but this will be at the discretion of the hearing officer.
 - DOJ Response: As DNREC mentioned, if public comment causes major changes to be made to the regulations, this could trigger a longer public comment period and would truncate the timeframe to meet the October 1 deadline. In other words, advancing the July 9 date would compress the Secretary’s turnaround time for a decision. However, we need to allow for this possibility.
- Will DNREC be open to pre-draft regulation publication changes?
 - DOJ Response: The April 16 meeting is a chance for a preliminary vetting before formal publication of the draft regulations. We do not want a longer pre-publication phase to delay or cut into the formal public comment period.
 - Facilitator Clarification: As a reminder, the intent of the RAC is to reach consensus, to the extent possible, on recommendations to the Secretary. When it comes to the published regulations, RAC members are commenting only as individuals.
- There were some comments from the Open Houses that raised concerns about DNREC’s ability to manage the conversion permit program. How can such a small group within DNREC manage this? What are the resources to go forward and staff this?
 - DNREC Response: DNREC will be bringing on more staff in preparation for the new regulations. We are also willing to go back to the General Assembly to ask for more funding, if necessary, to properly run this program.

Public Comment

Bill Dunn (Civic League for New Castle County)

- Comment #1 (beginning of the RAC meeting): My comment today is based on comments I’ve made at previous meetings. First, these regulatory aspects should focus far greater on the kinds of things that come into play with industrial facilities, specifically industrial control systems for sites along the Delaware River. Industrial fallout will directly affect the Delaware River and will reach the Delaware Bay. Secondly, I went and spoke in front of the Joint Finance Committee about DNREC’s deficiencies regarding the recent Croda incident and issues with the Delaware City Refinery. I also had a conversation with your facilitator at one of the public meetings and was told that the RAC is controlled by what is noted in House Bill 190. I responded by saying that we need to look back to

the Delaware constitution, the preamble in particular, as it notes that we need to protect the rights of Delaware citizens. We should be focusing on industrial control systems to set up the safest long-term standards; what you have focused on is really the perimeter. The RAC members should really consider the long-term effect of this process, particularly given DNREC's past shortcomings its industrial oversight. RAC Members should feel personally obligated to go beyond where they have so far in this process.

- Comment #2 (end of the RAC meeting): If requested, the hearing officer will hold the public comment record open for 30 days. We really should give consideration to this extended window. One of the issues that has risen to the top for me is that DNREC says industrial controls are part of the air permitting process. There is nothing that says that DNREC cannot develop regulations for these control systems for what goes on at these 14 sites. DNREC's already has recent history with Croda and the Delaware City Refinery; more than likely, everything occurring at these sites fell within DNREC's regulations. Having this type of situation develop again within these 14 sites is completely unacceptable and demonstrates flagrant disregard of the public based on what is being offered up to the business community. There should be interlock systems that, as soon as a leak is recognized, triggers an automatic stoppage of dangerous chemicals from leaking out into the environment, unlike with what happened at Croda with the ethylene oxide leak. You're going to allow at least 13 new developments of industrial operations and are relying on existing regulations as an acceptable way to evaluate what is necessary before putting them right on the Delaware River. I think RAC members see some value in what I am trying to put forth and need to speak up and say, "We need to do a little more." We have to pressure DNREC to define something better so that we don't have to cross these bridges again. The RAC is not as constrained in its scope as what DNREC would like for you to believe.

Adjournment

CBI Facilitator, Pat Field, adjourned the RAC at approximately 3:30pm.

APPENDIX A: PARTICIPANT LIST

RAC members (and designated alternates sitting in for RAC members)

Neeraj Batta	Batta Environmental
Brenna Goggin	Delaware Nature Society
Michael Hackendorn	Delaware Building and Construction Trades Council
Ronald Handy, Sr.	Boys & Girls Club of Delaware
Ronald “Kimoko” Harris (Designated Alternate for William Ashe)	International Longshoreman's Association 1883
S. Douglas Hokuf, Jr.	New Castle County
Tim Konkus	Delaware City Marina and Main Street Delaware City, Inc.
Larry Lambert	Claymont Renaissance Development Corporation
Tim Lucas (Designated Alternate for Herb Inden)	City of Wilmington
James Maravelias	AFL-CIO
Jerry Medd	Pilots’ Association for the Bay and River Delaware
Joshua Moody (Designated Alternate for Jennifer Adkins)	Partnership for Delaware Estuary
Jeffrey Richardson	Imani Energy
Robert Whetzel	Richards, Layton & Finger
Delores Whildin	Resident of Claymont
Marian Young	BrightFields, Inc.

DNREC staff and other state employees

Dirk Durstein	Delaware DOJ
Judy Jordan	Delaware DNREC
Brittany Klecan	Delaware DNREC
Andrea Kreiner	Delaware DNREC
Bob Scarborough	Delaware DNREC
Jameson Tweedie	Delaware DOJ
Ian Yue	Delaware DNREC

Facilitation team

Patrick Field	Consensus Building Institute
Sofia Soto Reyes	Consensus Building Institute

Members of the public (including designated alternates not sitting in for RAC members)

Bill Dunn	Civic League for New Castle County
Donald Frisco	Delaware Resident
Fred Longren	Self
Sherry Marsico	Self
Mary Peck (Designated Alternate for Brenna Goggin)	Delaware Nature Society
Angelique Rodriguez	Delaware LECET
Mike Teichman	Parkowski, Guerke & Swayze

APPENDIX B: FINAL RECOMMENDATIONS TO DNREC – APPROVED BY THE CZCPA RAC ON MARCH 12, 2019

Final Recommendations regarding the Definition of “Project Site”

“Project Site” means the physical location at which a permitted facility operates or the location where a proposed project, that is the subject of a conversion permit application, will operate. A project site may comprise an entire tax parcel, or parcels, or part(s) of any tax parcel(s); however, its preliminary boundary shall be defined prior to the issuance of a permit in the application for a permit, and its final boundary, after a permit is granted by the Secretary, shall be defined in the permit. For nonconforming uses, if a project site’s boundary is not defined in a permit, the boundary is the footprint in Appendix B of the Regulations Governing Delaware’s Coastal Zone. A conversion permit may not be granted for a heavy industry use or bulk product transfer facility outside a heavy industry use site depicted in Appendix B.²

Final Recommendations regarding the Definition of “Useful Life”

“Useful life” means the period of time that an applicant or permittee expects to operate a facility that requires a coastal zone conversion permit. The useful life equals thirty (30) years unless the Secretary allows an application for, or issue a permit for, a different time period. *This definition is potentially pertinent to sea level rise planning, financial assurances, permit duration, and offsets.*

Final Recommendations regarding Permit Duration

Conversion permit duration (both for the initial permit and any renewed permit) should be 20 years.

Final Recommendations regarding Permit Monitoring and Reporting Post-Approval

For Site Plans for Sea Level Rise and Coastal Storm Impacts: At least every 10 years, the permittee should update their Sea Level Rise and Coastal Storm Plan for the project site.

For Offsets: Applicant should provide a monitoring schedule that describes a process for 3rd party verification of offset project operation and completion.

For Financial Assurance: A conversion permittee should annually, within ten (10) days of the anniversary date of issuance of its permit, submit to DNREC evidence that the financial assurance required by the permit is in effect in the amount required by the permit and that the permittee has taken all necessary measures to ensure that the financial assurance will remain in effect throughout the duration of the permit.

For Bulk Product Transfer: The permittee should submit an annual report (as previously recommended by RAC).

For Site Inspections: DNREC access should be allowed to the site at reasonable times and on a regular basis, with reasonable times generally meaning operating hours.

² The CZCPA RAC Final Report will include information on how changing project site boundaries is a major permit modification. The Final Report will also address concerns about subdivision of heavy industry use sites.

Final Recommendations regarding Permit Revocation

The Secretary may revoke a permit for significant or repeated violations, including but not limited to:

- a lapse in financial assurance;
- failure to complete or maintain an offset;
- denial of DNREC access to the permitted site or to records related to (or required to be kept by) a permittee; or
- making any false statement, representation, or certification in an application, record, report, plan, or other document filed (or required to be maintained by) the permit.

Final Recommendations regarding Permit Modification

Modifications to an existing permit would be allowed. If the Secretary grants a request for a modification, only the conditions subject to modification are reopened. The remainder of the permit remains as is.

Modifications would occur in two forms:

- *Minor modifications* would be for administrative changes and would not require a public notice. Administrative changes include, but are not limited to, corrections of spelling or grammatical errors, a change in only the name of the owner or operator of a permittee, or other administrative matters that do not affect the substantive requirements prescribed by the permit. DNREC should post minor modifications on its website and listservs.
- *Major modifications* would be changes that affect the substantive requirements of the permit and would require public notice and review. A modification of the ownership or operating entity in a permit shall be granted only in the event that the prospective permittee satisfies all the applicable requirements under these regulations.

Final Recommendations regarding Permit Renewal

Conversion permit renewal should be allowed. The application for permit renewal should be submitted no fewer than 180 days prior to expiration. So long as there is a timely renewal application, the permit should continue until the renewal application is acted upon by DNREC. The RAC notes that DNREC has permitting timelines required under the Coastal Zone Act.

The renewal process should be streamlined, as compared to the original application, and focused on environmental impacts and offsets, financial assurance, and sea level rise and coastal storm planning and should take into account the applicant's compliance record. [Like other major environmental permits, the renewal process is expected to update relevant permit terms, as necessary, and be renewed contingent on the applicant's positive compliance record.]³

³ The CZCPA RAC did not come to consensus on the sentence in brackets. Differences of opinion and views among RAC Members, as it relates to this sentence, will be addressed in the CZCPA RAC Final Report.

Final Recommendations regarding Bulk Product Transfer Facilities

Conversion permit regulations should require that:

- The following record keeping conditions apply to conversion permits:
 1. Records of specified bulk product transfer information (e.g., quantity of bulk product transfer, final destination of the product, date of product export) be kept on site at the bulk product transfer facility,
 2. Bulk product transfer of grain only be required to keep records on the quantities and dates of imports and exports, and
 3. A summary of the specified information be submitted to DNREC on an annual basis;
- Conversion permits be written to incorporate product categories, so as to minimize the need for permit modification or new permits for minor, related changes in bulk products imported or exported; and
- Addition of a new bulk product category, not included in the existing permit, may require a permit modification or new permit due to potential impacts on financial assurance or environmental offset.

Final Recommendations regarding Plans for Potential Impacts of Sea Level Rise and Coastal Storms

Conversion permit regulations should require that:

- The Plan detail risk, likely impacts, and mitigation measures for the following geographic areas:
 1. The site's shoreline,
 2. Docks, piers, and offshore pipelines,
 3. All remediation areas on-site (including completed remediation areas and those in progress)
 4. All structures on-site, and
 5. Ingress/egress routes;
- The Plan include a discussion of any potential negative impacts to adjacent parcels resulting from development and flood mitigation activities; and
- The Plan address the following hazards over the anticipated useful facility life:
 1. Flooding, including the:
 - a. 1% chance flood (the current 100-year floodplain as defined by the effective FEMA maps),
 - b. 0.2% chance flood (the current 500-year floodplain as defined by the effective FEMA maps),
 - c. High sea level rise scenario (as defined by the effective Delaware Sea Level Rise Technical Committee recommendations), and
 - d. Combined effect of sea level rise and 1% chance flood;
 2. Shoreline erosion; and
 3. Wind speeds up to 95 mph, sustained.
- The Plan address measures necessary to evacuate, suspend operation(s), and secure the facility, when necessary, due to significant coastal storm events.

- Any update to a permittee’s Sea Level Rise and Coastal Storm Plan should be posted on the DNREC website for the public and be subject to written public comment for 30 days.

Final Recommendations regarding Economic Effect

- Conversion permit regulations should define “existing or previous use” to mean the same as “most recent heavy industry use” or current use (if not a heavy industry use). Regulations should also hold that “economic effect” and “net economic improvement” use the same economic metrics.
- In order to ensure a commonly understood baseline for economic effect, the State of Delaware will prepare a “baseline report” that will detail the economic effect of the most recent heavy industry use and current use (if not a heavy industry use) of the 14 sites. The applicant may use this baseline report, plus additional information they want to include, to prepare their conversion permit application.
- Conversion permit regulations should require that the applicant submit economic metrics for the following categories when reporting economic effect and net economic improvement:

Category	Specific Project Information Requested
Project Cost	Remediation, demolition, construction, operations, and capital costs; total investment costs
Tax Revenue	Property tax, gross receipts tax, personal income tax, corporate income tax, and other taxes; conversion permit applicants could be asked to take into account tax incentives or credits received or anticipated, as well as income tax write-offs in the tax numbers provided
Employment	Number of jobs and the expected duration and type of each job or category (such as whether the job is permanent/temporary, full-time/part-time, contractor/permanent); wages; and occupation distribution for all jobs expected to be created for site preparation, construction, and facility operations
State- and Community-Level Effect	Identification of local hiring preferences; local purchasing preferences; and investments in community benefit agreements, workforce development programs, or educational programs
Other Costs to the State	Tax incentives and credits; required infrastructure investment

- The RAC recommends that the Secretary consider any potential negative economic effect from the activity or facility set forth in the conversion permit.
- The RAC agreed that DNREC should verify the economic information submitted by the applicant. DNREC may use any number of options for verifying the applicant's submitted economic effect data and conclusions. These options could include, but are not limited to, applicant-provided data and case studies, state agency review by the appropriate agencies and staff, retention of an expert academic or consulting economist or economics firm, or the establishment of a more formal panel of experts from across the state (state employees and/or others).
- The RAC emphasizes that local, robust hiring is an intent and goal of the CZCPA. Thus, the RAC recommends that the Secretary, to the degree his or her role and authorities allow, seek to encourage and ensure such local hiring preferences and actions.

Final Recommendations regarding Environmental Impact

- DNREC should produce a baseline report of current use and existing environmental conditions, impacts, and risks on the 14 heavy industry use sites (including but not limited to those items described in Section 7015). In his or her conversion permit application, the applicant may describe any proposed changes from that baseline, further elaborating on the DNREC baseline report as they wish (including providing additional information on the environmental history of the site, if necessary, to explain how the existing environmental conditions came about).
- For CZCPA purposes, environmental impacts should be characterized in the same manner used to characterize environmental impacts under the current CZA permit program, consistent with the existing CZA statutory definition of "environmental impact" (Section 7004(b)(1)).
- Direct and cumulative impacts should continue to be considered for conversion permits, per the existing Regulations Governing Delaware's Coastal Zone, Section 8.3.2.

Final Recommendations regarding Offsets to Environmental Impacts

1. Note that under 7 Del. C. § 7014 all offset proposals shall favor offsets that directly benefit Delaware.
2. The offset proposal must more than offset all environmental impacts (including but not limited to one-time impacts and annual environmental impacts over the duration of the permit (life of the facility?)).
3. An offset project should be located as close as possible to the site and, to the greatest extent possible be consistent with the negative impact in medium, duration, timing and pollutant.
 - a. For example, if adverse impact is the emission of 10 lb of NO_x annually over the useful life of the plant, the most suitable offset is to reduce another source of NO_x on the site by more than the new emission over the useful life of the plant.
 - b. Or if a new process will emit 90 decibels of noise 12 hours a day over some specified time period, the offset could focus on reducing other sources of noise in the community (e.g., building structures to reduce noise for a nearby highway or facilitating a change in truck

routes to reduce truck-related noise in the local community).

4. If the applicant is unable to identify an offset for the same pollutant in the same medium on or close to the site, then they should offset a similar pollutant or environmental impact. “Similar” means a pollutant that has the same type of effect on the environment when it is released (e.g., offset a benzene (VOC) emission that would affect ozone with a different VOC (xylene)).
5. If it is not possible to offset a particular environmental impact on or near the site, then the applicant should identify an offset project for the pollutant in the same medium somewhere else in the Coastal Zone, but as close as possible to the site.
6. If it is not possible to offset the same pollutant or impact somewhere else in the Coastal Zone, then the applicant should search for another location in Delaware, with preference given to potential projects closer to the Coastal Zone.
7. If the applicant is not able to identify an appropriate offset project through the previous steps, they should consider:
 - a. the environmental effect and attempt to identify an offset as close to the site as possible that will counter that negative effect; or
 - b. an offset for the same pollutant in a different medium as close to the site as possible.
8. If the applicant is not able to identify an appropriate offset project through the previous steps, applicant may propose an alternative environment improvement project of commensurate value to Delaware’s coastal resources, as close to the site as possible. Such projects might include recreational access opportunities, waterfront community engagement, or other community benefits, with a nexus to net ecological improvement.
9. Related considerations and recommendations:
 - a. To the extent feasible the offset process should encourage concurrent permitting or consultation to provide administrative efficiencies and facilitate coordination among the applicant and regulators.
 - b. With respect to the location of offset projects, local impacts should be offset locally.
 - c. Minimizing environmental impacts is a priority in the CZCPA process. The offset process is intended to address environmental impacts that cannot be avoided or further minimized.
 - d. The existence of an offset process does not in any way limit DNREC’s authority to reject conversion permit applications with environmental impacts determined to be too severe or for which potential offset projects have insufficient nexus.
 - e. The Secretary should provide greater clarity on the process and procedures for demonstrating offset consistency with these rules and priorities.

Final Recommendations regarding Financial Assurance

Below is a table of recommendations per financial assurances. This table provides information on: (1) event categories of expected financial risk, (2) the process used in establishing financial assurances for each risk event, (3) the way to determine the amount of financial assurances necessary to meet the requirements of the Act, (4) the types of financial assurance instruments available, and (5) each instrument's ability to both adapt to the time horizon of a risk event and to ensure funds are available in the time and amount necessary.

In addition to this table, the RAC offered the following recommendations:

- Financial assurances, in general, must be commensurate with the use (and its associated risks) proposed by the conversion permit applicant.
- The form and amount of financial assurances should be reviewed at appropriate periodic intervals, since financial conditions can change once a conversion permit is in place. Such review should occur for the life of that permit.
- The Secretary should define more clearly “environmental damage,” as outlined in the statute. Does such damage include natural resources damages, public health damages, or economic loss associated with natural resource-related activities such as fishing, swimming, boating, and beach going?
- The RAC supports providing a range of financial assurance instruments, from trust funds to captive insurance, as described in the table below. However, self-insurance instruments are not preferred for actions to minimize environmental damage and stabilize and secure the site upon termination, abandonment, or liquidation of site activities, since that time frame is likely many decades out and/or bankruptcy could cause such closure. Thus, the RAC recommends the following:
 - The Secretary should consider either offering expedited or less complex review for applicants who use third-party instruments or a clearly described, stepped process where the applicant has to explain why, how, and what protections are in place should they utilize self-insurance options.
 - Like all instruments, self-insurance instruments will need to be reviewed at appropriate periodic intervals.
 - DNREC review of self-insurance options will likely require expertise beyond DNREC's current staffing and expertise. Thus, the Secretary should ensure that, for any applicant utilizing self-insurance, DNREC is able to cover the additional administrative costs of reviewing and considering such financial instruments and that such costs be taken into account when determining the application fee.
 - The RAC encourages the Secretary to ensure that he or she has the authority, in the periodic review of self-insurance instruments, to require those who self-insure to carry a blended approach of third-party and self-insurance instruments and/or to move to only third-party instruments, as circumstances merit.

		damage, including DNREC oversight/ administration costs. The face value should be downward adjusted to the degree existing FA covers such actions.							
Maintenance or repair of site or infrastructure improvements to address sea level rise or coastal storms Time Horizon: Short to Long Term	CZCPA applications should identify any site or infrastructure improvements that will be undertaken to address sea level rise or coastal storms. DNREC conducts application-specific evaluation of the extent to which FA is needed to ensure sufficient funds to address associated maintenance and/or potential future repair.	Face value should be equal to the estimated cost to maintain and/or repair relevant infrastructure and site improvements, including DNREC oversight/ administration costs. The face value should be downward adjusted to the degree existing FA covers such actions.	●	●	●	●	● <i>Short Term</i> ● <i>Medium to Long Term</i>	● <i>Short Term</i> ● <i>Medium to Long Term</i>	● <i>Short Term</i> ● <i>Medium to Long Term</i>

KEY:

- FA instrument is adaptive to the time horizon of the risk event **and** provides reasonable assurance of funds availability in the timing and amounts necessary assuming the instrument is structured correctly.
- FA instrument is not easily adapted to the time horizon of the risk event **or** may not provide reasonable assurance of funds availability in the timing and amounts suggested by the risk event category.
- FA instrument is not easily adapted to the time horizon of the risk event **and** does not provide the regulator with reasonable assurance of funds availability.