

**COASTAL ZONE CONVERSION PERMIT ACT REGULATORY ADVISORY COMMITTEE MEETING #11
APRIL 16, 2019**

APPROVED BY THE CZCPA RAC CHAIR ON MAY 8, 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 April 16, 2019 meeting, the CZCPA RAC concluded discussion on its finalized recommendations. The RAC also reviewed and approved the meeting summary from its March 12 meeting and reviewed its Final Report. The meeting closed with RAC members signing the Final Report, a brief discussion of next steps, and a small ceremony to celebrate the work of the RAC. 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/czcpa.

ACTION ITEMS

| Who | What |
|---------------|---|
| DNREC/ DOJ | <ul style="list-style-type: none">• Post all presentation slides, background materials, and the approved March 12 meeting summary to the CZCPA RAC webpage at de.gov/czcpa.• Deliver the RAC’s Final Report/Recommendations to the Secretary• Seek signatures from RAC members that were absent |
| CBI | <ul style="list-style-type: none">• Finalize RAC Final Report for transmittal to the RAC Chair and the Secretary• Prepare draft meeting summary |

The most detailed and up-to-date information on 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/czcpa.

RAC Business

The March 12 meeting summary was approved by the RAC with no changes.

Welcome and Opening Comments

Governor of Delaware John Carney and DNREC Secretary Shawn Garvin addressed RAC members and the members of the public present.

Secretary Garvin and Governor Carney’s full remarks are noted below.

Remarks from Secretary Shawn Garvin (DNREC)

I want to thank you [the RAC] for taking this process on. From the outset, Justice Holland said he would serve on the RAC, but felt it was important that he was not a voting member, viewing his job as a way to keep things moving forward. He was concerned that if he were to be a voting member of the RAC, there could be a misperception of him providing his own opinions rather than guidance. As you all know, I have kept a fairly low profile, and I have told you that I wanted you to do your work. To keep me up to speed about your progress, the Justice and I met right before the holidays in December. Justice Holland has also passed along letters sent from the RAC throughout this process.

I cannot thank you enough for taking on this huge responsibility. We are talking about something that has come with a lot of attention. You all come with different perspectives and were selected to come to the table and work together with the goal of providing recommendations for a path forward on the regulations. I know it has been an interesting process, but these are high stakes. As I said at the beginning of this process, when the bill [Coastal Zone Conversion Permit Act] was passed, it was an effort to provide economic opportunities for the future, while maintaining the integrity and goals of the CZA (Coastal Zone Act). How do we continue to protect natural areas along the coastline as well as protect areas that were already developed, while also addressing new issues brought up in the Coastal Zone Conversion Permit Act such as climate change?

Your day is not done yet, as I know you have one more meeting to deliberate. The Justice has told me that you have made dozens of consensus recommendations and two on which you have not reached consensus. I hope I will be able to receive a full set of recommendations with consensus, but if not, you have still exceeded expectations for coming up with a suite of recommendations to the point that gives us [DNREC] a path forward. That is not to say that after today everything is finished; we still have to put forth regulations with an open and transparent process and with input from the public. The Governor will be joining us shortly and he has made it known to me that he would not mind having regulations finished earlier than October 1, 2019. We still have lots of work to get done; we need you in dialogue in our regulation development process. We have also been working with the Delaware Coastal Zone Industrial Control Board (CZICB) to be efficient with our time and have both our processes be as open as possible to reach our goals.

I also want to thank our staff at DNREC and our colleagues at the Department of Justice (DOJ); there has been a lot of incredible work and great outreach. One of the first things that was part of the discussion after the bill was passed were two town hall meetings to get input from the public about how the regulation development process should look, from the law being signed to regulations being passed. One of things we knew going in was that there were 14 sites and many communities around those 14 sites. How do we make sure we are getting information into those communities? More importantly, how do we make sure we are getting information out of those communities to encourage dialogue? One of things we [DNREC] are working on is bringing more of an environmental justice focus into the Department. How is this part of the way that we think about decision-making on a regular basis? We know that environmental justice is not just something you do; it's a continual process. The RAC process has made sure that we are including surrounding communities in dialogue and that these communities understand what is going on and are able to provide input. We want to hear from these communities and keep working on this.

I also want to thank Pat for his guidance and leadership. Pat and his organization [CBI] were present at the very beginning to help think through how to build the next set of decisions; they [CBI] were also helpful during the first regulation development process [in 1999]. I think the combination between you [Pat] and the Justice has been a tremendous effort. The DNREC staff has also been tremendous. I cannot understate the goals that we set out for the RAC. I received a lot of questions from the Justice about what the RAC is, how it is put together, and the purpose of it. We had a difficult road to go down and wanted to get diverse perspectives from people who will be affected [by the CZCPA]. This process did a good job of balancing all the various interests.

Remarks from Governor John Carney (State of Delaware)

I want to take the opportunity to thank you for your service over the last year. I know it was difficult but hard and important work. I was recently thinking about the Delaware River watershed, having been a co-sponsor on a recent piece of legislation, the Delaware River Basin Conservation Act, which was just funded for the first time. I've also thought about something that is happening on the Brandywine Creek near my house in Wilmington, as I learned that they were taking down some dams. I wondered why they were doing something so destructive to the Brandywine. They told me that this was so shad could run up the Brandywine, like they did a long time ago. The reason that shad can run up the Brandywine is because they can run up the Delaware River; this is because the Delaware River is the cleanest it has been in the last 100 years. One of the goals of CZCPA is to preserve and protect the Delaware River, particularly as the seas rise and threaten some of the abandoned industrial sites along the river. When I was growing up in Claymont, more than half the people worked in the industrial complex from South Philly to Edgemoor, many areas of which are now abandoned. So, the work that the RAC has been doing will hopefully allow us to preserve and protect the Delaware River and Bay and open up those abandoned sites for employment to people who need jobs in our state.

I understand how difficult the work has been, and I want to say thank you. To Justice Holland, who has served our state so well for so long: I appreciate his leadership here. He told me that all the members made almost all meetings, which is impressive; I look forward to seeing the product that you deliver.

Review and Discussion of the Draft RAC Final Report

Before opening the room for discussion, Justice Holland, RAC Chair, explained the process of going through the draft Final Report. He reiterated the significance of consensus on the RAC's final recommendations to the Secretary and the importance of the Final Report accurately reflecting the RAC's deliberations.

The RAC reviewed each section of the draft Final Report for completeness, consistency, and accuracy with all of its deliberations. The comments below are from RAC members unless otherwise specified.

Section 1: Executive Summary

The RAC did not discuss any substantive changes to the Executive Summary of the Final Report. However, changes made in subsequent sections were reflected accordingly in the Executive Summary of the finalized Report.

Section 2: Background on The Coastal Zone Act and Its Current Regulations and The Coastal Zone Conversion Permit Act

The RAC did not discuss any substantive changes to this section of the Final Report.

Section 3: Brief Site Descriptions of the 14 Heavy Industry Use Sites (Chart)

- The content in the “Status of Contamination and Remediation” column reflects the status of remediation, not contamination. If there is not an opportunity to include the status of contamination, “contamination” should be removed from the heading.
- There are a number of places that talk about “active redevelopment plans.” Do such plans refer to those that require a Conversion Permit?
 - DNREC Response: We could note that “redevelopment” includes commercial and non-heavy industrial use.
 - This raises a question about the quality of the information regarding the 14 sites. I do not think we should address the issue of redevelopment. Any reference to anything but the current use we just strike.
 - DNREC Response: That solution works for us.
- I am upset that we are not protecting people who may be living in new residential developments around the Citi Steel site. I just can’t understand why \$300,000 homes are being built on the site. The decision could have been made to put residential property on the north side of the plant. People have never been informed about what was going on and they waited until the last minute to present us with a concept site plan map. As we speak, they are building now and starting the process.
 - DNREC Response: Residential development does not fall within the jurisdiction of the CZA; the issue will need to be taken up with the County.
 - RAC Chair Response: What we are trying to deal with right now is if someone wants to get a Conversion Permit in the future. What do you suggest we do as a part of this process to avoid these types of concerns for the future? We have to work within the existing system for the residents today, but we can think about how we want to change things for the future.
 - RAC Member: The work being done at Claymont right now is remediation work only. There is capping required for the remediation work, prescribed in the Final Plan of Remedial Action for the Citi Steel site.
- What is DNREC’s plan for ensuring that we preserve and protect the surrounding environment, as all of these sites are under some form of active remediation?
 - DNREC Response: Primary responsibility for remediation lies with the Hazardous Substance Cleanup Act (HSCA). There is a threshold level for contaminants to remain in the ground, and sometimes remediation requires on-going monitoring that may exceed our lifetime. The Delaware General Assembly required the DNREC Coastal Zone Act Program to account for HSCA requirements in financial assurance. Over time, these sites will be remediated and monitored for any residual contamination that remains. We have to remember that we are dealing with legacy plants that operated before there were any environmental laws, which is a lot of what is being remediated today. Plants now are much more regulated. There are various laws in place to minimize environmental contamination from a facility.

Section 4: Origins and Description of the RAC

The RAC did not discuss any substantive changes to this section of the Final Report.

Section 5: Summary of Work Groups

The RAC did not discuss any substantive changes to this section of the Final Report.

Section 6: Summary of Public Engagement

The RAC did not discuss any substantive changes to this section of the Final Report.

Section 7: Final RAC Recommendations

Bulk Product Transfer Facilities

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

Plans for Potential Impacts of Sea Level Rise and Coastal Storms

- Does “securing the facility” during a storm include the containment of hazardous materials?
 - DNREC Response: Yes.

Economic Effect

The RAC did not discuss any substantive changes to their recommendations regarding Economic Effect.

Environmental Impact

The RAC did not discuss any substantive changes to their recommendations regarding Environmental Impact.

Offsets

RAC members discussed the merits of including wording that set a temporal standard for the duration of an offset. Specifically, RAC members deliberated whether to include language that stated: “duration of the permit” and/or “life of the facility.”

- Several pollution issues we have currently are with sites that are not in active use; they are legacy issues. So, if we state, “life of the facility,” would offsets encompass these types of impacts in the future?
- Why would we not use the “life of the facility” language? We should be offsetting impacts throughout the life of the facility as well as any future impacts that the facility has created.
 - DOJ Response: From the perspective of the Secretary, if you say “duration of the permit,” this allows the permit to be recalibrated. This is an advantage from the Secretary’s point of view. The permittee may also not know what to anticipate, in terms of impacts, for the full life of the facility; they may only understand the impacts incrementally. With the renewal provisions you have recommended, if the RAC wants to go in the direction of the “duration of the permit,” it can.
 - DNREC Response: Environmental impacts may have different durations. As such, one possibility could be to recommend that the life of the offset should be tailored to the life of the environmental impact. The applicant should properly offset those environmental impacts. The RAC could recommend that the offset last the life of the permit, but the environmental impact might not last that long or might last longer. The recommendation should be written in a way that expresses what the RAC would like the Secretary to do.
- I am not sure either “duration of the permit” or “life of the facility” is a one-size-fits-all solution. As mentioned before, there may be some impacts that go on longer than the life of the facility. Do we need to even add any temporal phrase? As a potential applicant, I’m not sure how you could identify impacts that are going to be offset 30-40 years down the road. I think this is the point of having applicants re-up their offset proposals.
- Using “life of the facility” provides owners with a potential loop hole to get around offsets by simply changing ownership.

- **DNREC Comment:** As a reminder, the discussion around this topic started because the RAC wanted to make sure offsets were capturing one-time impacts (such as impacts caused by construction) and annual impacts. You can leave it to DNREC to negotiate these details on a case-by-case basis during the application process. The point you want to make clear in your recommendations is that offsets are not just for one-time impacts but also annual impacts.
- If other pollutants are already offset via another DNREC program, an applicant would not need to offset the same pollutant again via the conversion permit process, correct?
 - **DNREC Response:** Correct, that is the intent.
- The Background section on Offsets in the Final Report notes that projects need to take into account the affected community. I think we could use some firmer language regarding engaging the affected community in discussions about offset projects, not just implementing offsets that would impact the affected community. Example phrasing could be, “real and meaningful engagement with the affected communities.”

Financial Assurance

The RAC did not discuss any substantive changes to their recommendations regarding Financial Assurance.

Cross-Cutting Issues

On “Conversion Permit Renewal”

- **Regarding the sentence: [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.]**
- Regardless of where we end up on what is in the brackets, let the record show that the Delaware Nature Society is not opposed to permit renewal; we are opposed to the presumption of permit renewal.
- **Facilitator Question:** Would striking the sentence be clearer?
 - **DOJ Response:** Keeping this last clause [the bracketed sentence] does not actually do anything; it does not add anything beyond what is already stated elsewhere in the Final Report.
- The RAC decided to accept the proposal to strike the bracketed sentence and reached consensus on permit renewal.

On the definition of “Project Site”

- All of the RAC’s work could be for naught if a developer has to take ownership of an entire site. Can we reach consensus that subdivision is okay as long as it is compliant with the regulatory development codes and ordinances?
 - **DNREC Clarification:** DNREC has no authority to prevent subdivision.
- Is subdivision considered a major modification?
 - **DNREC Response:** Yes, this would be considered a major modification.
- With clarification that DNREC has no authority to prevent subdivision, the RAC decided to accept the definition of “project site” with general consensus but not unanimity.

Section 8: Appendices (Electronically Available)

The RAC did not discuss any substantive changes to this section of the Final Report.

Reaching Consensus on the Final Report

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

The CZCPA RAC Final Report includes information on how changing project site boundaries are a major permit modification, and addresses concerns about and touches on one RAC member's disagreement with the subdivision of heavy industry use sites.

The RAC's final recommendations to DNREC can be found in the RAC Final Report at de.gov/czcparac.

RAC members made the following comments upon reaching consensus on the Final Report:

- When it comes to offsets and environmental impacts, the [Comprehensive Conservation and Management Plan \(CCMP\) for the Delaware Estuary](#) can provide guidance on how to address these issues. This Plan should be a resource, something both applicants and DNREC can consider.
- Can we add a "Resources for Applicants" page with links on the DNREC website?
 - DNREC Response: We could post a "related resources" page on the website.
 - RAC Chair Response: In the final letter to the Secretary, we will make sure to note that the RAC had a suggestion, aside from the recommendations, to post related reports on environmental impacts, including the recently completed CCMP.
- We do not have a crystal ball on these sites, but I would like to note that if and when construction or operations begin on these sites, community workforce agreements will remain a priority for the labor groups. We do not want to bring in labor from other places. If industry work is being carried out in the community, we want the community to be the ones working on these sites.
- There are a lot of people in the affected communities who feel that they have been left behind. This regulation development process is an opportunity for DNREC to encourage people; this is a chance for us to change how things go on in Delaware.
- I've appreciated the association with DNREC and what they've done for my community, including two new air monitors. Many of the topics we've discussed are complex and I'm not sure I completely understand all of them. However, I know enough to feel thankful for what has been accomplished through this RAC.

Next Steps

Andrea Kreiner (DNREC), reviewed the next steps in the CZCPA regulatory development process. She noted that the regulations are currently going through internal review, and, around May 10, DNREC will submit draft regulations to the DNREC Registrar, with the goal to also send the regulations to the RAC and the CZICB at the same time. She also reiterated that the CZICB will be holding a joint public hearing with DNREC on the draft regulations. DNREC 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 at the DNREC Lukens Drive Office.**

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

Final Remarks

Andrea Kreiner (DNREC) thanked the RAC for their work and noted again how it had far exceeded her expectations. She also thanked Justice Holland (RAC Chair) for his leadership and guidance and Pat Field (CBI) for his facilitation. She also went on to express gratitude towards the Department of Justice, and all the DNREC staff who helped with the RAC process, with a special thank you to Ian Yue (DNREC) for helping everything run smoothly.

Justice Holland (RAC Chair) also thanked the RAC. He mentioned he had been asked to speak about the process and whether or not it should be used again. He expressed that this RAC was the “gold standard” in terms of process. He remarked about being unsure whether the process could be replicated but that if there was a way to do so, it would be helpful to model other RAC processes off of this one.

Dirk Durstein (DOJ) also expressed his gratitude, mentioning that this was the third RAC he had assisted with. He noted that it reflects well on society that those with different interests and motives could gather together and come to consensus on something. He also conveyed appreciation that the RAC was able to gather and speak to one another – not just at one another – and delve into important issues. He commented that he did not think any RAC member abandoned their constituencies or compromised their values and that everyone on the RAC deserved credit for this. He concluded by stating that a consensus report will hold much more weight for the Secretary than a non-consensus report, as the document will give specific direction towards drafting regulations.

Public Comment

Sherry Marisco (Private Citizen)

- To follow up on what the Governor had mentioned, this Act was intended to create jobs and create diversity in those jobs. How will we know that these revisions to the Act will be doing the job that they should be doing?
 - Facilitator Clarification: There is a requirement for conversion permit applicants to cite the economic effect of their proposed project. In addition, DNREC will also verify economic information cited in a permit application.

- DNREC Response: The Division of Small Business will also have to supply the Delaware General Assembly with a report every two years on the economic effect of the Act on the state as a whole.
- If no one comes forward with a conversion permit, what will happen to these Brownfields? Will they just sit vacant?
 - DNREC Response: Each site already has its own plan for remediation. Development on these sites could help to speed up the remediation process.

Bill Dunn (Civic League for New Castle County)

- I cannot believe what was said earlier in the meeting: that existing regulations are in place to seriously address contamination issues. You have noted numerous times here that you have reviewed public comments. Since the Croda and Delaware City Refinery incidents, I have talked about the regulatory advisory committee making recommendations to the Secretary regarding operational and process design, oversight of that process, safety control systems, fail-safe valving, and automated cascading shutdown control systems. Of those that I just mentioned, how many RAC members recall any of them being discussed? You all have had two banner signs [the Croda and Delaware City Refinery incidents] come up in the past few months, showing what can happen with a lack of oversight controls. This is water under the bridge at this point since this process is moving forward. You all have had the opportunity to recommend to the Secretary about the controls and proper reuse of these properties. It is your responsibility to call for significant process control systems. If Croda had proper systems in place, that leak would not have existed for more than 15 minutes. It blew out ethylene oxide for over 5 hours; DNREC's estimate of how much ethylene oxide was leaked seems incredibly low. If you as the RAC do not recommended anything regarding safety control systems, you are in abdication of your responsibility to the citizens of Delaware.

Simeon Hahn (NOAA Office of Response and Restoration; comment emailed)

- Does the economic analysis include the potential negative economic impacts to other economic sectors such as ecotourism related activities or impacts on local communities (ex. housing prices)? It should.
 - DNREC Response: This issue is addressed specifically in the RAC recommendations.
- Though the site is defined as the "property", it should be clear that the potential environmental and economic impacts (positive and negative) extend off the site into the River and the communities. It should be mentioned that there is a Comprehensive Conservation and Management Plan for the Delaware Estuary that has broad social, conservation/environmental, and economic goals. The analysis should consider impacts on these goals.
 - DNREC Response: The [Comprehensive Conservation and Management Plan for the Delaware Estuary](#) will be addressed in the cover letter sent to the Secretary along with the RAC Final Report.

Adjournment

RAC Chair, Justice Holland adjourned the final RAC meeting at approximately 11:30am.

APPENDIX A: PARTICIPANT LIST

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

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| Jennifer Adkins | Partnership for Delaware Estuary |
| 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 |
| 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 |
| Robert Whetzel | Richards, Layton & Finger |
| Delores Whildin | Resident of Claymont |
| Marian Young | BrightFields, Inc. |

Featured Speakers

| |
|---------------------------------|
| Governor John Carney |
| DNREC Secretary Shawn M. Garvin |

DNREC staff and other state employees

| | |
|------------------------|----------------|
| Kristin Barnekov-Short | Delaware DNREC |
| Lisa Borin Ogden | Delaware DNREC |
| Sierra Davis | Delaware DNREC |
| Dirk Durstein | Delaware DOJ |
| Judy Jordan | Delaware DNREC |
| Andrea Kreiner | Delaware DNREC |
| Susan Love | 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)

| Name | Affiliation |
|---|--|
| Bernie August | Delaware Audubon Society |
| Matt Brill | Self |
| Bill Dunn | Civic League for New Castle County |
| Tom Godlewski | Delaware City Refinery |
| Sherry Marsico | Self |
| Mary Peck (Designated Alternate for Brenna Goggin) | Delaware Nature Society |
| Shai Sefiane | Ruggerio Willson & Associates |
| David Swayze | Parkowski, Guerke & Swayze |
| Frances West (Designated Alternate for Larry Lambert) | Council of Civic Organizations of Brandywine Hundred, Inc. |