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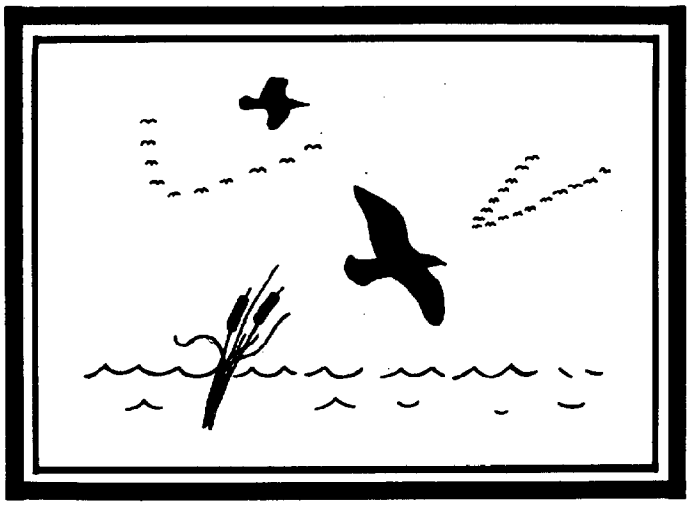
THE COASTAL ZONE ACT

DELAWARE COASTAL ZONE PLANNING AND REGULATORY ADMINISTRATION

REPORT FOR THE PERIOD-JUNE 28, 1971-JUNE 30, 1973



Delaware. State Planning Office.

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STATE COASTAL ZONE INDUSTRIAL CONTROL BOARD

AND

DELAWARE STATE PLANNING OFFICE

November 1973

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TABLE OF CONTENTS

		PAGE
Letter to the Governor, General Assembly, and People		ii
PART I	Background	1
PART II	Coastal Zone Planning	3
PART III	State Coastal Zone Industrial Control Board	6
PART IV	Administrative Procedures	12
PART V	Project Applications and Appeals	16

APPENDICES

		PAGE
APPENDIX 1	Coastal Zone Act and Map	50
APPENDIX 2	Administrative Forms and Procedures	65
APPENDIX 3	Definition of Non-conforming Use "Expansion or Extension"	98
APPENDIX 4	Coastal Zone Legal Opinions of the Attorney General	100

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STATE OF DELAWARE
EXECUTIVE DEPARTMENT
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DOVER

SHERMAN W. TRIBBITT
GOVERNOR

DAVID R. KEIFER
DIRECTOR

Governor Sherman W. Tribbitt
Members of the General Assembly
The People of Delaware

On June 28, 1971, by enactment of the Coastal Zone Act, Delaware embarked on a major new and uncharted course of State planning and regulatory management of a unique and vitally important resource - the lands and waters of the coastal zone. This bold initiative placed Delaware in the forefront of the growing concern of coastal states and the Federal government over the wise use and protection of our limited and precious coastal resources.

In the two years since enactment of the Coastal Zone Act, significant progress has been made in the establishment and functioning of a Delaware Coastal Zone Planning and Management System. This first Annual Report describes the work of the State Coastal Zone Industrial Control Board and State Planning Office in meeting their responsibilities under the Act.

The period covered in this Annual Report is from June 28, 1971, through June 30, 1973.

With the continuing concern and support of the State Executive and Legislative branches of government and of local government officials and the people of Delaware, the public policy of regulating industrial development in order to protect the environmental and recreational values of the coastal zone can achieve the goal of safeguarding the quality of life in Delaware.

Respectfully submitted,

David R. Keifer

David R. Keifer
Director

DRK:cb

PART I

Background

Enactment of the Coastal Zone Act was the result of the deep concern of many people and public officials in Delaware over the likelihood of industrial growth in the coastal zone resulting in a large new petroleum refinery and a deepwater terminal for supertankers and related heavy industries in areas not yet industrialized. Land ownership and some local zoning policies indicated that such industrialization was a real possibility. The lack of a State policy toward industrial growth in the coastal zone and regulatory authority over it left the State in a position of not having an effective voice in the use of this uniquely valuable and environmentally sensitive State resource - the coastal zone.

As a result of this situation and this concern, the Governor appointed a Task Force on Marine and Coastal Affairs in early 1970 to examine the situation and advise him on a proper course of action to protect the State's interest in use and protection of coastal resources. In February 1971, the Task Force completed a preliminary report recommending that industries compatible with high environmental quality standards be encouraged, but that no further incompatible industries be allowed in the coastal zone. Incompatibility would be determined on the basis of quantities and types of pollutants and the magnitude of the environmental effects resulting from the size and nature of the industry. The Task Force also recommended prohibiting a deepwater port facility in Delaware Bay. The report emphasized the recreational values of the coastal zone for Delawareans and for visitors from more heavily urbanized nearby states.

Shortly after release of the Task Force Preliminary Report, in the spring of 1971, the Governor introduced legislation in the General Assembly (House Bill Number 300) for the Coastal Zone Act which follows recommendations of the Task Force on Marine and Coastal Affairs as to what it regulates and what it prohibits. On June 28, 1971, the Governor signed the Act into law, (Title 7, Chapter 70, Delaware Code).

Administration of the Coastal Zone Act is the responsibility of the State Planning Office. This report is designed to serve as a report on activities under the Act and also to record in one place the law, administrative procedures, Attorney General decisions and project histories.

PART II

Coastal Zone Planning

Coastal Zone Plan

The Coastal Zone act of 1971 requires that the State Planning Office prepare a comprehensive plan for the coastal zone. Work on this requirement began in earnest early in 1972 following the establishment of a Coastal Zone Technical Advisory Committee (TAC). This Committee was comprised of representatives from appropriate State, county, and regional agencies, including the county planning offices, the City of Wilmington, State Department of Natural Resources and Environmental Control and the College of Marine Studies. The TAC was charged with assisting the Office in developing and reviewing various plan proposals.

Work on the plan proceeded during 1972. Various background studies and bibliographies were prepared during this period with proposed Coastal Zone Goals and Objectives and various "sketch plan" proposals being presented to the Coastal Zone TAC and the Council on State Planning in January, 1973. A Preliminary Coastal Zone Plan was submitted to the TAC, the Council, and the Coastal Zone Industrial Control Board in May, 1973. As of June 30, 1973, the Plan was under review and subject to revision prior to public hearings to accommodate the comments and recommendations of the TAC, Council and Board.

The Preliminary Coastal Zone Plan is both a land development and regulatory document. It contains goals, objectives, and development concepts with application to the zone and to the State in general. It also recommends

specific development policies and strategies for the coastal zone, including a land use plan for the various sub-regions of the coastal zone.

Definition of Heavy Industry and Guidelines for Acceptable Manufacturing Uses in the Coastal Zone

The Act also requires the Planning Office to promulgate an elaboration of the definition of heavy industries prohibited under the Act, and to establish a system for determining which manufacturing uses would be acceptable in the coastal zone. To assist in this work, the Planning Office contracted with Battelle, Columbus Laboratories, a nationally recognized research organization. Battelle's assignment was to thoroughly investigate industry characteristics and processes in order to develop a uniform system for rating one industry against another in terms of likely impact on the coastal zone.

More than 400 industry groups were evaluated in terms of: need for coastal location; pollution potential; unacceptable processes; land and labor requirements; relationship to other industries; needs for energy and water; and demands for public facilities.

Development of this data allowed for a rating system serving two needs, i.e. allowing for determination of the least desirable industries which should be banned, and providing a method for reviewing an application to determine its potential impact and assess its acceptability.

The materials developed by Battelle were presented for review to the Coastal Zone TAC, the Council on State Planning and the State Coastal Zone Industrial Control Board. These proposals, as of June 30, 1973, were being prepared

in regulation form for public review and official presentation to the Industrial Control Board.

Methodology for Evaluating Environmental Impact Statements

Another planning activity during the period was the development of a methodology for evaluating the completeness and quality of the environmental impact statement required from each applicant for a coastal zone permit. The assistance of Battelle, Columbus Laboratories was requested to develop a matrix and checklist system which could be uniformly applied by the Planning Office to each statement. This procedure will allow for a more effective and consistent review of proposals and reduce the risk of erroneous or incomplete materials being submitted.

As of June 30, 1973, coastal zone planning activities emphasized development of a public information and participation program. While the Coastal Zone Act requires a single hearing on the Coastal Zone Plan and the proposed definition and guidelines, efforts were underway to stimulate public input on coastal area issues as well as reaction to the planning proposals. A series of public forums, public plan summaries, and other approaches were under discussion by the Planning Office, the TAC and the Coastal Zone Board.

PART III

State Coastal Zone Industrial Control Board

For the purpose of providing representation of the public and of county planning commissions and State agencies concerned with planning and regulatory matters in the coastal zone, the Coastal Zone Act established a State Coastal Zone Industrial Control Board. The authority, functions and make-up of the Board are described in Sections 7005, 7006 and 7007 of the Act.

The Board is composed of ten voting members. Five regular members are appointed by the Governor with Senate confirmation for terms provided in the law, except that the Board chairman serves at the Governor's pleasure. Five ex-officio members include the county planning commission chairmen of the three counties, and the Secretaries of the Department of Natural Resources and Environmental Control and Department of Community Affairs and Economic Development. The ex-officio members represent these agencies, therefore, the length of their terms is unlimited, although there may be (and have been) changes in the particular individuals who fill these positions.

Members of the State Coastal Zone Industrial Control Board during the period July 1971 through June 1973 have been the following persons:

Regular Members

Dr. George M. Worrilow, Chairman	Newark
Mrs. Gwynne Smith	Green Acres, Wilmington
Mr. John W. Sievers	Dover
Mr. Robert W. Tunnell, Esq.	Georgetown
Mr. I. G. Burton	Milford

Ex-officio Members

Mr. Samuel R. Richeson, Jr.	New Castle County Plan. Bd.

Ex-officio Members (continued)

*Dr. Y. Eugene McCoy	New Castle County Planning Board
Mr. Brice M. Hickman	Kent Co. Regnl. Plan. Comm.
*Mr. Howard L. Papen	Kent Co. Regnl. Plan. Comm.
*Mr. G. Wallace Caulk	Kent Co. Regnl. Plan. Comm.
Mr. Charles Mills	Sussex County Plan. and Zoning Comm.
Sec. John C. Bryson	Dept. of Nat. Res. and Environ. Cont.
*Sec. Austin N. Heller	Dept. of Nat. Res. and Environ. Cont.
Sec. John D. Daniello	Dept. of Com. Affairs and Econ. Dev.
*Sec. Robert L. Halbrook, Jr.	Dept. of Com. Affairs and Econ. Dev.

The authority and responsibilities of the Board include three functions:

(1) to review and approve, disapprove or modify regulations governing permit applications and application and appeals hearing and other procedures;

(2) to serve as an appeals board to hear and decide upon appeals from status and permit application decisions of the State Planner, and

(3) to review and adopt a coastal zone comprehensive plan for manufacturing development, guidelines for acceptable manufacturing in the coastal zone, and regulations for elaboration of the Law's definition of (prohibited) heavy industry uses.

Staff and office services for the State Coastal Zone Industrial Control Board are provided by the State Planning Office.

During the period from July 1971, through June 1973, the Board held nine meetings, other than hearings and meetings on appeals. The first eight of these meetings were held between August 1971, and February 1972, and dealt primarily with coastal zone permit and appeal forms, procedures, and fees.

At the September 13, 1971, meeting, the Board voted to establish a status decision process wherein the State Planner would decide on an applicant's status under terms of the Coastal Zone Act prior to the full application for a

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*A former member of the Board.

coastal zone permit requiring detailed project plans and an environmental impact statement. The consensus of the Board was that this procedure would avoid the situation where an applicant would prepare the full permit application incurring time and money costs only to be told that his project was outside the authority of the Coastal Zone Act or that it was a prohibited use.

At the December 14, 1971, Board meeting, a definition of "expansion or extension of non-conforming uses" was adopted see Appendix 3. The Law allows industrial uses that were in operation prior to and on the date of enactment of the Act to expand or extend their operations. Under the adopted definition, permit applications are required only of those expansion or extension projects having a "significant" impact on increased production capacity, land use area, or environmental impact; this decision is made at the status decision level (see Part IV of this Report for an explanation of administrative procedures).

After lengthy discussions of administrative forms and procedures involving numerous drafts during the period September 1971, through January 1972, the Board voted on February 14, 1972, to adopt the forms and procedures as they are given in Appendix 2.

During the course of the first year's coastal zone administrative experience, it was determined that a fee for filing appeals from the State Planner's status and permit decisions was necessary. At its meeting on September 27, 1972, the Board voted to adopt an appeals fee of one hundred dollars. A fee of this amount would discourage frivolous appeals and yet would not prevent seriously affected and concerned persons from appealing.

The limited appeals experienced since adoption of this fee supports this opinion.

The appeals experience of the State Coastal Zone Industrial Control Board is described in Part V of this Report in the descriptions of the project applications. To briefly summarize, in the period June 28, 1971 - June 30, 1973, the appeals have been as follows:

Appeals from Status Decisions:

Sun Oil Company of Pennsylvania, September 29, 1972

Appeal of the State Planner's decision that extension of a pier at the Marcus Hook, Pennsylvania refinery is a prohibited offshore bulk product transfer facility.

The Board's appeal decision of November 29, 1972, after a public hearing, upheld the State Planner.

Sun Oil, the Board, and the State Planner reached a mutual agreement to allow this project to go ahead under the exemption for pier use by single industrial facilities in Section 7002(f) of the Law after Sun Oil agreed in writing to modify its use of the extended pier. No appeal was made to Superior Court.

Save Our Shores, March 2, 1973

This private conservation organization through its president appealed the status decision on the application of the Sico

Foundation of Mt. Joy, Pennsylvania for a new petroleum tank farm and improvements to an existing tank farm on property adjacent to the Wilmington Marine Terminal. The State Planner had decided that the tank farm project could proceed without a coastal zone permit by reason of it not being manufacturing and being exempt from prohibition because it was an extension of the exempt Port of Wilmington docking facilities. The Board held a public hearing on this appeal on March 20, 1973. Prior to any appeal decision by the Board, a mutually satisfactory agreement among all parties was reached to modify the status decision so that a clear geographic limit was placed on the exemption of Port of Wilmington docking facilities from prohibition as offshore bulk product transfer facilities. At that point, Save Our Shores dropped its appeal.

Appeals from Permit Application Decisions

Private citizens on a permit application of Delmarva Power and Light Company, September 25, 1972

Three private residents of Edgemoor appealed the State Planner's decision to grant a permit for a new boiler to double the electric power generating capacity of the Edgemoor power plant of Delmarva Power and Light. The appellants claimed that this was a prohibited heavy industry use. On November 24, 1972, after a public hearing on the appeal, the State Coastal Zone Industrial Control Board

upheld the State Planner's decision to grant a permit.

On December 18, 1972, the Board's appeal decision was appealed to Superior Court in New Castle County by one of the original appellants. The Superior Court had not made its decision on this appeal as of June 30, 1973.

During the two year period covered by this annual report, the Board did not become involved with review and adoption of a coastal zone plan, guidelines for acceptable manufacturing and refinement of the definition of heavy industry uses. The State Planning Office with the assistance of a private planning consultant did prepare draft reports on these matters, as described in Part II of this Report.

PART IV

Administrative Procedures

Introduction

In the period from enactment of the Coastal Zone Act to mid-February 1972, administrative procedures were developed. It was proposed by the State Planning Office and approved by the State Coastal Zone Industrial Control Board that there be three distinct procedural steps for a given project. These steps are the status decision application, the permit application and the appeal.

Status Decision Application

The Status Decision Application step is designed to provide enough information to the State Planner so that he can make an initial decision as to whether a particular project is prohibited by the Coastal Zone Act, requires a permit under the Act, or is outside the scope of the Act. It was felt that with a minimum amount of information, this decision could be made. If the project is either prohibited or outside the scope of the Act, the decision constitutes a final decision on that project by the State Planner and is publicly advertised so that it may be appealed. If the State Planner determines that the project is a manufacturing use requiring a permit, the applicant is notified and is given the necessary forms to complete the permit application.

Early in the administration of the Act, it became apparent that one type of project needed special treatment, namely, the expansion of existing non-conforming uses. This problem arose because many existing industries, determined to modify their facilities either for business reasons or because of requirements

for pollution control equipment. This modification could potentially bring the facility under the regulations of the Coastal Zone Act. However, it was felt unreasonable to require firms to supply full permit application documentation for relatively minor projects. In response to this problem, the State Coastal Zone Industrial Control Board adopted a definition for the expansion or extension of a non-conforming use: "Expansion or Extension means a change of existing processes, facilities or buildings which significantly increases the production capacity, land use area or environmental impact".

Status decision applications from existing non-conforming uses are tested against this definition. If it is found that the particular project will not result in a significant increase in production capacity or land use area or negative environmental impact, the applicant is informed that he does not need a permit and that he may proceed with his project. This decision is publicly advertised. Most projects that have been processed to date, have fallen into this category. It is felt that this procedure should be maintained so that a project, that while allegedly being undertaken for pollution control measures might result in significant increases in land use for the facility or in significant production increases, can be required to go through the permit procedure.

All applications for status decision involving installation of equipment to meet pollution control standards are routinely submitted to the Department of Natural Resources and Environmental Control for validation of factual information.

Permit Applications

If a status application decision is that a proposed project constitutes a new manufacturing use or a significant expansion or extension of a

non-conforming use, the applicant prepares and submits full application documentation including an environmental impact statement. After the application is submitted to the State Planning Office and reviewed for completeness, a public hearing is held. The application documents are made available for public inspection at the State Planning Office and also at the Planning Commission Office of the County in which the proposed project is to be located and the public hearing is to be held. Recordings are made of the hearing and are retained until the project has been closed out.

At the hearings, the applicant makes a presentation of the proposed project. Other interested persons are permitted to make presentations and ask questions. The State Planner or the Chief of Coastal Zone Management serves as hearing officer at these hearings.

The hearing testimony and the application documents are then reviewed by the State Planning Office staff and when necessary other agencies' personnel. Within ninety days of receiving the permit application, the State Planner makes a decision to grant or deny the permit or to grant the permit subject to project modifications. The applicant is notified of the State Planner's decision and it is published so that either the applicant or an interested person can file an appeal with the Coastal Zone Industrial Control Board. If no appeal is filed within fourteen days of the publication of the State Planner's decision, that decision becomes final.

Appeals

If an appeal is filed from the State Planner's decision, the State Coastal Zone Industrial Control Board schedules a public hearing. The appeal request must be accompanied by an appeal fee of $100 which is used to offset,

at least in part, the cost of the appeal including advertising and a transcript of the hearing made by a court reporter. Following the appeal hearing, the State Coastal Zone Industrial Control Board renders a decision to either uphold the State Planner's decision, overturn his decision, or uphold it with modifications. The Board has a total of sixty days to make its appeal decision.

After newspaper publication of the State Coastal Zone Industrial Control Board's appeal decision, there is a twenty day period for filing of further appeals to the Superior Court in the county where the project is located. The Board's appeal decision may be appealed to Superior Court by the permit applicant, by an aggrieved citizen, or by the State Planner.

PART V

Project Applications and Appeals

To July 1, 1973, thirty-six projects had been received under terms of the Coastal Zone Act for the State Planner's decision. These projects and the decisions made are described in chronological order in this Part.

Project Number 1 - Delaware Terminal Company

On July 23, 1971, a letter was received by the State Planner from the President of the Delaware Terminal Company notifying him of the Company's plan to purchase property along the Delaware River south of Naaman's Creek in Claymont from the Phoenix Steel Corporation for construction of a tanker docking facility and petroleum tank farm. Low sulfur boiler fuel for electric power plants would be unloaded and stored here prior to movement by pipeline to customers in Delaware and eastern Pennsylvania.

Several alternative plans for docking were proposed by Delaware Terminal Company requiring a determination by the Attorney General of the meaning of the work "offshore" in the definition in the Coastal Zone Act of (Prohibited) offshore bulk product transfer facilities. This Attorney General's opinion as well as others made in the course of coastal zone permit administration are reproduced in Appendix 4 to this report.

There was some misunderstanding between the Delaware Terminal Company representatives and the State Planner as to whether or not the Company was merely providing information or was seeking the State Planner's ruling, or decision, on a permit. The Attorney for the Company made it clear in a letter

of October 8, 1971, to the State Planner that this project was merely being brought to his attention for informational purposes and that the project was not ready to go ahead. He and the State Planner agreed that no formal action under the Coastal Zone Act had been sought. No further communication from the Delaware Terminal Company was received. Since that time, the State Planner learned that this project at the Phoenix Steel Corporation property was abandoned.

Project Number 2 - First State Pipeline Company

Shortly after enactment of the Coastal Zone Act, a project of the First State Pipeline Company for a supertanker monobuoy mooring 26.5 statute miles southeast of Cape Henlopen connected by a sea bed pipeline to a crude oil tank farm at the southern end of Cape Henlopen State Park between the Atlantic Ocean and the Lewes and Rehoboth Canal was brought to the State Planner's attention. The project had previously been the subject of a public hearing of the Water and Air Resources Commission on September 26, 1969, for a subaqueous lands permit.

The project's purpose was to enable supertankers of 250,000 deadweight tons or more to moor and unload imported crude oil for movement to oil refineries in the Delaware Valley by pipeline from the tank farm near Rehoboth Beach.

On September 21, 1971, the State Planner requested a complete project description so that he could proceed with a coastal zone status decision despite the fact that permit application and other administrative forms and procedures had not yet been completed and received Board approval. On

September 27, 1971, representatives of the First State Pipeline Company and associated companies discussed the project with the State Planner in Dover. Additional information on the project was provided for the State Planner's review.

The status decision on the First State Pipeline Company project was given on December 17, 1971; the project was determined to be an offshore bulk product transfer facility prohibited in the coastal zone. Reference was made in the decision to a legal opinion of the Attorney General on November 11, 1971, supporting this decision. (See Appendix 4.) No appeal was filed from this decision.

Project Number 3 - Getty Oil Company

The Getty Oil Company applied for a coastal zone status decision on August 25, 1971, for improvements to its refinery facilities near Delaware City. The improvements were related to air emissions and consisted of a carbon monoxide boiler on the fluid catalytic cracking unit converting carbon monoxide to carbon dioxide plus consuming traces of unburned hydrocarbons and a merox treatment plant to remove organic sulfides from the alkylation process eliminating ground odors from spent caustic. The status decision given on January 20, 1972, was that no permit was required. This was the first status decision made after adoption by the State Coastal Zone Industrial Control Board of the definition of "Expansion or Extension of Non-Conforming Uses". Under this definition, a permit is not required if there is no "significant" increase in production capacity or plant land use area or (negative) environmental impact from the change of processes, facilities or buildings of a non-conforming manufacturing use.

There was no appeal.

Project Number 4 - Delmarva Power and Light Company

An application for a status decision on construction of a new boiler to approximately double power generating capacity at the Edgemoor power plant was filed on October 29, 1971, by the Delmarva Power and Light Company. The status decision of November 22, 1971, was that this was expansion of a non-conforming manufacturing use of such significant impact that a coastal zone permit would be required.

On June 20, 1972, Delmarva Power and Light Company submitted a permit application. A public hearing on the application was held on July 27, 1972, by the State Planner at the Mt. Pleasant High School. A coastal zone permit was granted on September 15, 1972, but was not actually delivered to Delmarva Power and Light Company pending possible filing of an appeal.

An appeal from the State Planner's permit decision was filed with the State Coastal Zone Industrial Control Board on September 25, 1972, by three residents of Edgemoor, Delaware near the plant site. The appeal claimed that the State Planner was mistaken in granting a permit because the power plant was a heavy industry use and the large increase in power generating capacity would be seriously detrimental to air quality in the region, specifically in terms of sulfur dioxide and nitrogen oxide emissions.

Prior to the State Planner's permit decision, Delmarva Power and Light Company had argued that no coastal zone permit should be required for the new boiler because construction was started with a Wilmington building permit before enactment of the Coastal Zone Act and because an electric power

generating plant is not manufacturing (a permit can be granted only for a manufacturing use). However, the Delmarva Power and Light Company did not appeal the State Planner's status decision of November 22, 1971, requiring application for a permit.

The State Coastal Zone Industrial Control Board held a public hearing in Wilmington on November 13, 1972, on the appeal. On November 24, 1972, the Board upheld the State Planner's permit decision. On December 18, 1972, the Board's decision was appealed to Superior Court in New Castle County by one of the original appellants. The Court had not made its decision as of June 30, 1973.

Project Number 5 - El Paso Eastern Company

In a letter to the State Planner, December 21, 1971, the vice-president of the El Paso Eastern Company described a project for a liquified natural gas (LNG) terminal in New Jersey opposite Claymont, Delaware involving a pier extending into Delaware waters beyond mean low water on the New Jersey side of the Delaware River. The project involved importation of North African liquified natural gas by tanker, storage and regassification at this terminal, and shipment by pipeline to customers in the Northeast. The letter suggested that the State Planner examine the project in the context of the Coastal Zone Act.

Prior to his status decision, the State Planner sought the Attorney General's legal advice on this project. On January 20, 1972, the Attorney General advised that the pier would be a (prohibited) offshore bulk product transfer facility and that it was not exempt from prohibition by reason of

the clause in Section 7002(f) of the Law providing for piers or docking facilities to be used solely by a single industrial or manufacturing user. (See Appendix 4)

On February 23, 1972, the State Planner informed the vice-president of El Paso Eastern Company that the pier for the LNG terminal would be a prohibited offshore bulk product transfer facility. On March 3, 1972, the Company vice-president replied that El Paso had abandoned the project a few days prior to the State Planner's decision and requested a withdrawal of the status decision saying that he had merely sought information advice on the status of the project. The State Planner refused to withdraw his status decision on March 17, 1972. No appeal was filed, and since the project had apparently previously been dropped by the Company, no appeal could logically have been expected.

Project Number 6 - Sun Olin Chemical Company

This project consisted of construction of a Stretford Sulfur Recovery Unit at the Sun Olin Chemical Plant in Claymont. This unit would remove hydrogen sulfide from a by-product stream and convert it to elemental sulfur thus removing sulfur dioxide as an emission to the atmosphere. Sun Olin was under orders by the Department of Natural Resources and Environmental Control to remove sulfur dioxide emissions in order to meet State air quality requirements by January 1973.

The status decision request was received on January 26, 1972, and the decision was made on March 9, 1972; the decision was that as expansion or extension of a non-conforming use, this project did not require a coastal zone permit because it had no significant effect on land use area, plant

production, or (negative) environmental impact. There was no appeal.

Project Number 7 - Hudson Engineers, Incorporated

A status decision application was filed on April 18, 1972, by Hudson Engineers, Incorporated of Philadelphia for Texaco, Incorporated. The project involved improvement and extension of an existing pier at the Paragon Oil (A Texaco subsidiary) petroleum tank farm at Claymont. The extended pier would be well beyond the mean high water line and would be an offshore bulk product transfer facility. The Paragon Oil operation is strictly for petroleum storage and transfer, no refinery operations are conducted there.

On June 30, 1972, the status decision was made, stating that this pier extension did not require a permit and was exempt from the prohibition of offshore bulk product transfer facilities because it came within the "single industrial facility" clause of Section 7002(f) of the Coastal Zone Act. This clause exempts docking facilities and piers used by a single industrial or manufacturing facility from the definition of bulk product transfer facilities.

No appeal was filed.

Project Number 8 - Sun Olin Chemical Company and Allied Chemical Corporation

Status decision applications were received on April 10, 1972, from Sun Olin Chemical Company and on May 1, 1972, from Allied Chemical Corporation, both at Claymont, Delaware for a joint project to construct a pipeline including pipeline supports, and a low pressure blower (at Sun Olin). The purpose was to carry hydrogen sulfide gas from Sun Olin's main steam boilers

to the adjoining Allied Chemical plant where it would be burned and converted to sulfur dioxide and water, becoming part of the sulfur dioxide gas stream for the manufacture of sulfuric acid.

Overall net air quality would be improved. Sun Olin sulfur dioxide emissions would be less than the emissions level prior to this project but slightly more than the standard required by the State in January 1972, which Allied Chemical had been ordered to meet.

Both of these plants are non-conforming uses and the status decisions on this joint project were made under terms of the definition of expansion or extension of non-conforming uses adopted by the State Coastal Zone Industrial Control Board as an administrative regulation.

On June 28, 1972, the State Planner notified the two companies of his status decisions on this project. The decisions were to not require coastal zone permits. There was no significant increase in plant land use areas from construction of the pipeline, no significant increase in production capacities, and a net improvement of air quality when the amounts of sulfur dioxide emissions from both plants were considered together.

The Air Resources Section of the Department of Natural Resources and Environmental Control was aware of these status decision applications and agreed with the State Planner's evaluation of air quality impact.

Project Number 9 - Port of Wilmington (Department of Commerce, City of Wilmington)

The Port of Wilmington, Department of Commerce of the City of Wilmington filed an application on May 16, 1972, for a status decision on construction of a petroleum pipeline from a Port docking facility for petroleum barges

and small tankers across the Wilmington Marine Terminal property and the Coastal Zone to a tank farm of Customs gauging storage tanks near Commerce Street on the south side of the Christina River, Wilmington, thence northward to Pennsylvania re-entering the Coastal Zone at Edgemoor. The Port made this application at the request of a private company, the Gulf Interstate Engineering Company. The pipeline would carry low sulfur and other fuel oil to electric power plants in northeastern Delaware and the Philadelphia region; at an indefinite future time it might also carry naptha.

The status decision was limited to the pipeline within the Coastal Zone. Pier and docking facilities at the Port of Wilmington are exempt from regulation by Section 7002(f) of the Coastal Zone Act. (See Attorney General's opinion of November 11, 1971, Appendix 4). The tank farm of Customs gauging tanks would be outside of the legally defined coastal zone.

On June 28, 1972, the State Planner made his status decision that the pipeline was outside of the authority of the Act. A pipeline is a means of transportation, by itself it is not a heavy industry or a manufacturing use. The status decision was not appealed. This project was closely related to a later project that came before the State Planner in January 1973 (see Project Number 23 - The Sico Foundation).

Project Number 10 - (State) Department of Natural Resources and Environmental Control

Application for a Coastal Zone status decision was made on June 5, 1972, by the Department of Natural Resources and Environmental Control for the Delaware Resource Recovery Demonstration Plant for solid waste removal and

recovery at Pigeon Point, Wilmington.

The State Planner's status decision of June 30, 1972, was that this solid waste plant would be a new manufacturing use requiring a Coastal Zone permit. In addition to reduction of solid waste for removal to the Pigeon Point landfill, the plant will recycle certain types of organic, metal, and glass wastes for re-use. The physical and operating characteristics of the plant fit the Act's definition of "Manufacturing".

There was no appeal of this status decision.

No permit application has yet been formally filed with the State Planning Office as of July 1, 1973, although a detailed description of the plant was provided by the Department of Natural Resources and Environmental Control for review in the Fall of 1972. In October 1972, the Environmental Protection Agency awarded a nine million dollar grant to Delaware for this project. The plant has not gone ahead, however, due to a freeze of federal funds for projects of this nature.

Project Number 11 - Sun Oil Company of Pennsylvania

A status decision application was filed on June 15, 1972, by the Sun Oil Company of Pennsylvania to determine the status under the Coastal Zone Act of a project to extend an existing pier at its Marcus Hook, Pennsylvania petroleum refinery partly into Delaware territory. The southern most of three piers would be extended 2,020', with 1,140' of this being south of the Pennsylvania - Delaware boundary and thereby in the Coastal Zone. The pier would be used for the unloading of crude oil and other petroleum products both for use within the Sun Oil refinery and to be trans-shipped to other

customers without undergoing any refining by Sun Oil. A small part of the Marcus Hook Refinery is in Delaware - 16 acres of a total 403 acres. None of the existing piers were in Delaware.

The State Planner's status decision of September 14, 1972, was that the extension of Pier #3 came under Coastal Zone authority, that it was not exempt from regulation under Section 7002(f) of the Act as a bulk product transfer facility for use by a single non-conforming use, that it did not come under Section 7004(a) allowing for expansion of non-conforming uses by permit, and that it was a prohibited offshore bulk product transfer facility in Delaware's Coastal Zone to the extent that the extended pier would be in Delaware.

Sun Oil appealed the status decision to the State Coastal Zone Industrial Control Board on September 29, 1972, claiming the State Planner was in error in making his decision. On November 13, 1972, the Board held a public hearing on the appeal. On November 29, 1972, the Board gave its appeal decision upholding the State Planner's status decision. The Board found that the extended pier would be largely a conduit (for trans-shipment) of petroleum products rather than a facility necessary to operation of the Sun Oil Refinery - the refining use being the key to possible exemption of the extended pier under Section 7002(f) of the law. One-half of the increased unloading capacity after the pier improvement would be for trans-shipment rather than Sun Oil Refinery purposes. The Board did not agree that the substantially increased trans-shipment operations at the extended pier would simply be intensification of part of an integrated, combined use - as Sun Oil had argued - rather it considered this increased trans-shipment capability an entirely new use.

No appeal was filed from this appeal decision. However, Sun Oil

representatives did contact the State Planner and his legal advisor in the Attorney General's Office following the Board's decision to discuss a way for the pier extension project to go ahead. An agreement was reached by all concerned that if Sun Oil used that part of extended Pier #3 within Delaware waters solely for its own refinery purposes and not for any trans-shipment purposes, the status decision would be changed to exempt this project from prohibition under terms of Section 7002(f) of the Coastal Zone Act (See Project Number 28).

Project Number 12 - E. I. DuPont de Nemours and Company

The E. I. DuPont de Nemours and Company applied on June 26, 1972, for a status decision on its plan to replace the batch-type Sulfate Process by a modern Chloride Process for production of titanium dioxide at its Edgemoor, Delaware plant near the Merchandise Mart shopping center. Titanium dioxide is a white pigment used in paint, paper, ink, plastics, and some cosmetics. At the time of the application, the Edgemoor plant used both the Sulfate and Chloride Processes. The project would replace the Sulfate Process with a new Chloride Process so that the plant would then be all Chloride.

The State Planner's status decision on July 17, 1972, was that this would be a significant expansion - extension of a non-conforming use in terms of production capacity and possibly in environmental and economic impacts. Application for a coastal zone permit was required. Plant

production capacity would increase by fifty percent and there were a number of environmental considerations involved. The status decision was not appealed.

On August 10, 1972, DuPont submitted its permit application. A public hearing was held at Mount Pleasant High School on September 11, 1972. After receiving assurances from the Department of Natural Resources and Environmental Control that air and water quality would be improved as a result of this project and that quality standards would be met and after examining solid waste, noise, glare, radiation, and odor effects, the State Planner made his permit decision on November 6, 1972. The decision was to grant a permit subject to the condition that all other applicable State permits would be obtained. There was no appeal from the permit decision and on November 24, 1972, a permit was issued to the DuPont Company for the Edgemoor plant changeover to an all-chloride process.

Project Number 13 - New Castle County Department of Public Works

A status decision application was made on July 13, 1972, by the New Castle County Department of Public Works for construction and operation of a solid waste pulverizing plant at the Pigeon Point County sanitary landfill site off Lambson Lane adjacent to Wilmington. The plant would pulverize up to 1,200 tons per day of various kinds of solid waste including household refuse, auto tires, small wooden crates and boxes, light building construction wastes, small furniture, and empty industrial drums. The pulverized waste reduced on an average to two inch particle size would be deposited by a conveyor system to the Pigeon Point Sanitary Landfill immediately adjacent to the plant. Non-grindable waste, not pulverized, would be conveyed directly to the landfill. The All American Engineering Company (AENCO) would build the plant and operate

it and would have title to all ferrous (iron) metal removed from the waste by a separator to be built at a future time (not part of this status decision application).

The status decision of July 21, 1972, was that the pulverizing plant was "manufacturing" requiring a coastal zone permit. There was no appeal.

On August 17, 1972, a permit application was filed by the New Castle County Department of Public Works. Environmental, aesthetic, economic and other effects of the pulverizer plant required by law to be considered were examined by the State Planner in evaluating the merits of this project. A public hearing on the application was held at Scott Plaza, a State office building at 1228 North Scott Street, in Wilmington. On November 15, 1972, a permit was granted subject to the condition that all other applicable State permits would be obtained. The permit was granted with the understanding that a leachate disposal system satisfactory to the Department of Natural Resources and Environmental Control would be installed. The permit was only for the pulverizer plant and not for the ferrous metal separator or compost unit that may be built at some time. There was no appeal of this permit decision.

Project Number 14 - Regal Development Corporation

Application for a status decision was filed on July 14, 1972, by the Regal Development Corporation of Wilmington for a Port Penn Marina. The project involved a large scale marina at Port Penn and the Delaware River including about 300 slips for cruising boats, a restaurant, and facilities for fuel, boat storage and repair, and boat supplies. A small amount of subaqueous land was to be leased from the State.

The status decision on the Port Penn Marina was made on July 17, 1972. The project was determined to be outside of the authority of the Coastal Zone Act being of a commercial rather than industrial or manufacturing nature and not involving an offshore bulk product transfer facility for the commercial transfer of cargoes, but rather docking facilities purely for use by pleasure craft. There was no status decision appeal.

Project Number 15 - Sun Olin Chemical Company

The Sun Olin Chemical Company of Claymont on August 9, 1972, applied for a status decision on a project to manufacture liquid carbon dioxide (CO_2). A liquefaction facility would be built as an expansion of the Ethylene Oxide Unit to purify and liquify approximately 105 tons per day of CO_2 to be shipped by tank truck to customers.

No air or water quality permits were required from the State. Air quality would be slightly improved by eliminating carbon dioxide vented to the atomosphere from the Ethylene Oxide Unit; this was an incidental effect, not a purpose of the project.

On October 4, 1972, the status decision stated that this project was expansion or extension of a non-conforming use that did not have a significant impact in terms of plant production capacity, land use area, or (negative) environmental impact. No coastal zone permit was required and the project was not prohibited. There was no appeal from this status decision.

Project Number 16 - Getty Oil Company, Incorporated

The Getty Oil Company applied on August 4, 1972, for a status decision

on construction and operation of a Beavon - Stretford process plant at its Delaware City refinery to recover sulfur dioxide from its Sulfur Plant tail gases to enable Getty to meet Delaware Air Quality Regulations for New Castle County by September 1973. The process would reduce sulfur dioxide emissions to the atmosphere and would result in recovery of one-half ton of elemental sulfur per hour. The Beavon - Stretford process plant would be located within an existing working area of the refinery on a small parcel of land (140 x 200 feet) adjacent to much larger, more visually prominent operating units and about 500 feet distant from the nearest public highway.

The State Planner's status decision of October 4, 1972, for the Beavon - Stretford process plant was that it did not require a permit and was not prohibited by the Coastal Zone Act. The project was considered not to be a "significant" expansion or extension of a non-conforming use in terms of refinery production capacity, land use area or aesthetic impact of the Beavon - Stretford unit, or negative environmental effect. The Department of Natural Resources and Environmental Control confirmed that this project would have a positive environmental effect by reducing refinery sulfur dioxide emissions and was being undertaken to meet State air quality requirements for New Castle County.

There was no appeal from the status decision.

Project Number 17 - Allied Chemical Corporation

The Allied Chemical Corporation applied for a coastal zone status decision on August 4, 1972, to construct a sulfuric acid storage tank at its Delaware Works in Claymont. The storage tank would have a 15,000 ton capacity and

construction would include a protective dike, pumps, and two pipelines to existing docking facilities. It would be used as a back-up storage facility to enable Allied Chemical to meet increased market demand for sulfuric acid.

Although this tank would have no effect on emissions or effluent compliance, a permit for construction was required by the Water Resources section of the Department of Natural Resources and Environmental Control.

The status decision of October 4, 1972, was that construction of the sulfuric acid storage tank and auxiliary facilities did not require a coastal zone permit and was not prohibited. It was an expansion or extension of a non-conforming use that was not "significant" in its effects on plant production capacity, plant land use area, and area aesthetic or environmental qualities.

There was no status decision appeal.

Project Number 18 - Allied Chemical Corporation

On September 6, 1972, the Allied Chemical Corporation applied for a status decision on an add-on interstage absorption system to its Sulfuric Acid Plant at its Delaware Works in Claymont. Construction of this system was part of the plant's emission compliance program and would reduce sulfur dioxide emissions from the Sulfuric Acid Plant upon completion in September 1973.

The State Planner's status decision of October 4, 1972, was that the add-on interstage absorption system did not require a permit and was not prohibited because this expansion or extension of a non-conforming use had no "significant" production capacity, land use area, or (negative) environmental

effects.

No appeal from this status decision was filed.

Project Number 19 - Getty Oil Company

A status decision application was filed on September 12, 1972, by the Getty Oil Company for construction of a low-rate activated sludge (waste water) treatment plant to treat effluent water from the refinery process at Getty's Delaware City petroleum refinery. The treatment plant would take waste water after in-plant treatment and primary oil separation; treatment would be based on the aeration concept used in municipal sewage treatment plants. Excess sludge from the treatment plant would be removed to Getty's solid waste landfill.

According to the Department of Natural Resources and Environmental Control, this project would reduce carbonaceous oxygen demand of refinery effluents to the Delaware River as required by Delaware water quality standards.

The State Planner's status decision of October 4, 1972, was that no coastal zone permit was required and the waste water treatment plant was not prohibited. The decision was made according to the "significant" effects test for expansion or extension of non-conforming uses.

No appeal from this status decision was made.

Project Number 20 - Allied Chemical Corporation

On October 5, 1972, the Allied Chemical Corporation applied for a status decision for projects at its Delaware Works in Claymont to construct and

operate:

(1) a South Plant Treatment System to treat water effluents from the Hydroflouric Acid Plant, Flourides Plant, and Alum Plant. The project had the approval of the (State) Department of Natural Resources and Environmental Control; and

(2) a Hydroflouric Acid Plant Dry Residue Handling System to render hydroflouric acid reactor residue neutral, dust free, and suitable for landfill disposal. This was approved, also, by the Department of Natural Resources and Environmental Control.

The status decision on January 2, 1973, was that neither project required a coastal zone permit nor was prohibited. However, the decision was conditional on a solution satisfactory to the Department of Natural Resources and Environmental Control for disposal of Dry Residue solid waste at a suitable site so as not to endanger surface or ground waters in the coastal zone.

There was no appeal from this status decision.

Project Number 21 - Feralloy Corporation

Approval of the first manufacturing plant new to the coastal zone, rather than expansion of a plant existing there prior to passage of the Coastal Zone Act, was initiated with a status decision application on November 27, 1972, by the Feralloy Corporation of Wilmington. The project involved construction of an (approximately) 82,000 square foot manufacturing plant, on approximately 6 1/2 acres of land at the New Castle

Industrial Park adjacent to Lambsons Lane near Pigeon Point, New Castle County. Feralloy Corporation is the wholly owned subsidiary of a West German company which in turn is owned by the West German government. At the time of this application, Feralloy operated plants in Baltimore and Wilmington for the cutting and slitting of semi-finished sheet steel. The Wilmington plant at the former Dravo Shipyard on the Christina River handled 6,000 tons per month. The new plant would consolidate Baltimore and Wilmington operations and would handle 12,000 tons per month initially and 40,000 tons per month by the end of the 1970's if an additional 80,000 square feet of floor space would be built at the New Castle Industrial Park. About 65 percent of steel handled at the Dravo Shipyard plant was imported from Europe, about 75 percent would be imported to the new plant, the remainder is American manufactured sheet steel. At the new plant, 75 percent of the sheet steel would be brought-in over the Wilmington Marine Terminal docks, an economic benefit to the Marine Terminal. Most out-going shipments would be by truck. The plant at the Dravo Shipyard had forty-one employees with a monthly payroll of about $29,000; the new plant initially would have seventy-two employees and a monthly payroll of approximately $51,000. At full capacity by the late 1970's plant employment would be one hundred and monthly payroll about $75,000.

State support for construction of the new Feralloy plant was in the form of State backing, at less than full faith in credit, of $1,400,000 of revenue bonds. This support was approved by the (State) Council on Industrial Financing. Title to the 6 1/2 acre parcel at the New Castle Industrial Park is with the Department of Community Affairs and Economic Development. At the end of the fifteen year term of the bond issue, the State would sell the land to Feralloy

Corporation for a nominal price; in the meantime real estate taxes to New Castle County would be paid by Feralloy.

The State Planner's status decision of December 21, 1972, was that the new Feralloy plant would be manufacturing, not simply a warehouse, and that a coastal zone permit was required. This decision was based on the fact that over three-fourths of the sheet steel would be cut or slit (cut lengthwise) and that this type of operation met the definition of manufacturing in the Coastal Zone Act.

There was no appeal from the status decision and on January 3, 1973, Feralloy Corporation filed a permit application. A public hearing on the application was held on January 9, 1973, at Scott Plaza, 1228 North Scott Street, Wilmington.

The permit decision of January 10, 1973, was to grant the coastal zone permit for constructio and operation of the initial (approximately) 82,000 square foot plant at the New Castle Industrial Park. Any further plant construction will require a new status decision.

Project Number 22 - Amoco Chemicals Corporation

The Amoco Chemicals Corporation applied on December 12, 1972, for a coastal zone status decision for an Atactic Recovery Unit at its New Castle Polymer Plant on Route 9 south of the City of New Castle.

The plant produces homopolymers and copolymers. An unavoidable by-product of this production is atactic, a non-crystalline form of polypropylene. Most of this atactic must be disposed of as a waste product to a

landfill, a small amount can be sold commercially. The Atactic Recovery Unit; if successful, would demonstrate the commercial feasibility of converting atactic from homopolymer production to a more saleable form. The benefits to Amoco would be an increase in a saleable by-product and consequent reduction of costs to dispose of unsaleable waste atactic. Need for landfill space would also be reduced.

On January 2, 1973, the State Planner made his status decision. No permit was required and the Atactic Recovery Unit was not a prohibited use. The project was not "significant" expansion or extension of a non-conforming use in terms of plant production or land use area, or aesthetic or environmental impacts. There would be no increase in production of homopolymers or copolymers and no increase in emissions or effluents.

Project 23 - Sico Foundation

On January 8, 1973, the Sico Foundation of Mount Joy, Pennsylvania filed a status decision application for construction and operation of petroleum tanks and pipelines on its property adjacent to the Wilmington Marine Terminal.

The Sico Foundation owns approximately 52 acres of which about 20 acres is currently used by its subsidiary, the Sico Company, for a petroleum tank farm utilizing the petroleum pier at the Marine Terminal for its docking facility to offload incoming petroleum products brought by barge. The remainder of the 52 acres is now vacant. The project called for leasing of approximately 26 acres of the vacant land from the Sico Foundation by Energy Transporters, Incorporated to construct several large petroleum storage tanks for low sulfur fuel to be transported by pipeline to electric power plants and industrial

customers in the Delaware Valley. In addition, the Sico Company would build one new storage tank and improve a number of old tanks to meet federal occupational safety standards at the existing Sico petroleum tank farm. There would be a 3x increase in storage capacity to 1,050,000 barrels capacity of all tanks, old and new, on the Sico Foundation property. The Marine Terminal petroleum pier would be considerably improved at the expense of Energy Transporters, Incorporated. A new thirty inch pipeline from this pier to its new tank farm would be built by Energy Transporters, Incorporated and part of the existing pipeline from the pier to the Sico tanks would be replaced by the Sico Company. The Sico Company would continue to operate its tank farm and Energy Transporters, Incorporated would operate the new tank farm adjacent to it on the leased twenty-six acres of Sico's property.

The State Planner's status decision of February 14, 1973, was that no coastal zone permit was required because petroleum tank farms are not manufacturing and that the project was not prohibited as a heavy industry use because it was in effect an extension of the Port of Wilmington docking facilities which are exempt from prohibition in the coastal zone. That is, the improved and the new tank farms, being dependent on use of the Port of Wilmington (Marine Terminal) petroleum pier, could logically be considered an essential extension of that facility because petroleum unloaded would have to be stored someplace and the tanks provided that necessary storage. The fact that these tanks would be in close geographic proximity to the Marine Terminal pier and were within the riverfront area of Wilmington, was an additional consideration in the status decision.

An appeal of this status decision was filed on March 2, 1973, by Mr. Albert W. Adams, Jr., of near Milford, representing a private conservation organization called Save Our Shores. Mr. Adams' appeal claimed that the State Planner's status decision was incorrect. He asked the State Coastal Zone Industrial Control Board to reverse the decision for several reasons:

(1) The State Planner erroneously concluded that the Sico project was outside of the authority of the Coastal Zone Act.

(2) Storage tanks on the Sico Foundation property cannot be considered an extension of the Port of Wilmington docking facility.

(3) It was unnecessary and mistaken for the State Planner to refer to the Port docking facility once he had decided that the Sico and Energy Transporter's tank farms were not manufacturing or heavy industry uses.

(4) The Board should examine the question of whether or not petroleum tank farms are a heavy industry use because they have tanks - a physical feature used to define heavy industry uses in the Coastal Zone Act.

On March 20, 1973, the State Coastal Zone Industrial Control Board held a public hearing on the appeal at Scott Plaza, a State office building, in Wilmington. Testimony was heard from the attorney representing the appellant, Mr. Adams, and an attorney for Energy Transporters, Incorporated representing the status decision applicant. Members of the Board raised some questions and elicited new information on the Sico project.

After the appeal hearing but prior to the Board's decision, an agreement was reached by the State Planner and the two parties concerned in the case to

modify the status decision in a way that would satisfy Mr. Adams of Save Our Shores without changing the substance of the decision. The wording of the State Planner's decision was changed so that it was made clear that the geographic extent of the Port of Wilmington exemption of docking facilities and functionally related bulk product storage tanks applied only within the City of Wilmington. On April 18, 1973, the attorney for Save Our Shores notified the Chairman of the State Coastal Zone Industrial Control Board that the appeal was being withdrawn on the basis of this mutually agreed-upon change in the status decision.

The effect of the revised status decision on the Sico Foundation case is to place a clear geographic limit on the exemption under Section 7002(f) of the Coastal Zone Act of docking facilities of the Port of Wilmington and functionally related, nearby bulk product storage tanks. Storage tanks widely separated from the Port and outside of the City of Wilmington would not come under the exemption provided by Section 7002(f).

Project Number 24 - Townsend Incorporated

Townsend's Incorporated of Millsboro, Delaware applied on February 6, 1973, for a coastal zone status decision on two projects at its soybean plant on Route 24 east of Millsboro. At this plant, soybeans are processed for soybean oil and for chicken feed. The plant has been in operation since the early 1950's.

Townsend's planned to enlarge its soybean extraction plant to double capacity to extract soybean oil. Most of the increased capacity would not be used in the near future, but would provide excess capacity to draw upon

at a future time. The second improvement would be to the soybean drying, cleaning and storage facilities to provide increased capacity to handle wet field soybeans and dry and store them.

The State Planner's status decision of February 12, 1973, was that the Townsend's plant was a non-conforming manufacturing use in the coastal zone and that these improvement projects were expansions or extensions not requiring a permit by reason of not having "significant" effects on production capacity, land use area, or the environment. There would be considerable emission of soybean dust from the drying and cleaning process, but Townsend's would install fine mesh screens to control this exceeding State air quality requirements. This was confirmed by the Department of Natural Resources and Environmental Control.

On April 12, 1973, Townsend's Incorporated notified the State Planner that their plans for the extraction plant had been revised to meet requirements of the federal Occupational Safety and Health Act, of which Townsend's had previously been unaware. The plan changes involved putting an industrial type fence around the extraction plant a minimum distance from it, and placing a vapor barrier between the extraction process and a possible source of vapor ignition.

After conferring with his legal advisor, the State Planner notified Townsend's Incorporated on May 7, 1973, that a second status decision application was not necessary and that the original decision remained in effect because the change of plans did not involve changes in plant production or environmental impact and had been made to satisfy federal occupational health and safety requirements.

The status decisions for Townsend's Incorporated were not appealed.

Project Number 25 - Container Corporation of America

Application for a coastal zone status decision was made on February 26, 1973, by the attorney for Container Corporation of America to construct and operate a new plant in the City of New Castle for manufacturing paperboard industrial drum containers. The paperboard and metal ends would be manufactured elsewhere and brought to this plant. Here the paperboard would be shaped into containers and the metal lids crimped over the paperboard tubes. The applicant described this as a fabrication process.

Container Corporation of America would purchase a site of approximately eight acres off New Castle Avenue provided the site received City rezoning approval and the project received approval under the Coastal Zone Act.

The State Planner gave his status decision on March 1, 1973, stating that the plant would be a new manufacturing use in the coastal zone requiring application for a coastal zone permit following zoning approval by the Town of New Castle.

There was no appeal of this status decision.

No permit application has been submitted and nothing further has been heard of this project up to June 30, 1973, the end of the period covered by this Annual Report.

Project Number 26 - Blue Hen Finishing Company

On March 2, 1973, a status decision application was filed with the State Planner for operation of a leather and artificial leather spray finishing

plant in the former Gioia Specialty Foods plant in Odessa. Real and artificial leather hides would be sprayed with a polyurethane lacquer finish in a spray booth and dried prior to shipment to customers who would use the lacquered leather to make shoes, handbags, belts, and other leather goods.

The applicant claimed that his operation was not manufacturing, but rather it was similar to a paint shop. No leather would be tanned or made into finished leather products here, the only thing done would be the spraying of the chemical lacquer finish and color pigments onto pieces of tanned leather.

The State Planner in his status decision of April 26, 1973, determined that this was manufacturing because there was a chemical transformation of an organic or inorganic substance into a new product, meeting the definition of manufacturing in the Coastal Zone Act.

No appeal of this status decision was made.

On June 26, 1973, the Blue Hen Finishing Company, Incorporated filed its coastal zone permit application, one day following rezoning approval of the plant site by the Mayor and Council of Odessa. The State Planner began his review of the permit application and scheduled a public hearing on it at the end of July 1973, in Odessa; he had ninety days from the date of receipt of this application to make his permit decision.

Project Number 27 - Stauffer Chemical Company

Application for a coastal zone status decision was made on March 7, 1973, by the Stauffer Chemical Company, Incorporated near Delaware City on a project to modify its carbon disulfide plant by installing pollution control equipment for further treatment of tail gases from an existing sulfur recovery unit in order to reduce sulfur dioxide emissions to conform to State air

quality standards by January 1, 1974. The Department of Natural Resources and Environmental Control had issued a permit for construction of this equipment.

On March 16, 1973, the State Planner made his status decision. No permit was required and the project was not prohibited for this expansion or extension of a non-conforming use. There were no significant effects on area aesthetic qualities or plant land use area. There was no effect on plant production capacity. There was a positive environmental effect by considerably reducing emissions of sulfur dioxide from the carbon disulfide plant of the Stauffer Chemical Company.

No appeal of this status decision was made.

Project Number 28 - Sun Oil Company

The Sun Oil Company of Pennsylvania on March 26, 1973, applied for a status decision on a revised proposal to extend its Pier #3 at the Marcus Hook, Pennsylvania refinery. This project had previously been given a status decision upheld by the State Coastal Zone Industrial Control Board that the pier extension into Delaware waters was prohibited (see Project Number 11).

In this status decision application, Sun Oil agreed in writing to use that part of extended Pier #3 within Delaware exclusively for off-loading of material for the Sun Marcus Hook refinery operations and not to use it for trans-shipment in connection with non-refinery operations. Sun Oil explicitly stated that none of its expanded trans-shipment operations to serve outside customers would be located in Delaware. On this basis, Sun Oil requested

exemption of extended Pier #3 as a docking facility or pier for a single non-conforming industrial facility as allowed in Section 7002(f) of the Coastal Zone Act.

On April 19, 1973, the State Planner made his status decision granting this exemption of extended Pier #3 from prohibition as an offshore bulk product transfer facility under Section 7002(f) on the basis of the promise by Sun Oil to use it exclusively for its own refinery purposes.

The status decision was not appealed.

Project Number 29 - Getty Oil Company

Application for a coastal zone status decision was filed on March 22, 1973, by the Getty Oil Company for modification of its sulfuric acid alkylation plant to enable Getty to produce low lead and no lead gasoline at its Delaware City refinery. There would be no net refinery production increase, and no emissions to the atmosphere or increase in liquid wastes from this plant modification.

The State Planner's status decision of April 6, 1973, declared that no coastal zone permit was required and the project was not prohibited by reason of the project being expansion or extension of a non-conforming use that had no "significant" impact on refinery production capacity or land use area, or negative environmental effect.

There was no status decision appeal.

Project Number 30 - ICI America Incorporated

ICI America Incorporated of Wilmington on April 10, 1973, applied for

a status decision on a project to improve its Atlas Point organic chemicals plant waste water treatment system.

ICI America is required by the Delaware River Basin Commission and federal and State agencies to improve the quality of its waste water discharges to the Delaware River.

Additional improved plant waste water treatment facilities would be constructed at the ICI America Atlas Point plant so that effluents to the Delaware River would meet State, interstate, and federal water quality standards. Within approximately two years, the plant waste water would go into the extended New Castle County sewer system and then to the Wilmington sewage treatment plant - improved pre-treatment at the Atlas Point Plant would make its waste waters suitable for discharge to this public sewerage system.

Plant production capacity was not a factor in this status decision.

On May 14, 1973, the State Planner made his coastal zone status decision that this was expansion or extension of a non-conforming use that was not prohibited and required no coastal zone permit because it had no significant affect on plant production, land use area, aesthetic qualities, or the environment.

No one appealed this status decision.

Project Number 31 - Del Val Asphalt Corporation and

Project Number 32 - Artic Roofings, Incorporated

On April 9, 1973, status decision applications were filed by Del Val Asphalt Corporation and Artic Roofings, Incorporated for air pollution control equipment at their adjoining manufacturing plants at Edgemoor.

Duct work, fans, and dampers were to be installed for incineration of fumes from two felt saturators at Artic Roofings and from asphalt oxidizers at Del Val Asphalt in existing incinerators at Del Val Asphalt. A new knock out tank would also replace an existing tank at Del Val.

Both Del Val and Artic Roofings were under order of the Chancery Court to eliminate tar and asphalt odors beyond their property boundaries. The joint project had received construction permits from the Air Resources Section of the Department of Natural Resources and Environmental Control.

The State Planner's status decisions of May 3, 1973, for this joint project were that it was not prohibited and could proceed without a coastal zone permit because the effects of this expansion or extension of non-conforming uses were not significant, infact, the environmental effect would be a positive one of eliminating disturbing off-site tar and asphalt odors.

No appeals of these status decisions were filed.

Project Number 33 - General Electric Service Shop

A status decision application was filed on April 30, 1973, by the General Electric Service Shop of Philadelphia to construct and operate a small plant for the overhaul and repair of A. C. electric motors on two acres of leased land at the New Castle Industrial Park, Lambsons Lane near Pigeon Point, Wilmington. No new electric motors would be manufactured; operations would be entirely the repair of used electric motors.

The State Planner on May 9, 1973, decided that this project of the General Electric Service Shop was outside of the authority of the Coastal Zone Act.

There was no appeal from this status decision.

Project Number 34 - Forbes Steel and Wire Corporation

On June 20, 1973, application for a status decision was filed by the Forbes Steel and Wire Corporation at New Castle and New York Avenues, Wilmington, to construct an addition to its existing plant to enlarge its batch steel cleaning operations.

The State Planner on June 29, 1973, notified the Forbes Steel and Wire Corporation that it was not regulated by the Coastal Zone Act because its plant is located outside of the legal coastal zone, that is, it is located a short distance to the west of the right-of-way of Interstate 495, the coastal zone landward boundary in Wilmington.

There was no legal notice advertised for this decision since there seemed to be no real basis for any appeal and the status decision procedure was unnecessary and could have been avoided if the company representative had first informally checked with the State Planning Office as to the boundaries of the coastal zone. The legal advisor to the State Planner on coastal zone matters concurred with this decision not to require published legal notice.

Project Number 35 - Getty Oil Company

The Getty Oil Company on June 25, 1973, applied for a status decision to modify a catalytic cracker reactor at its Delaware City refinery to improve efficiency of producing gasoline and furnace oil from gas oil. There will be an increased production of gasoline due to the more efficient technology, but the refinery crude oil processing capacity will not increase.

This application was being reviewed by the State Planning Office at the end of the period covered in this Annual Report.

Project Number 36 - Stauffer Chemical Company

On June 29, 1973, the Stauffer Chemical Company applied for a coastal zone status decision on a project to replace two steam boilers with two new much larger boilers at its PVC Chemical Plant near Delaware City. A steam boiler capacity increase of more than 3x will result from installation of the new boilers. The Company has applied to the Department of Natural Resources and Environmental Control for a permit from the Air Resources Section.

This application was under review by the State Planning Office at the end of the period covered in this Annual Report.

APPENDIX 1

Coastal Zone Act and Map

This bill appears as Chapter 175
Volume 58 Laws of Delaware
Approved by the Governor [redacted]
6/30/71

HOUSE OF REPRESENTATIVES

126TH GENERAL ASSEMBLY

FIRST SESSION - 1971

HOUSE SUBSTITUTE NO. 2

FOR

HOUSE BILL NO. 300

AS AMENDED BY

HOUSE AMENDMENTS NO. 1, 2, 8, 11, 12, 13, 14,

15, 18, 19, 22, 23 AND 24

AN ACT CREATING A NEW CHAPTER 70, TITLE 7, DELAWARE CODE TO ESTABLISH A COASTAL ZONE IN DELAWARE; TO PROHIBIT OR LIMIT CERTAIN USES THEREIN; TO CREATE A STATE COASTAL ZONE INDUSTRIAL CONTROL BOARD

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Title 7, Delaware Code, is amended by creating a new Chapter 70 to read as follows:

"CHAPTER 70. COASTAL ZONE ACT

§ 7001. Purpose

It is hereby determined that the coastal areas of Delaware are the most critical areas for the future of the State in terms of the quality of life in the State. It is, therefore, the declared public policy of the State of Delaware to control the location, extent and type of industrial development in Delaware's coastal areas. In so doing, the State can better protect the natural environment of its bay and coastal areas and safeguard their use primarily for recreation and tourism.

Specifically, this chapter seeks to prohibit entirely the construction of new heavy industry in its coastal areas, which industry is determined to be incompatible with the protection of that natural environment in those areas. While it is the declared public policy of the State to encourage the introduction of new industry into Delaware, the protection of the environment, natural beauty and recreation potential of the State is also of great concern. In order to strike the correct balance between these two policies, careful planning based on a thorough understanding of Delaware's potential and her needs is required. Therefore, control of industrial development other than that of heavy industry in the Coastal Zone of Delaware through a permit system at the State level is called for. It is further determined that off-shore bulk product transfer facilities represent a significant danger of pollution to the Coastal Zone and generate pressure for the construction of industrial plants in the Coastal Zone, which construction is declared to be against public policy. For these reasons, prohibition against bulk product transfer facilities in the Coastal Zone is deemed imperative.

§ 7002. Definitions

(a) 'The Coastal Zone' is defined as all that area of the State of Delaware, whether land, water or subaqueous land between the territorial limits of Delaware in the Delaware River, Delaware Bay and Atlantic Ocean, and a line formed by certain Delaware highways and roads as follows:

Beginning at the Delaware-Pennsylvania line at a place where said line intersects U. S. Route 13; thence southward along the said U. S. Route 13 until it intersects the right-of-way of U. S. Route I-495; thence along

said I-495 right-of-way until the said I-495 right-of-way 1
intersects Delaware Route 9 south of Wilmington; thence 2
along said Delaware Route 9 to the point of its intersection 3
with Delaware Route 273; thence along said Delaware Route 4
273 to U. S. 13; thence along U. S. 13 to Maintenance Road 5
409; thence along Maintenance Road 409 to Delaware Road 71; 6
thence along Delaware Road 71 to its intersection with 7
Delaware Road 54; thence along Delaware Road 54 to Delaware 8
Road 896; thence along Delaware Road 896 to Maintenance 9
Road 396; thence along Maintenance Road 396 to Maintenance 10
Road 398; thence along Maintenance Road 398 to the Maryland 11
State Line; thence southward along the Maryland State Line 12
to Maintenance Road 433; thence along Maintenance Road 433 13
to Maintenance Road 63, thence along Maintenance Road 63 14
to Maintenance Road 412, thence along Maintenance Road 15
412 to U. S. 13, thence along U. S. 13 to Delaware 299 at 16
Odessa; thence along Delaware Route 299 to its intersection 17
with Delaware Route 9; thence along Delaware Route 9 to 18
U. S 113; thence along U. S Route 113 to Maintenance 19
Road 8A, thence along Maintenance Road 8A to Maintenance 20
Road 7 to the point of its intersection with Delaware Route 21
14; thence along Delaware Route 14 to Delaware Route 24; 22
thence along Delaware Route 24 to Maintenance Road 331; 23
thence along Maintenance Road 331 to Maintenance Road 334; 24
thence along Maintenance Road 334 to Delaware Route 26; thence 25
along Delaware Route 26 to Maintenance Road 365; thence along 26
Maintenance Road 365 to Maintenance Road 84; thence along 27
Maintenance Road 84 to Maintenance Road 384; thence along 28
Maintenance Road 384 to Maintenance Road 382A; thence along 29
Maintenance Road 382A to Maintenance Road 389; thence along 30

Maintenance Road 389 to Maintenance Road 58; thence along Maintenance Road 58 to Maintenance Road 395; thence along Maintenance Road 395 to the Maryland State Line.

(b) 'Non-conforming use' means a use, whether of land or of a structure, which does not comply with the applicable use provisions in this chapter where such use was lawfully in existence and in active use prior to the enactment of this chapter.

(c) 'Environmental Impact Statement' means a detailed description as prescribed by the State Planning Office of the effect of the proposed use on the immediate and surrounding environment and natural resources such as water quality, fisheries, wildlife and the aesthetics of the region.

(d) '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 other fixed improvement.

(e) 'Heavy industry use' means a use characteristically involving more than twenty acres, and characteristically employing some but not necessarily all of such equipment such as, but not limited to, smoke stacks, 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. 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.

(f) 'Bulk product transfer facility' means any port or dock facility, whether an artificial island or attached to shore by any means, for the transfer of bulk quantities of any substance from vessel to on-shore facility or vice versa. Not included in this definition is a docking facility or pier for a single industrial or manufacturing facility for which a permit is granted or which is a non-conforming use. Likewise, docking facilities for the Port of Wilmington are not included in this definition.

(g) 'Person' shall include, but not be limited to, any individual, group of individuals, contractor, supplier, installer, user, owner, partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, administrative agency, public or quasi-public corporation or body, or any other legal entity, or its legal representative, agent, or assignee.

(h) 'Board' shall mean the Coastal Zone Industrial Control Board.

§ 7003. <u>Uses absolutely prohibited in the Coastal Zone</u>

Heavy industry uses of any kind not in operation on the date of enactment of this chapter are prohibited in the Coastal Zone and no permits may be issued therefor. In addition, offshore gas, liquid, or solid bulk product transfer facilities which are not in operation on the date of enactment of this

chapter are prohibited in the Coastal Zone, and no permit may be issued therefor. Provided, that this section shall not apply to public sewage treatment or recycling plants.

§ 7004. Uses allowed by permit only. Non-conforming uses

(a) Except for heavy industry uses, as defined in section 7002 of this chapter manufacturing uses not in existence and in active use of the date of enactment of this chapter are allowed in the Coastal Zone by permit only, as provided for under this section. Any non-conforming use in existence and in active use on the effective date of this chapter shall not be prohibited by this chapter. All expansion or extension of non-conforming manufacturing uses, as defined herein, and all expansion or extension of uses for which a permit is issued pursuant to this chapter, are likewise allowed only by permit. Provided, that no permit may be granted under this chapter unless the county or municipality having jurisdiction has first approved the use in question by zoning procedures provided by law.

(b) In passing on permit requests, the State Planner and the State Coastal Zone Industrial Control Board shall consider the following factors

(1) Environmental impact, including but not limited to, probable air and water pollution likely to be generated by the proposed use under normal operating conditions as well as during mechanical malfunction and human error; likely destruction of wetlands and flora and fauna; impact of site preparation on drainage of the area in question, especially as it relates to flood control; impact of site preparation and facility operations on land erosion;

effect of site preparation and facility operations on the quality and quantity of surface ground and sub-surface water resources, such as the use of water for processing, cooling, effluent removal, and other purposes; in addition, but not limited to, likelihood of generation of glare, heat, noise, vibration, radiation, electromagnetic interference and obnoxious odors.

(2) Economic effect, including the number of jobs created and the income which will be generated by the wages and salaries of these jobs in relation to the amount of land required, and the amount of tax revenues potentially accruing to State and local government.

(3) Aesthetic effect, such as impact on scenic beauty of the surrounding area.

(4) Number and type of supporting facilities required and the impact of such facilities on all factors listed in this subsection.

(5) Effect on neighboring land uses including, but not limited to, effect on public access to tidal waters, effect on recreational areas, and effect on adjacent residential and agricultural areas.

(6) County and municipal comprehensive plans for the development and/or conservation of their areas of jurisdiction.

§ 7005. Administration of this chapter

(a) The State Planning Office shall administer this chapter. All requests for permits for manufacturing land uses and for the expansion or extension of non-conforming uses as herein defined in the Coastal Zone shall be directed to the State Planner. Such requests must be in writing and

must include (1) evidence of approval by the appropriate county or municipal zoning authorities, (2) a detailed description of the proposed construction and operation of the use, and (3) an Environmental Impact Statement. The State Planner shall hold a public hearing and may request further information of the applicant. The State Planner shall first determine whether the proposed use is, according to this chapter and regulations issued pursuant thereto, (1) a heavy industry use under section 7003; (2) a use allowable only by permit under section 7004; or (3) a use requiring no action under this chapter. The State Planner shall then, if he determines that section 7004 applies, reply to the request for a permit within ninety (90) days of receipt of the said request for permit, either granting the request, denying same, or granting the request but requiring modifications; he shall state the reasons for his decision.

(b) The State Planner may issue regulations including, but not limited to, regulations governing disposition of permit requests, and setting forth procedures for hearings before himself and the Board. Provided, that all such regulations shall be subject to approval by the Board.

(c) The State Planner shall develop and propose a comprehensive plan and guidelines for the State Coastal Zone Industrial Control Board concerning types of manufacturing uses deemed acceptable in the Coastal Zone and regulations for the further elaboration of the definition of 'heavy industry' in a manner consistent with the purposes and provisions of this chapter. Such plan and guidelines shall become binding regulations upon adoption by the Board after public hearing. The Board may alter said regulations at any time after a public hearing. Provided, that any such regulations shall be consistent with sections 7003 and 7004 of this chapter.

(d) The State Planning Office and all agencies of State government shall assist the State Coastal Zone Industrial Control Board in developing policies and procedures, and shall provide the Board with such information as it shall require.

§ 7006. State Coastal Zone Industrial Control Board created. Composition. Conflict of interest. Quorum.

There is hereby created a State Coastal Zone Industrial Control Board, which shall have ten (10) voting members. Five (5) of these shall be regular members appointed by the Governor and confirmed by the Senate. No more than two (2) of the regular members shall be affiliated with the same political party. At least one regular member shall be a resident of New Castle County, one a resident of Kent County and one a resident of Sussex County, provided that no more than two residents of any county shall serve on the Board at the same time. The additional five (5) members shall be the Secretary of Natural Resources and Environmental Control, the Secretary of Community Affairs and Economic Development, and the Chairmen of the Planning Commissions of each county, who shall be ex-officio voting members. The term of one appointed regular member shall be for one (1) year; one for two (2) years; one for three (3) years; one for four (4) years; and the Chairman, to be designated as such by the Governor, and serve at his pleasure. Thereafter, all regular members shall be appointed for five year terms. The members shall receive no compensation except for expenses. Any member of the Board with a conflict of interest in a matter in question shall disqualify himself from consideration of that matter. A majority of the total membership of the Board less those disqualifying themselves shall constitute a quorum. A majority of the total membership of the Board shall be necessary to make a final decision on a permit request.

§ 7007. Appeals to State Coastal Zone Industrial Control Board

(a) The State Coastal Zone Industrial Control Board shall have the power to hear appeals from decisions of the State Planner made under section 7005. The Board may affirm or reverse the decision of the State Planner with respect to applicability of any provision of this chapter to a proposed use; it may modify any permit granted by the State Planner, grant a permit denied by him, deny a permit, or confirm his grant of a permit. Provided, however, that the Board may grant no permit for uses prohibited in section 7003 herein.

(b) Any person aggrieved by a final decision of the State Planner under section 7005 (a) may appeal same under this section. Appellants must file notice of appeal with the State Coastal Zone Industrial Control Board within fourteen (14) days following announcement by the State Planner of his decision. The State Coastal Zone Industrial Control Board must hold a hearing and render its decision in the form of a final order within sixty (60) days following receipt of the appeal notification.

(c) Whenever a decision of the State Planner concerning a permit request is appealed, the Board shall hold a public hearing at which the appellant may be represented by counsel. All proceedings in such a hearing shall be made a matter of record and a transcript or recording of all proceedings kept, and the public may attend and be heard.

(d) The Board shall publicly announce by publication in at least one newspaper of daily publication in the county in which the site designated in the request is wholly or principally located and in at least one newspaper of daily publication

and general circulation throughout the State the time, location and subject of all hearings under this section at least ten (10) days prior thereto.

§ 7008. Appeals to Superior Court

Any person aggrieved by a final order of the State Coastal Zone Industrial Control Board under section 7007 may appeal the Board's decision to Superior Court in and for the county of the location of the land in question. Likewise, the State Planner may appeal from any modification by the Board of his ruling. The appeal shall be commenced by filing notice thereof with Superior Court not more than twenty (20) days following announcement of the Board's decision. The Court may affirm the Board's order in its entirety, modify same, or reverse said order. In either case, the appeal shall be based on the record of proceedings before the Board, the only issue being whether the Board abused its discretion in applying standards set forth by this chapter and regulations issued pursuant thereto to the facts of the particular case. The Superior Court may by rule prescribe procedure by which it will receive, hear, and make disposition of appeals under this chapter.

Provided, that no appeal under this chapter shall stay any cease and desist order or injunction issued pursuant to this chapter.

§ 7009. Condemnation

If Superior Court rules that a permit's denial, or restrictions imposed by a granted permit, or the operation of section 7003 or section 7004 of this chapter, is an unconstitutional taking without just compensation, the Secretary of the State Department of Natural Resources and Environmental Control may, through negotiation or condemnation proceedings

under Chapter 61 of Title 10, acquire the fee simple or any lesser interests in the land. The Secretary must use this authority within five years from the date of the Court's ruling, for after said five years have elapsed the permit must be granted as applied for if the land has not been acquired under this authority.

§ 7010. Cease and Desist Orders

The Attorney General shall have the power to issue a cease and desist order to any person violating any provision of this chapter ordering such person to cease and desist from such violation. Provided, that any cease and desist order issued pursuant to this section shall expire (1) after thirty (30) days of its issuance, or (2) upon withdrawal of said order by the Attorney General, or (3) when the order is superseded by an injunction, whichever occurs first.

§ 7011. Penalties

Any person who violates any provision of this chapter shall be fined not more than $50,000 for each offense. The continuance of an activity prohibited by this chapter during any part of a day shall constitute a separate offense. Superior Court shall have exclusive original jurisdiction over offenses under this chapter.

§ 7012. Injunctions

The Court of Chancery shall have jurisdiction to enjoin violations of this chapter.

§ 7013. Inconsistent laws superseded. All other laws unimpaired. Certain uses not authorized.

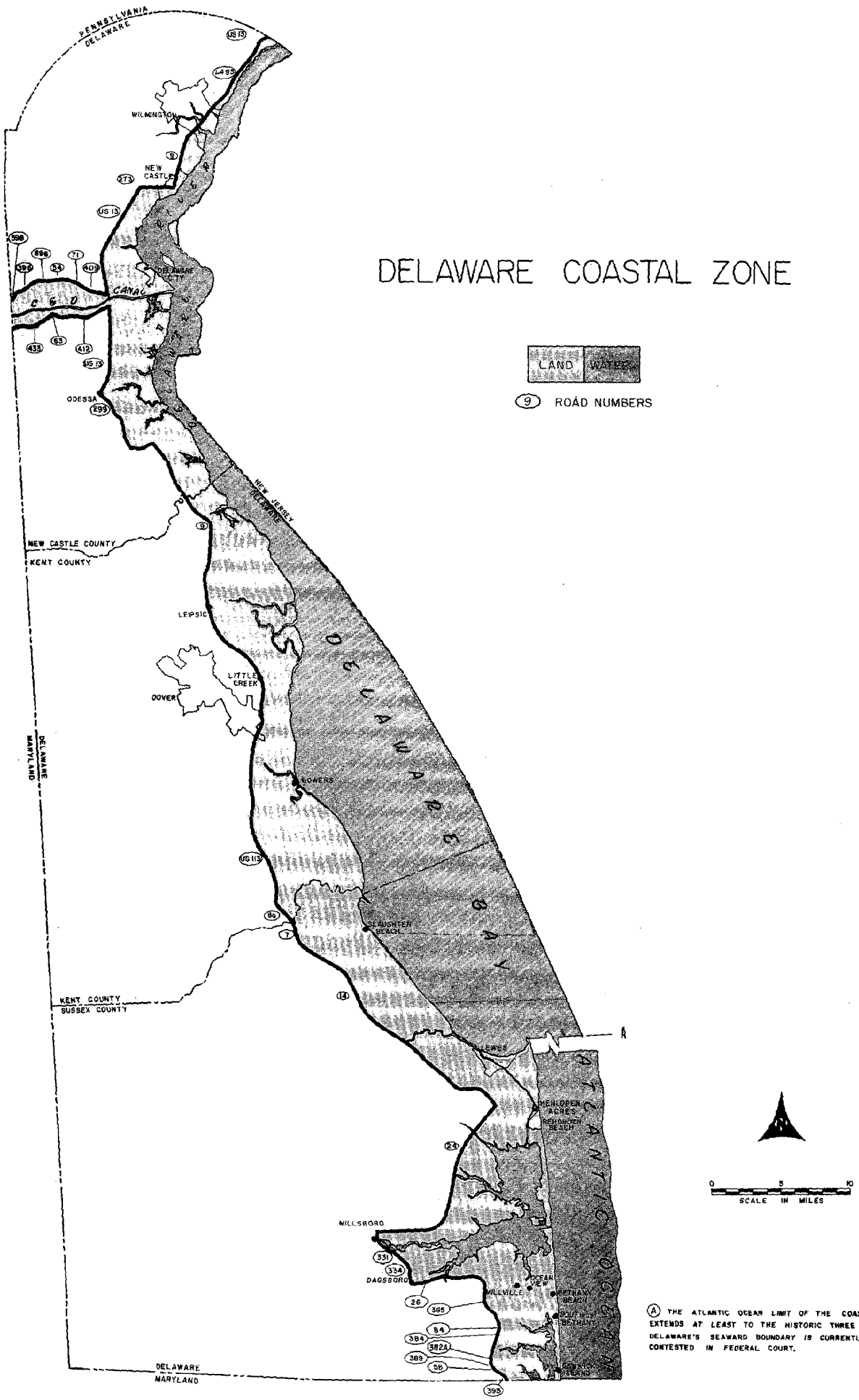
All laws or ordinances inconsistent with any provision of this chapter are hereby superseded to the extent of the inconsistency. Provided, that present and future zoning powers

of all counties and municipalities, to the extent that said powers are not inconsistent with this chapter, shall not hereby be impaired; and provided that a permit granted under this chapter shall not authorize a use in contravention of county or municipal zoning regulations.

§ 7014. Severability and Savings Clause

If any provision of this chapter, or of any rule, regulation, or order promulgated thereunder, or the application of any such provision, regulation, or order to any person or circumstances shall be held invalid, the remainder of this chapter or any regulations or order promulgated pursuant thereto or the application of such provision, regulations, or order to persons or circumstances other than those to which it is held invalid, shall not be affected thereby."

DELAWARE COASTAL ZONE



(A) THE ATLANTIC OCEAN LIMIT OF THE COASTAL ZONE EXTENDS AT LEAST TO THE HISTORIC THREE MILE LIMIT. DELAWARE'S SEAWARD BOUNDARY IS CURRENTLY BEING CONTESTED IN FEDERAL COURT.

APPENDIX 2

Administrative Forms and Procedures

COASTAL ZONE ACT

STATE OF DELAWARE

Application For A Project Status Decision
Under Terms of Section 7005 (a) and
Regulations Adopted Pursuant to
Section 7005 (b) of the Coastal Zone Act

Delaware State Planning Office
530 S. DuPont Highway
Dover, Delaware

(Checklist for State Planner)

Status Application Number _____

Application Sent to Applicant (date) _____

Application Received (date) _____

Nature of Application Decision _____

Decision Notification (date) _____

Appeal Filed (date) _____

_____
Date Received
(to be filled in by State Planner)

Application Number_____
(to be filled in by State Planner)

APPLICATION FOR A COASTAL ZONE
STATUS DECISION

A. Identification of the Applicant

Name_____

Address_____

Telephone_____

Signature_____

If the Applicant is not the Project Owner but is an Authorized Agent of the Owner please so state below, and state the Owner's name and address

_____

_____

B. Identification of the Project

Briefly describe the project as follows:

1. Location of project site

2. Is the project entirely new construction _____

reconstruction and improvement_____

expansion and extension of an existing facility _____

(check where appropriate)

3. Nature and Scale of the project including a brief description of manufacturing processes and products, or types of products to be transferred (if the project is a bulk product transfer facility)

(attach descriptive material to this Application)

Advice To The Applicant

(this advisory material may be retained by the Applicant)

1. Descriptive material may include sketch maps and plans--detailed engineering or architectural plans are not necessary.

2. The information provided with this Application need be sufficient in detail only to the extent that it enables the State Planner to clearly understand the nature of the project so that he may determine its status under the Coastal Zone Act.

3. The purpose of the Status Decision is to determine:

   a. if a proposed project is a prohibited heavy industry or offshore bulk product transfer facility, as defined by the Coastal Zone Act, or

   b. if a project is outside the scope of the Coastal Zone Act, or

   c. if the project is manufacturing which may be allowed by permit

4. There is no time limit for the State Planner's status decision. However, applications will be reviewed as expeditiously as possible.

5. The Applicant will be notified by mail of the Status Decision. If the Applicant's project is a prohibited use in the Coastal Zone, the Applicant may appeal that decision to the State Coastal Zone Industrial Control Board within fourteen (14) days of receiving formal notice of the decision. In such a case, the Applicant will be provided with an appeals form at the time he is notified of the Status Decision.

   If the Applicant's project is a permitted manufacturing use he will be provided with Application forms necessary to apply for a coastal zone permit at the time of Status Decision notification.

COASTAL ZONE ACT

STATE OF DELAWARE

Permit Application Instructions and Forms
and
Information Material On
Required Procedures

Delaware State Planning Office
Dover, Delaware

APPLICATION FOR A COASTAL ZONE PERMIT

RECORD OF APPLICATION

State of Delaware

Delaware State Planning Office
Thomas Collins Building
530 South DuPont Highway
Dover, Delaware 19901

(Checklist For State Planner)

Application Project Number	_____
Application Sent to Applicant	_____
Application Received	_____
Application Hearing Advertisement	_____
Application Hearing Held	_____
Permit Decision (Nature Of)	_____
Decision Public Notice	_____
Decision Notice to Applicant	_____
Appeal Application Received	_____
Permit Mailed to Applicant	_____

INSTRUCTIONS FOR COMPLETION OF THE RECORD OF APPLICATION FOR A COASTAL ZONE PERMIT

1. Complete the application form (Part 1).

2. Complete mandatory Application Supporting Documents Parts 1.1, 1.2 and 1.3. If additional space is needed for any information requested, use separate sheets, attach to the appropriate document and clearly identify each part and question by number and letter.

3. Complete and sign the Letter of Affirmation, Part 1.4.

4. Appropriate optional Application Supporting Documents should be completed at the discretion of the permit applicant; in all cases they should be completed to the extent required by the State Planner.

5. Submit all completed permit application material to the:

   Delaware State Planning Office
   Thomas Collins Building
   530 South duPont Highway
   Dover, Delaware 19901

_____
Date Received
(to be filled in by State Planner)

_____

Application Number _____
(to be filled in by State Planner)

PART I

DELAWARE STATE PLANNING OFFICE

APPLICATION FOR A COASTAL ZONE PERMIT

DATE _____, 19____

A. Name of Project Owner

_____

Business Address and Telephone Number

B. Name of Project Developer (if not the owner)

_____

Business Address and Telephone Number

C. Authorized Agent (for this project application)

Name _____

Business Address and Telephone Number

D. Application is hereby made for:

_____ new construction
_____ reconstruction or improvement
_____ expansion or extension

E. Property Location (mailing address and identification of abutting highways, roads, or streets)

F. Signature and Title of Authorized Agent

_____

Application Number _____
(to be filled in by State Planner)

PART I.I

Application Supporting Document

EVIDENCE OF LOCAL ZONING JURISDICTION APPROVAL

I _____, zoning
(Name)

administrator for _____, do hereby
(Name of county, city or town)

affirm that the project proposed by _____
(Name of permit applicant)

located at _____,
(Address)

in the _____ zoning district is in full compliance with the zoning code as it applies to this project.

_____
Signature of Zoning Officer

_____
Official Title

County or Municipal Seal
(if applicable)

Application Number _____
(to be filled in by State Planner)

PART 1.2

Application Supporting Document

DESCRIPTION OF PROJECT CONSTRUCTION AND OPERATIONS

A. Describe the project for which application is being made for a coastal zone permit. Sufficient information should be provided in this description to enable a reader to clearly and fully understand the intent and scope of the project. Include a general statement of the means to be taken to remove gas, liquid and solid wastes.

B. Project Location Map having the following characteristics:

1. Drawn to scale no smaller than one inch to 2,000 feet.

2. A north arrow showing true north.

3. A graphic scale.

4. Show the entire property boundaries and clearly indicate that part of the site for which this coastal zone permit application is made and any part of the property previously developed.

5. Clearly show and identify highways, roads, and local streets abutting or leading into the project site.

6. Indicate the County and Hundred within which the project site is located.

Application Number _____
(to be filled in by State Planner)

PART 1.3

Application Supporting Document

ENVIRONMENTAL IMPACT STATEMENT

A. Describe the probable impact of the project on the environment and on ecological systems such as wildlife, marine life and plant communities. Secondary as well as primary significant consequences should be included. For example, perhaps the project will have a primary effect of eliminating or substantially reducing a link in the natural food chain of marine life, thereby having a secondary effect on forms of marine life which prey on the life form eliminated or severely reduced.

B. Describe the cumulative and long term effects of the project on the environment and natural resource base, as well as the immediate effects.

C. Identify the extent to which the project curtails the range of beneficial uses of the environment. For example, a shoreline dredged or filled for an industrial port facility will be entirely or largely removed from any other potential use. Include descriptions of any irreversible and irretrievable commitments of environmental resources.

References to relevant studies and plans should be included to support the statement descriptions, analyses and conclusions.

Application No. _____
(to be filled in by State Planner)

PART 1.4

APPLICATION LETTER OF AFFIRMATION

I hereby affirm on this _____ day of _____, 19___, as follows:

1. That I am the owner, or the duly authorized agent of the owner of the project, described in this application, known as the _____ project located at _____ in _____ County of Delaware.

2. That the statements made in this Application for a Coastal Zone Permit together with Application Supporting Documents and attached material, and the Environmental Impact Statement, are true, complete and correct to the best of my knowledge and information.

_____
Signature of Applicant or Agent

_____
Title

_____
Corporate Seal (If applicable)

NOTE: If the affirmation is made by an agent of the project owner, submit as Letter of Affirmation Supporting Document 1.41 written authorization to act as agent.

This Document is Mandatory Only When Requested By The State Planner

Application Number _____
(to be filled in by State Planner)

PART 2

Application Supporting Document

PROJECT COST AND PROPERTY RECORD

A. Submit as Supporting Document 2 an estimate of the Project Cost and information regarding the project Property Record as follows:

1. State below the estimated total cost of improvements to land and cost of buildings:

2. State whether the Applicant owns the project site or leases the site or has it under option or other similar arrangement.

3. State the number of acres: owned _____
leased _____
under option or similar arrangement _____

4. State whether the project property deed is recorded, and, if so, give the date and place of recording, the deed book and page numbers, and name(s) of the owner(s) of record.

These Documents are Mandatory Only When Requested By The State Planner

Application Number _____
(to be filled in by State Planner)

PART 3

Application Supporting Document

PROJECT SITE PLAN

A. Submit as Supporting Document 3 a Preliminary Project Site Plan having the following characteristics:

1. Drawn to scale no smaller than one inch to 200 feet.
2. A graphic scale.
3. A north arrow showing true north.
4. Name and license number of the Delaware licensed architect and/or landscape architect responsible for the Plan.
5. Acreage of the total property, and the project site (where the project for which permit application is made includes only part of a property).
6. Property lines of the entire property including dimensions and deflection angles.
7. Estimated stages of development (if the project is only one of a series of stages of development).
8. Existing and proposed buildings and major accessory structures indicating use.
9. Existing and proposed roads, and other transportation facilities, including such as railroads, entranceways, parking and loading areas and piers, wharves, boat landings, or other port facilities. Parking and loading dimensions and capacities should be shown.
10. Existing and proposed gas and electric utility, drainage, and other rights-of-way (other than roads).
11. Proposed project landscaping features.

B. The Project Site Plan shall be a reproducible on polyester film a minimum of 3/1000" thickness.

C. Plan single sheet size shall not exceed 38" x 48". If more than one sheet is necessary, each sheet should be identified by letter or number and there should be a key sketch showing how the sheets fit together.

D. Documents to accompany the Project Site Plan:

1. Supporting Document 3.1 (attach) Schematic Elevations and Plans of proposed buildings and major accessor structures showing exterior features, and including the name and Delaware license of the architect.

   The drawings should be at a scale no smaller than one inch to 50 feet.

These Documents Are Mandatory Only When Requested By The State Planner

Application Number _____
(to be filled in by State Planner)

PART 4

Application Supporting Document

DESCRIPTIONS OF PROJECT WATER AND SANITARY SEWERAGE SYSTEMS

Submit as Supporting Document 4 Descriptions of Water and Sanitary Sewerage Systems as follows:

Water System (on site for which permit application is made)

a. Name of off-site public or private water company system to be used (if applicable).

b. Will an on-site water system be installed or enlarged?

c. For all uses of water other than for cooling purposes, estimate:

(1) Amount of water to be used: indicate if replacement water or total

daily average - gallons per day (g.p.d.)
daily peak - g.p.d. (if water use will vary on a seasonal or periodic basis)

(2) Purposes of water use (list by function)

d. Uses of water for cooling purposes, estimate:

(1) Amount of water to be used make-up, and re-cycled:

daily average - g.p.d.
daily peak - g.p.d. (if water use will vary on a seasonal or periodic basis)

(2) Briefly describe uses of water for cooling including:

identification of receiving surface waters;
natural temperatures of receiving waters;
effect of cooling water discharge on receiving waters in terms of temperature increase and area affected.

PART 4 (continued)

Sewerage System

a. Name of off-site public or private sewerage system to be used (if applicable).

b. If an on-site sewerage system will be installed or enlarged, generally describe as follows:

(1) Types of sewage (organic, chemical, mineral)
(2) Estimated average daily quantity of sewage, by type
(3) Estimated peak daily quantity of sewage, by type
(If the quantity will vary on a seasonal or periodic basis)
(4) Estimated daily treatment capacity
(5) Type and level of sewage treatment
(6) Number of sewage outfalls by name of receiving water body - provide a sketch plan of this with a scale and north arrow
(7) If ground-water will be recharged, briefly describe the process including the amount of water involved.

These Documents Are Mandatory Only When Requested By The State Planner

Application Number _____
(to be filled in by State Planner)

PART 5

Application Supporting Document

PROJECT GRADING PLAN

A. Submit as Supporting Document 5 a Preliminary Project Grading Plan having the following characteristics:

1. Drawn to scale no smaller than one inch to 200 feet.
2. A graphic scale.
3. A north arrow showing true north.
4. Name and license number of the Delaware licensed civil engineer responsible for the Grading Plan.
5. Existing contours:
   at 2 foot intervals on land with a five percent slope or less.
   at 5 foot intervals on land exceeding a five percent slope.
6. Contours after grading:
   at 2 foot intervals on land with a five percent slope or less.
   at 5 foot intervals on land exceeding a five percent slope.
7. Existing poorly drained areas, marshes, and tidal wetlands.
8. Existing and proposed water bodies including intermittent streams.
9. Location and extent of landfill areas, existing and proposed.
10. Location and extent of soil removal areas (including dredging), existing and proposed.
11. Location and extent of bulkheading, existing and proposed.
12. Property lines and dimensions of the entire property.

B. The Project Grading Plan shall be a reproducible on polyester film a minimum of 3/1000" thickness.

C. Plan single sheet size should not exceed 38" x 48". If more than one sheet is necessary, each sheet should be identified by letter or number and there should be a key sketch showing how the sheets fit together.

D. Documents to accompany the Project Grading Plan:

1. Supporting Document 5.1 (attach).

   Description of measures taken for planting, seeding, or otherwise restoring vegetation cover on cleared, graded, or filled land in order to prevent or minimize soil erosion.

PART 5 (continued)

2. Supporting Document 5.2 (attach, if applicable)

   Description of the amount and type of landfill, distinguishing clean fill from organic or solid waste used for fill.

   Description of the amount of dredged material and the locations of disposal areas for dredged material.

This Document Is Mandatory Only When Requested By The State Planner

Application Number _____
(to be filled in by State Planner)

PART 6

Application Supporting Document

PROJECT STORM DRAINAGE PLAN

A. Submit as Supporting Document 6 a Preliminary Project Storm Drainage Plan having the following characteristics:

1. Drawn to scale no smaller than one inch to 50 feet.

2. A graphic scale.

3. A north arrow showing true north.

4. Approximate locations and estimated carrying capacities of storm drainage culverts and pipelines.

5. Approximate locations and estimated carrying capacities of storm drainage basins.

6. Approximate locations of storm drainage outfalls to natural water bodies.

7. Proposed amount of land to be paved-over or occupied by buildings and estimated increase in storm water run-off above natural run-off.

8. Property lines and dimensions of the entire property.

B. The Project Storm Drainage Plan shall be a reproducible on polyester film a minimum of 3/1000" thickness.

C. Plan single sheet size shall not exceed 38" x 48". If more than one sheet is necessary, each sheet should be identified by letter or number and there should be a key sketch showing how the sheets fit together.

This Document is Mandatory Only When Requested By The State Planner

Application Number _____
(to be filled in by State Planner)

PART 7

Application Supporting Document

DETAILED DESCRIPTION OF PROJECT CONSTRUCTION AND OPERATIONS

Submit as Supporting Document 7 a Description of Project Construction and Operations including the following:

1. The type and characteristics of the manufactured or processed product and of the process or assembly operation.

2. The nature of the raw materials or semi-finished materials which are the basis for the manufacturing operation.

3. The means of transportation (rail, water, air, or highway) to be utilized for moving materials to and products from the plant. Expected size and weight of trucks (if any). Amount of daily truck traffic expected.

4. The quantity, source, and use of water expected to be required for plant operations.

5. The type of power and fuels to be used for plant operations.

6. The type and estimated amount of waste to be produced in the course of plant operations.

7. A general statement of the means to be taken to remove waste including gases, liquids and solid waste.

8. A general statement of expected heat, glare, noise, vibration, radiation, electromagnetic disturbance, obnoxious odors, and other pollutants, expressed in quantified terms wherever possible; and the means to be taken to control, reduce, or eliminate these features.

9. Number of daily plant operating shifts and hours of operation.

10. The estimated total number of employees for construction and for operations. If the plant operations will increase on a staged basis over a period of time, the total number of operating employees at each stage.

PART 7 (continued)

11. The estimated number of employees for construction and for operations on the largest shift.

12. The estimated number of seasonal employees (if any) at the peak season.

13. The estimated number of employees, construction and operating, expected to be hired in Delaware, to be hired from out-of-state, to be brought from operations in other states.

14. The estimated expected weekly construction payroll and operating payroll.

15. The estimated annual amount of State and local taxes expected to be paid by the company and by its employees.

16. The estimated volume of supplies and services for construction and for operations to be purchased in Delaware (in dollars).

17. Present type of land use on the project site.

18. Expected date(s) of construction completion and initiation of operations.

This Document Is Mandatory Only When Requested By The State Planner

Application Number _____
(to be filled in by State Planner)

PART 8

Application Supporting Document

ALTERNATIVES TO THE PROPOSED PROJECT

Describe alternatives to the project which might avoid all or some of the adverse environmental effects. Design changes or process alternatives should be analyzed. The alternative of not carrying out the project should be included. Dollar costs and environmental impacts of the alternatives should be described.

COASTAL ZONE ACT
ADMINISTRATIVE, APPEALS, AND HEARING PROCEDURES

The purpose of this material is to provide information on Application Procedures for coastal zone permits, Appeals Procedures, and Public Hearing Procedures, so that permit applicants and others may understand the procedural requirements of the Coastal Zone Act.

This material is supplementary, not part of, the Application for a coastal zone permit and may be retained for your information.

PROCEDURES FOR ADMINISTRATION OF COASTAL ZONE
REQUESTS FOR STATUS DECISIONS,
PERMIT APPLICATIONS AND APPEALS, AND
PUBLIC NOTICES OF HEARINGS AND DECISIONS

I. Request for Project Status Decision

Prior to formal application for a coastal zone permit, the applicant will request a project status decision from the State Planner. To provide the State Planner with information necessary for him to determine project status, a detailed description of project operations must be submitted to him.

Based on the information provided, the State Planner will determine the status of the proposed project under terms of the Coastal Zone Act and adopted regulations. Each project will be classified as one of the following:

1. The project is a use not regulated by the Coastal Zone Act. If so, the State Planner notifies the applicant in writing that his project is not covered by the Coastal Zone Act and requires no permit from the State Planner. Public Notice is given of the decision.

2. The project is a prohibited heavy industry or off-shore bulk product transfer facility. If so, the State Planner notifies the applicant in writing that his project is a prohibited use in the Coastal Zone.

3. The project is manufacturing allowable by permit in the Coastal Zone. If so, the State Planner notifies the applicant in writing that he may file a formal application for a coastal zone permit.

II. Formal Application for a Coastal Zone Permit

Step 1.

Application is made in writing on proper forms to the State Planner.

The application must include:

1. application for a coastal zone permit (Part 1 of Record of Application)

1.1 evidence of local zoning jurisdiction approval

1.2 a description of project construction and operations, including a project location map

1.3 an environmental impact statement

1.4 an application letter of affirmation

In addition, the application should include where applicable in the opinion of the applicant and must include when requested by the State Planner:

2. the project cost and property record

3. a project site plan, including schematic elevations and plans

4. a description of project water and sewerage systems including use of waters for processing, waste removal and cooling

5. a project grading plan (including descriptions of erosion controls, landfill and dredging operations)

6. a project storm drainage plan

7. detailed description of project construction and operations

8. alternatives to the proposed project

Step 2.

The State Planner views the permit application material with the advice and assistance of appropriate State agencies.

Step 3.

The State Planner advertises a public hearing on the permit application. The public advertisement is as follows:

1. It is placed twice in at least one (1) daily newspaper of general circulation in Delaware, and in at least one (1) daily or weekly newspaper of general circulation in the county where the project is located.

2. The first advertisement appears at least fifteen (15) days prior to the hearing date; the second advertisement appears at least seven (7) days prior to the hearing date.

3. The public advertisement states the time, date, and place of the hearing, and briefly describes the purpose of the hearing.

Step 4.

The public hearing on the permit application is held.

Step 5.

Within ninety (90) days of receipt of a complete permit application, the State Planner makes his decision on the application. The decision may be:

1. to grant the permit
2. to grant the permit subject to conditions and modifications attached to the project plans
3. to deny the permit

Step 6.

The State Planner notifies the permit applicant in writing of his decision, stating the reasons for his decision. Notification is made by certified mail return receipt. Simultaneously, the State Planner notifies the public of his decision by placing an advertisement in at least one (1) daily or weekly newspaper of general circulation in the County where the project is located.

If the State Planner's decision is to grant the permit, he so notifies the applicant in writing. A permit granted is conditional on the applicant's receipt of all other applicable permits from State agencies and on payment by the applicant of all coastal zone permit application fees and charges.

The permit is dated to take effect on the fifteenth (15th) day after public announcement of the State Planner's decision. This is to allow the required period for decision appeals. If an appeal is filed within this fourteen (14) day period, the permit will be withheld by the State Planner until the appeal is finally decided.

III. Appeal to the State Coastal Zone Industrial Control Board

Step 1.

The permit applicant or any aggrieved "person" (as defined by the Coastal Zone Act) may appeal the State Planner's decision on the project status classification or the zone permit application. The appeal must be filed within fourteen (14) days of the State Planner's public announcement of his decision. The appeal must be filed with the Chairman of the Industrial Control Board on the proper appeals form and accompanied by a check or money order for one hundred dollars ($100), for the appeals fee, made out to the Delaware State Planning Office.

Step 2.

Public advertisement of the appeals hearing is made at least ten (10) days prior to the hearing date in at least one (1) daily newspaper of general circulation in Delaware and in at least one (1) daily or weekly newspaper of general circulation in the county where the project is located. The public advertisement will state the time, date, place and purpose of the hearing.

Step 3.

The public hearing on the appeal is held. The hearing will have these characteristics:

1. the public may attend and be heard
2. all proceedings are a matter of public record
3. a transcript or recording of proceedings must be kept
4. the appellant may be represented by legal counsel

Step 4.

Following the public hearing and within sixty (60) days of its receipt of the appeal application, the Industrial Control Board will make its decision on the appeal. The decision will be made in writing and copies will be sent to the State Planner and to the appellant by certified mail return receipt.

The Board will publicly announce its appeal decision by advertising in at least one daily newspaper of general circulation in Delaware and in at least one daily or weekly newspaper of general circulation in the county where the project is located. Upon notification of an appeal decision granting a permit, the State Planner will release the zone permit to the appellant after twenty (20) days following announcement of the Board's decision.

IV. Appeal to the Superior Court

Any person aggrieved by a final order (appeal decision) of the Industrial Control Board may appeal in writing to Superior Court for the county where the permit applicant's project is located. The State Planner may appeal to Superior Court.

Appeal notice must be filed within twenty (20) days of the date of the Industrial Control Board's public announcement of its appeal decision.

Basis for the appeal to the Superior Court can only be on the issue of the Board's abuse of its discretion in applying standards set forth in the Coastal Zone Act and the regulations adopted to the facts of the case at issue. The appeal shall be based on the record of proceedings before the Board.

REGULATIONS FOR CONDUCT OF PUBLIC HEARINGS REQUIRED BY THE COASTAL ZONE ACT

A. Public Hearings on Permit Applications to the State Planner

1. The State Planner, or his designated representative, shall be the moderator of the hearing. The moderator shall be responsible for making all arrangements for the hearing, including required publication of public notice. The moderator is also responsible for the conduct of the hearing.

2. Permit applicants and all others wishing to speak at the hearing may be represented by legal counsel.

3. At the beginning of the hearing the moderator shall explain the purpose of the hearing and the rules of procedure.

4. The entire hearing shall be covered by stenographic record. A transcript of the hearing shall be available for public inspection in the office of the State Planner in Dover, or in the county planning offices in New Castle and Sussex Counties when the project is located in either of those Counties.

5. The Coastal Zone Permit applicant shall have the opportunity to explain his project.

6. Following the permit applicant's explanation of the project, members of the public shall be given the opportunity to make their statements. Each speaker shall identify himself by name, address and organization represented (if any).

7. Questions from the floor may be addressed to the moderator who will make the decision whether or not the question should be answered.

8. When there are no further statements to be made, the hearing shall be closed by the moderator.

9. Written statements may be submitted to the State Planner if they are received not later than five (5) calendar days after the date of the public hearing.

10. So that the public may be informed of the nature of the project for which a permit application has been filed, the published notice of the hearing shall briefly summarize the important characteristics of the project. Members of the public wishing more detailed information about the project may view copies of the project application papers in the office of the State Planner in Dover, or in the county planning offices in New Castle and Sussex Counties when the project is located in either of those Counties.

B. Public Hearings on Appeals to the State Coastal Zone Industrial Control Board

1. The Chairman of the Industrial Control Board, or his designated representative, shall be the hearing moderator. The moderator shall be responsible for the conduct of the hearing. The State Planner shall be responsible for making all arrangements for the hearing including required publication of public notice.

2. The appellant and members of the public wishing to be heard at the appeal hearing may be represented by legal counsel.

3. The appellant shall be given the opportunity to explain the nature of the appeal.

4. The appellant may be questioned by members of the Industrial Control Board or by persons at the request and on behalf of the Board. Questions from the floor may be addressed to the moderator who will make the decision whether or not the question should be answered.

5. Members of the public may make statements about the appeal. All those wishing to speak shall identify themselves by name, address, and organization represented (if any).

6. The entire meeting shall be covered by stenographic record. A transcript of the hearing shall be available for public inspection in the office of the State Planner in Dover, or in the county planning offices of New Castle and Sussex Counties when the project being appealed is located in either of those Counties. All appeals hearing records shall be kept in a file specifically set aside for the Industrial Control Board in the office of the State Planner.

7. When there are no further statements or questions, the appeals hearing shall be closed by the moderator.

C. Public Hearings on a Comprehensive Plan, Guidelines for Acceptable Manufacturing Uses, and Elaboration of the Definition of Heavy Industry

1. The Chairman of the State Coastal Zone Industrial Control Board, or his designated representative, shall be the moderator of the hearings. The moderator shall be responsible for the conduct of the hearings. The State Planner shall be responsible for advertising and making all arrangements for the hearings.

2. The comprehensive plan for the coastal zone, guidelines for acceptable manufacturing uses, and elaboration of the definition of heavy industry shall be described and explained.

3. Upon completion of the explanation of the comprehensive plan, guidelines, and definition of heavy industry, members of the public may make statements and ask questions. Each person making

a statement or asking questions shall state his name, address, and organization represented (if any).

4. When the moderator determines that there are no further statements or questions and that no member of the Industrial Control Board or the State Planner has anything further to say, he may close the hearing. If circumstances deem a second hearing advisable, the moderator may adjourn the hearing to a later date.

5. Written statements for the hearing record may be submitted to the State Planner at any time between the date of public announcement of the hearing and the date of the hearing, and will be accepted after the public hearing if received within seven (7) calendar days of the hearing date.

DELAWARE

COASTAL ZONE PERMIT

DATE _____

NUMBER _____

ISSUED TO _____

TO PERMIT _____

_____

_____

_____

_____

SITE LOCATION _____

_____

_____

SIGNATURE _____
(Delaware State Planner)

Notice:

1. This permit is conditional upon receipt of all other applicable permits from State agencies.

2. If any significant changes or deviations are to be made in plans, construction, or operations, as approved by the State Planner, the applicant shall notify the State Planner. The permit approval may be denied or revoked by the State Planner and a new permit application required if he deems these changes or deviations to be unnecessary and of actual or probable harm to the purposes of the Coastal Zone Act.

STATE COASTAL ZONE INDUSTRIAL CONTROL BOARD

ADMINISTRATIVE CHECKLIST FOR COASTAL ZONE APPEALS

Appeal Number _____
Name of Appellant _____
Date of State Planner's Decision Notice _____
Date of Receiving the Appeal _____
Date of Public Hearing Advertising _____
Date and Place of Public Hearing _____
Date of Appeal Decision _____

Nature of the Appeal Decision _____
Date of Appeal Decision Public Notice _____
Date of Appeal to Superior Court _____
Appellant to Superior Court _____
Superior Court Decision Date _____

Nature of Superior Court Decision _____
Attorney General's Cease and Desist Order, Date _____
Court of Chancery Injunction, Date _____

Date Received (to be filled in by State Planner)

Appeal Application Number (to be filled in by State Planner)

STATE COASTAL ZONE INDUSTRIAL CONTROL BOARD

APPLICATION TO APPEAL FROM A DECISION OF THE STATE PLANNER

DATE _____, 19____

A. Name of the Appellant _____

Address and Telephone Number _____

_____

B. Name of the Project Being Appealed _____

C. Coastal Zone Permit Application Number of the Project Being Appealed

_____(to be filled in by State Planner)

D. Date of Public Notice of State Planner's Decision _____

E. Signature of the Appellant _____

Position or Title (if any) _____

Please include the appeal fee of One Hundred Dollars ($100) with this Appeal Application. The check or money order should be made out to the:

Delaware State Planning Office

Submit the completed Appeal Application including the appeal fee, within fourteen (14) days of the State Planner's public notice of his decision on the Coastal Zone permit application to:

State Coastal Zone Industrial Control Board
Thomas Collins Building
530 South duPont Highway
Dover, Delaware 19901

APPENDIX 3

Definition of Non-conforming Use "Expansion or Extension"

COASTAL ZONE ADMINISTRATIVE REGULATIONS

-DEFINITIONS-

In order to clarify the types of actions covered by the term "expansion or extension" of non-conforming uses, this term is defined as follows:

"Expansion or Extension"	means a change of existing processes, facilities or buildings which significantly increases the production capacity, land use area or environmental impact.

APPENDIX 4

Coastal Zone Legal Opinions of the Attorney General

JAN 25 1972

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

W. LAIRD STABLER, JR.
ATTORNEY GENERAL

Wilmington, Delaware

January 20, 1972

Mr. David R. Keifer, Director
Planning Office
Executive Department
State of Delaware
Dover, Delaware 19901

Re: Coastal Zone Act - Bulk Transfer Facility (El Paso Eastern Company)

Dear Dave:

I have reviewed the material submitted to you with regard to the liquid natural gas (LNG) terminal which El Paso Eastern Company proposes to built in New Jersey with docking facilities extending into the Delaware River. I agree with your determination that this facility is an offshore bulk product transfer facility as that term is defined by the Coastal Zone Act. However, there may be some question as to whether or not the terminal is excepted from 7 Del. C. §7002(f) by virtue of the fact that it is "a docking facility or pier for a single industrial or manufacturing facility for which a permit is granted".

It is my opinion that the El Paso Eastern terminal does not fit within the "single industrial or manufacturing facility" exception. The Delaware courts have uniformly held that the meaning of a statute depends on the intent of the legislature and that such intent must be ascertained from an interpretation of the act as a whole. The facts contained in the letter from the El Paso Eastern Company indicate that the LNG terminal in question is merely a way station in the natural gas transportation system which El Paso Eastern is endeavoring to develop. It is quite clear that the legislative intent was to permit docking facilities where such facilities would benefit such industries as would be granted permits to operate in the Coastal Zone. Here the situation is reversed. The terminal will only exist as an adjunct to the docking facility. In other words, the important part of the project to El Paso Eastern is not the "industrial facility" but the docking facility. Further, I assume that the facility proposed by El Paso Eastern is not the type of "single industrial or manufacturing facility" for which your office would grant a permit under 7 Del. C. §7004. The statute specifically mandates that such approval is necessary.

With specific reference to situations similar to the one here in issue, it is my recommendation that your office more clearly define "single industrial or manufacturing facility". The definition should explicate the legislative intent to allow an exception for docking or pier facilities only where the facilities are to be used in conjunction with industries of the type permitted under 7 Del. C. §7003. The definition I envision will permit your office to evaluate applications for construction onthe New Jersey shore as if they were applications for construction on the Delaware shore. Such a standard would negate claims that applications which require the approval of more than one governmental agency are acted upon by Delaware in an arbitrary or capricious manner. However, it must be clear that Delaware is not attempting to regulate development beyond the state boundary. Therefore, any reference to potential development in New Jersey should be avoided.

If you should wish to discuss this matter further, please do not hesitate to contact me. Also at this time I would like to stress that this is an informal advisory opinion. Please advise me if a formal opinion becomes necessary.

Sincerely,

Laird

W. Laird Stabler, Jr.
Attorney General

WLSJr:ls.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

W. LAIRD STABLER, JR.
ATTORNEY GENERAL

August 16, 1971

Mr. David R. Keifer, Director
Delaware State Planning Office
Thomas Collins Building
530 S. DuPont Highway
Dover, Delaware 19901

Dear Mr. Keifer:

You recently requested an opinion from the Department of Justice with respect to an installation proposed by the Delaware Terminal Company. Your specific inquiry was directed to the relationship between this installation, the "Coastal Zone Act", and the State Planning Office.

An examination of the "Coastal Zone Act" and the information available concerning the proposed installation makes it obvious that a specific answer to your question is impossible until the legislative mandate of subsection (c) of 7 Del. C. § 7005 has been carried out. The pertinent language of 7 Del. C. § 7005 (c) is:

> "The State Planner shall develop and propose ... regulations for the further elaboration of the definition of 'heavy industry' in a manner consistent with the purposes and provisions of this chapter. Such plan and guidelines shall become binding regulations upon adoption by the Board after public hearing."

After this task is completed, this office will be better able to assist you in the determination of "whether the proposed use is, according to this chapter and regulations issued pursuant thereto, (1) a heavy industry use under section 7003;" (7 Del. C. § 7005 (a)) or whether some other standard should be applied to this proposed installation.

If I can be of any further service, please don't hesitate to contact me.

Very truly yours,

Richard H. Schliem III

Richard H. Schliem, III
Deputy Attorney General

RHS:rmm

cc: W. Laird Stabler, Jr., Esq.
Attorney General

William O. LaMotte, III, Esq.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

W. LAIRD STABLER, JR.
ATTORNEY GENERAL

Wilmington, Delaware

September 21, 1971

TO: David R. Keifer, State Planner

FROM: W. Laird Stabler, Jr., Attorney General

QUESTION: Nature of the "Bulk Product Transfer Facilities" Prohibited by §7003 of the Coastal Zone Act.

REQUEST NO: S268

I. QUESTION

You have asked us to provide you with a review of the Coastal Zone Act with particular reference to what kind of bulk product transfer facilities are absolutely prohibited. We conclude that such facilities are prohibited if all or part of them are riverward of the mean low water mark.

II. OPERATIVE PROVISIONS OF THE STATUTE

The operative provisions of the Coastal Zone Act are Sections 7003 and 7004. Section 7004 permits certain manufacturing uses by permit and is not applicable. Section 7003 absolutely prohibits "off shore gas, liquid or solid bulk product transfer facilities which are not in operation on the date of enactment of this chapter ... in

the Coastal Zone". It is apparent that the word "off shore" modifies three kinds of "bulk product transfer facilities": "gas", "liquid" and "solid". The question then arises what is an "off shore" bulk product transfer facility which is prohibited as contrasted with one that is not off shore and is, therefore, permitted?

III. THE PURPOSE CLAUSE

The purpose clause of the Coastal Zone Act (§7001) is relevant. It provides:

> "It is further determined that off-shore bulk product transfer facilities represent a significant danger of pollution to the coastal zone and generate pressure for the construction of industrial plants in the coastal zone, which construction is declared to be against public policy. For these reasons, prohibition against bulk product transfer facilities in the Coastal Zone is deemed imperative."

Since the statute prohibits only "off shore" transfer facilities, we construe "bulk product transfer facilities" as used in the last sentence of this section to refer only to "off shore" bulk product transfer facilities.

IV. THE DEFINITION SECTION

Similarly, in subsection (f) of §7002, the definition of "bulk product transfer facility" would be meaningless if it did not, also, refer to "off shore" bulk product transfer facilities, there being no prohibition against such facilities unless "off shore". The context of the definition justifies the same conclusion. Thus, an "off shore bulk product transfer facility" is:

> "... a port or dock facility, whether an artificial island or attached to shore by any means, for the transfer of bulk quantities of any substance from vessel to on-shore facility or vice-versa."

The exclusions from the definitions are also relevant. Certain kinds of "docking facilities" are excluded. Other docking facilities not excluded must, by definition, be included if they are "off shore" docking facilities.

What then does "off shore" mean? Webster defines "off shore" as "situated, carried on, or working, at a distance from the shore; as, off shore fishing or fishermen; an off shore island". Webster New International Dictionary of the English Language, 2nd Ed., 1958. This

cannot be the intention of the Legislature because such facilities include dock facilities "attached to the shore by any means" and the Legislature felt it necessary to exclude the docking facilities for the port of Wilmington [§7002(f)]. Therefore, "off shore" means extending beyond the shore. An "off shore" facility is banned if it is attached to the shore.

V. DEFINITION OF SHORE AND OFF SHORE

We should then turn to the definition of the word "shore". Shore is quite clearly defined in Delaware Law. The Chancellor in Harlan & Hollingsworth Co. v. Paschall 5 Del.Ch. 435, 464, defines "shore" as follows:

> "The shore may therefore be defined as the land between the high and low water marks."

A later Chancellor, sitting as a judge of the Superior Court (by designation) defines "shore" the same way (State v. Pennsylvania Railroad Co., 228 A.2d 587, 600):

> "In Harlan & Hollingsworth Co. v. Paschall, supra, the Chancellor defined 'shore' as the 'land between the high and low water

marks' (5 Del.Ch. p.464). That definition is general and further refinement is necessary so that the area here involved may be fixed with certainty.

Obviously, the area of foreshore follows from the position of its boundaries, that is, the location of high and low water marks. And as to these, definitions vary. It has been said, for example, that high water mark is the 'line on the shore reached by the water at the high or flood tide'; and low water mark is the 'line on the shore of the sea which marks the edge of the waters at the lowest point of the ordinary ebb tide'. Black's Law Dictionary (4 Ed.) p. 1763."

In II Shalowitz, "Shore and Sea Boundaries", pages 334-5, the definition of "shore" is given in nautical terminology. It is not different from the Delaware definition for our purposes:

"Shore. -- This is the most important of the four zones, and extends from the low-water mark inshore to the base of the cliff (large or small), which usually marks the landward limit of effective wave action. It is the zone over which the line of contact between land and sea migrates."

* * *

"In the field of riparian land ownership and where the common law prevails, the Supreme Court has held the term shore to be the 'land between ordinary high and low-water mark, the land over which the daily tides ebb and flow'. Used in this sense, shore is synonymous with foreshore. The backshore, under this interpretation, would be the zone extending from the high-water

line to the coast.

> From the standpoint of shore and sea boundaries, the term shore has a special significance. Its inshore limit--the high-water line--marks the boundary of private property in most of the states, and its offshore limit--the low-water line--forms the baseline for the measurement of seaward boundaries."

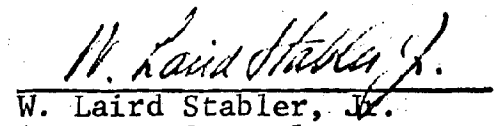
See also Borax Consol. v. Los Angeles, 296 U.S. 10, 56 S.Ct. 23, 29 (1935) (per Hughes C.J.).

Off shore would be, therefore, not on the shore, and extending beyond the shore or extending beyond the mean low water mark.

VI. CONCLUSION

We conclude that the Legislature absolutely prohibited gas, liquid and solid bulk product transfer facilities in the Coastal Zone if all or any portion of such facilities are found beyond the mean low water mark. If such facilities are exclusively constructed "on shore", that is to say entirely upland of the mean low water mark, they cannot be "off shore" and they are not prohibited by this law.

Sincerely,



W. Laird Stabler, Jr.
Attorney General

Mr. Keifer

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
Wilmington, Delaware

W. LAIRD STABLER, JR.
ATTORNEY GENERAL

September 21, 1971

TO: David R. Keifer, State Planner

FROM: W. Laird Stabler, Jr., Attorney General

QUESTION: What date should be used to establish the mean low water mark as used in the definition of "shore" in the Coastal Zone Act?

REQUEST NO: S268(a)

By opinion No. S268 we have defined "shore" as it pertains to off-shore bulk product transfer facilities. In your letter of September 16, 1971, you state that it would be logical to use the mean low water mark as it existed on the date the Coastal Zone Act was enacted. I concur with your logic, since to allow the mean low water mark to be altered by filling and/or bulkheading beyond the mean low water mark would make the Act a nullity.

I call your attention to the fact that §7002(b) would apply where filling and/or bulkheading was completed prior to the effective date of the Act. §7002(b) is as follows:

"'Non-conforming use' means a use, whether of land or of a structure, which does not comply with the applicable use provisions in this chapter where such use was lawfully in existence and in active use prior to the enactment of this chapter." (Emphasis Supplied.)

Sincerely,

W. Laird Stabler, Jr.
Attorney General

NOV 15 1971

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

W. LAIRD STABLER, JR.
ATTORNEY GENERAL

Wilmington, Delaware November 11, 1971

Mr. David R. Keifer
Director, Planning Office
Executive Department
State of Delaware
Dover, Delaware 19901

Dear Dave:

While I have discussed with you your various letters concerning certain interpretations of the Coastal Zone Act, I do sincerely apologize for taking such a long time in writing to you as I promised at the last Cabinet Meeting. Rather than write three separate letters in reply to your inquiries, I will attempt to answer your questions below with a proper designation. I would like to again stress that this is an informal, advisory opinion. If you want a formal opinion as to any of the subjects, please so advise.

1. Re: Delaware Terminal Company (letter of September 29, 1971) - whether the shoreline follows the line that existed prior to the time that the slip was constructed or whether the shoreline follows the configuration of the slip.

It appears that the shoreline would follow a gradual erosion or accretion, but would not follow a sudden alteration thereof such as a breakthrough as a result of a storm or of a digging of a slip such as the one in question. Therefore, the shoreline as defined in my earlier opinion would not follow the configuration of the slip, but instead the shoreline existing prior to the construction thereof.

2. Re: Port of Wilmington facility.

(a) I concur with the conclusion in your letter of October 14, 1971 that the exemption granting the Port of Wilmington under 7 Del. C. §7002(f) refers to docking facilities only and not to any other facilities or uses. Therefore, no new heavy industry may be built at the port and any new or expanded manufacturing use may be built only with a Coastal Zone permit.

(b) I further concur that it was the Legislature's intent to exempt future as well as existing port docking facilities. Therefore, the Port of Wilmington may build new docking facilities on filled land now owned by said Facility.

3. Re: First State Pipeline Company

In your letter of October 14, 1971, you advise of the above company's plans to construct a docking facility approximately twenty-four miles off Rehoboth Beach with a pipeline on the ocean floor reaching the shoreline immediately south of Cape Henlopen State Park and running westward to a proposed tank farm to be located on the east bank of the Lewes-Rehoboth Canal.

While this is an unusual situation, I would suggest that your position would be that this would be an off-shore bulk transfer facility. To hold otherwise would vitiate the absolute prohibition against such a facility as set forth in the Coastal Zone Act.

Finally, I have assigned Thomas D. Whittington, a newly appointed Deputy Attorney General, to assist you in all matters pertaining to the Coastal Zone Act. Tom is extremely interested in environmental matters and I am sure that he will be of great assistance to you as well as to me. Therefore, when and if you have any questions which require immediate attention, I would suggest that you contact him at the Civil Division in Wilmington.

Again, my apologies for the long delay, but it seems like everything is piling up these days!

Sincerely,

Laird

W. Laird Stabler, Jr.
Attorney General

WLSJr/lgj

cc: The Honorable Thomas D. Whittington, Jr.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

W. LAIRD STABLER, JR.
ATTORNEY GENERAL

Wilmington, Delaware

November 29, 1971

TO: David R. Keifer, Director
State Planning Office

FROM: W. Laird Stabler, Jr.
Attorney General

QUESTION: Does 7 Del. Code §7005(c) require a comprehensive plan limited to manufacturing uses only or was it the intent of the General Assembly for the comprehensive plan to also include other types of land use such as residential, commercial, agricultural and recreational uses?

REQUEST NO. S290

It is my opinion that the "comprehensive plan" to be developed by the State Planner under 7 Del. Code §7005(c) is limited to manufacturing uses only. The pertinent part of this section is as follows:

> "The State Planner shall develop and propose a comprehensive plan and guidelines for the State Coastal Zone Industrial Control Board concerning types of manufacturing uses deemed acceptable in the Coastal Zone..."

This language is quite specific and precludes further investigation as to the possible legislative intent for this comprehensive plan to include other types of land use.

If you have any further questions, please don't hesitate to call on me.

Sincerely,

W. Laird Stabler Jr.

W. LAIRD STABLER, JR.
Attorney General

WLSJr/lgj

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FEB 1972

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
WILMINGTON, DELAWARE

W. LAIRD STABLER, JR.
ATTORNEY GENERAL

February 15, 1972

Mr. David R. Keifer
Director
State Planning Office
Dover, Delaware 19901

Re: The Role of the State Planner at the Public Hearings on Permit Applications, the Proper Term for his Role, and the Record Requirements for Appeal to Superior Court - Under the Coastal Zone Act

Dear Dave:

This is our opinion in answer to the questions posed in your letter of January 21, 1972. With regard to the State Planner's role in the hearing required by 7 Del. C. §7005, it should be noted that the State Planner is under an affirmative duty to hold a public hearing upon all requests for permits for manufacturing land uses and for the expansion or extension of nonconforming uses. The only hearing requirement set forth in the Coastal Zone Act is that the hearing be public. In the context of the Act, the Planner's hearing should provide the public with notice of the permit request and an opportunity to be heard. The hearing also provides the Planner with an additional source of information on the permit request. Since the State Planner is the ultimate fact finder and decision maker on any permit request, his role is similar to that of a judge during a trial. Therefore, as a judge presides at a trial where he is expected to render a

decision, it follows that the State Planner may preside at a hearing where he is expected to render a decision. Pursuant to 7 Del. C. §7005(b), the State Planner may issue regulations establishing procedures to govern the conduct of his hearings. It is the opinion of this office that the State Planner, with the approval of the Coastal Zone Industrial Control Board, may act as "hearing officer" and may do so under any title which he cares to adopt.

With regard to the type of hearing record required for hearings under the Coastal Zone Act, it should be noted that there is no requirement of a record for the State Planner's hearing. If viewed in isolation, the mere exclusion of a record requirement would not be determinative of the need for a record. However, two other factors enter into our consideration of this question. First, any appeal from the State Planner's decision results in a hearing de nova before the Coastal Zone Industrial Control Board pursuant to 7 Del. C. §7007(c). Second, there is a requirement that a record be taken of the appeal hearing before the Coastal Zone Industrial Control Board. It is without question that the express statutory language requiring a record for the appeals hearing impliedly excludes any necessity for a record at the State Planner's hearing. However, as noted above, it is within the authority of the State Planner to issue a regulation which requires a record.

The "record" required by hearings under the Coastal Zone Act may be taken via electronic recording devices. See the attached copy of a recent Attorney General's Opinion on this subject.

With regard to the record necessary for appeal to the Superior Court, it should be noted that the appeal is made on the record below. It is therefore important to develop a complete and accurate record of the proceedings before the Board. The general requirements for a record

on appeal to Superior Court are set forth in International Acceptance Co., Del. Supr., 280 A.2d 733 (1971). These requirements are:

1. verbatim transcript of the proceedings;
2. sworn testimony which supports the Board's decision;
3. an opportunity for the applicant to present evidence and cross examine witnesses;
4. written findings of fact and conclusion;
5. an official written decision by the Board.

If I may be of any further assistance to you in this matter, please let me know.

Very truly yours,

Laird

W. Laird Stabler, Jr.
Attorney General

WLS,Jr./slb

cc: Thomas D. Whittington, Jr.

Enclosures

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
WILMINGTON, DELAWARE

W. TAIRD STABLER, JR.
ATTORNEY GENERAL

September 1, 1971

OPINION TO: The Honorable Hugh Martin
Secretary, Department of
Administrative Services
Capitol Square
Dover, Delaware 19901

OPINION FROM: C. Edward Duffy
State Solicitor

QUESTION: Can the quasi-judicial commissions in Delaware take advantage of electronic recordings of testimony and typewritten transcription service?

REQUEST NO.: S220

In response to the above styled inquiry, it should initially be noted that each quasi-judicial commission under the control of the Division of Business and Occupational Regulation has its own unique statutory provision requiring a hearing and appeals therefrom. As your request was stimulated by the Alcoholic Beverage Control and Public Service Commissions, yet your inquiry encompassed all quasi-judicial commissions, we will rely on the statutory language relating to those two specific commissions in reaching an opinion applicable to all.

Before we commence with our interpretation, however, attention should be directed to the reasons necessitating a hearing and a record of that hearing. The commissions under your ministr-

administrative, budgetary and clerical control all deal with business and occupational regulation. A severe economic impact generally follows an adverse ruling by a commission. As a result, the General Assemby has seen fit to permit an aggrieved party to appeal this adverse ruling to a court of law. The Superior Court functions as the Appellate Court in these instances. The difficulty on this appeal is that "the findings of fact made by the commission ...shall ... be conclusive, but the Superior Court may review questions of law involved in any final decision or determination of the [c]ommission." 24 Del. C. §2914. This means, in essense, that in order to perfect a statutory right of appeal, you must present to the Appellate Court a sufficient record of the proceedings at the hearing to enable the court to review. Toward this end, the General Assembly has provided statutory authority for a record. One example of such a provision is codified in 4 Del. C. §541 and pertains to the Alcoholic Beverage Control Commission, which provides in part:

> "(b) The hearing shall be conducted by the Commission and a record of the hearing shall be made and kept by the Commission. The record shall include the evidence, the Commission's findings of fact, the Commission's decision and a brief statement of the reasons therefor."

It is notable in this instance that the General Assembly has not specified the procedure to be followed in making the record, but simply that it be made. It is, therefore, our opinion that an electronic record shall suffice.

A second example of a statutory provision necessitating a record is found in 26 Del. C. §183, pertaining to the Public Service Commission, which states:

> "(a) A full and complete record shall be kept of all proceedings had before the Commission, or its representative, in any formal hearing, and all testimony shall be taken down by a reporter designated by the Commission..."

An interpretation of this type provision must begin with the word "reporter" and the effect that the inclusion of this word may have on the use of a recording device. Returning once again to the reason a record is desired, i.e., to perfect an appeal, we find that it is not the manner in which a record is made that is of practical significance, but rather the fact that a record is made complete with a description of the evidence, testimony, findings of fact and the final decision. The language of the code is, in a situation such as this, simply a conduit through which the "spirit" flows. And it is our opinion that the guiding purpose behind enactments requiring a record of administrative hearings is to enable the aggrieved party to appeal.

A situation quite similar to ours at hand is reported in Day v. Walker, 247 N.W. 350, 124 Neb. 500 (1933). There, a constitutional provision required that all votes in both houses of the legislature must be viva voce. An electronic roll call device was constructed in the chamber for reasons of convenience and economy. Instead of voting by voice, the legislators pushed buttons which in turn activated lights on a large tally board where all could see.

Upon its challenge, the Supreme Court of Nebraska held that:

> "The object and purpose of the constitutional provision [requiring vote by voice] was to give publicity and required each member of the legislature, voting on the passage of a bill, to vote publicly. . . . It was publicity that was aimed at. The electric roll call device provides that publicity." Day v. Walker, supra, 247 N.W. at 352.

Likewise, we conclude that the "object and purpose" of the statutory provision requiring a reporter was to necessitate a record which allowed the aggrieved party to appeal. It was to permit a party to appeal that this provision was aimed at. The electronic recording device provides that record. It is, therefore, our opinion that an electronic record fulfills the "spirit" of the law and is not contrary to the intent of the General Assembly.

It, therefore, follows that the quasi-judicial commissions referred to in 29 Del. C. §8808, coming under the "administrative, ministerial, budgetary and clerical" control of the Division of Business and Occupational Regulation are authorized to make records of their hearings with electronic devices. No attempt has been made to determine the propriety of electronic recordation in lieu of shorthand methods in other governmental agency hearings nor in judicial proceedings.

Sincerely,

C. Edward Duffy
State Solicitor

CED:ls

APPROVED BY:

W. Laird Stabler, Jr.
W. LAIRD STABLER, JR.
ATTORNEY GENERAL

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