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Spiegelman, Wilson, Yearick

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 190
AS AMENDED BY
HOUSE AMENDMENT NO. 1
AND
HOUSE AMENDMENT NO. 4
AND
HOUSE AMENDMENT NO. 6
AND
HOUSE AMENDMENT NO. 3
AND
HOUSE AMENDMENT NO. 5
AND
HOUSE AMENDMENT NO. 7

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO THE COASTAL ZONE ACT.

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

Section 1. Amend § 7001, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 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 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 beyond the~~ heavy industry use sites defined in this chapter. The expansion of heavy industry beyond those sites 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 2 policies, careful planning based on a thorough understanding of Delaware's potential and the State's 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 offshore 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, therefore bulk product transfer facilities are prohibited in the coastal zone, unless approved through a conversion permit at a heavy industry use site that had a docking facility or pier for a single industrial or manufacturing facility on or before June 28, 1971.

Section 2. Amend § 7002, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline and redesignating accordingly:

§ 7002. Definitions.

(b) "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 onshore 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 nonconforming use. Likewise, docking facilities for the Port of Wilmington are not included in this definition.

(g) "Heavy industry use site" means those 14 sites depicted in Appendix B of the Regulations Governing Delaware's Coastal Zone, § 101, Title 7 of the Delaware Administrative Code in effect on [the effective date of this Act], including those sites which have been abandoned in fact or have been the subject of an abandonment proceeding.

Section 3. Amend § 7003, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7003. Uses absolutely prohibited in the coastal zone.

~~Heavy~~ Except as provided by § 7014 of this title, heavy industry uses of any kind not in operation on June 28, 1971, 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 June 28, 1971, are prohibited in the coastal zone, and no permit may be issued therefor, except as provided in § 7014. ~~Provided, that~~ The prohibitions in this section shall not apply to public sewage treatment or recycling plants. A basic steel manufacturing plant in operation on June 28, 1971, may continue as a heavy industry use in the coastal zone notwithstanding any temporary discontinuance of operations after said date, provided that said discontinuance does not exceed 2 years. An incinerator is neither "public sewage treatment" nor a "recycling plant" for the purpose of this chapter.

Section 4. Amend § 7004, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7004. Uses allowed by permit only; nonconforming uses.

(a) Except for heavy industry uses, as defined in § 7002 of this title, manufacturing uses not in existence and in active use on June 28, 1971, are allowed in the coastal zone by permit only, as provided for under this section. Any nonconforming use in existence and in active use on June 28, 1971, shall not be prohibited by this chapter and all expansion or extension of nonconforming uses, as defined herein, and all expansion or extension of uses for which a permit is issued pursuant to this chapter, are likewise allowed only by permit. Expansions or extensions shall be subject to the permit requirements outlined in this section and the process outlined in § 7005 of this title. The conversion of a heavy industry use site to an alternative or additional heavy industry use is allowed only by a conversion permit issued pursuant to § 7014 of this title. The conversion of a heavy industry use site to a bulk product transfer facility is allowed only through a conversion permit issued under § 7014 of this title. 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.

Section 5. Amend § 7005, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7005. Administration of this chapter.

(a) The Department of Natural Resources and Environmental Control shall administer this chapter. All requests for conversion permits under § 7014 of this title for a heavy industry use site seeking an alternative or additional heavy industry use or for a bulk product transfer facility, and all requests for permits for manufacturing land uses and for the expansion or extension of nonconforming uses ~~as herein defined under § 7004 of this title~~ in the coastal zone shall be directed to the Secretary of the Department of Natural Resources and Environmental Control. Such requests must be in writing and must include:

- (1)a. Evidence of approval by the appropriate county or municipal zoning authorities;
- b. A detailed description of the proposed construction and operation of the use; and
- c. An environmental impact statement.

(2) The Secretary of the Department of Natural Resources and Environmental Control shall hold a public hearing and may request further information of the applicant. The Secretary of the Department of Natural Resources and Environmental Control shall first determine whether the proposed use is, according to this chapter and regulations issued pursuant thereto:

- a. A heavy industry use or bulk product transfer facility prohibited under § 7003 of this title;
- b. A use allowable only by permit under § 7004 of this title; ~~or~~
- c. A use requiring no action under this ~~chapter.~~ chapter; or

d. A heavy industry use or bulk product transfer facility allowable by conversion permit under § 7014 of this title.

The Secretary of the Department of Natural Resources and Environmental Control shall then, if he or she determines that § 7004 or § 7014 of this title applies, reply to the request for a permit within 90 days of receipt of the said ~~request for permit~~ of an administratively complete permit, either granting the request, denying same, or granting the request but requiring modifications; the Secretary shall state the reasons for his or her decision.

(b) The Secretary of the Department of Natural Resources and Environmental Control may issue regulations including, but not limited to, regulations governing disposition of permit requests, and setting forth procedures for hearings before himself or herself and the Board. Provided, that all such regulations shall be subject to approval by the Board.

(c) The Secretary of the Department of Natural Resources and Environmental Control 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” and for further elaboration of conversion permits under § 7014 of this title 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 §§ 7003 ~~and 7004~~ , 7004, and 7014 of this title.

Section 6. Amend § 7007, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 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 Secretary of the Department of Natural Resources and Environmental Control made under ~~§ 7005~~ §§ 7005 and 7014 of this title. The Board may affirm or reverse the decision of the Secretary of the Department of Natural Resources and Environmental Control with respect to applicability of any provisions of this chapter to a proposed use; it may modify any permit granted by the Secretary of the Department of Natural Resources and Environmental Control, grant a permit denied by the Secretary, deny a permit or confirm the Secretary's grant of a permit. Provided, however, that the Board may grant no permit for uses prohibited in § 7003 herein.

(b) Any person aggrieved by a final decision of the Secretary of the Department of Natural Resources and Environmental Control under § 7005(a) or § 7014 of this title may appeal same under this section. Appellants must file notice of appeal with the State Coastal Zone Industrial Control Board within 14 days following announcement by the Secretary of the Department of Natural Resources and Environmental Control of his or her decision. The State Coastal

Zone Industrial Control Board must hold a hearing and render its decision in the form of a final order within 60 days following receipt of the appeal notification.

Section 7. Amend Chapter 70, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7014. Conversion permit.

(a) An owner, operator, or prospective purchaser of a heavy industry use site, including a site that has been abandoned in fact or has been the subject of an abandonment proceeding, may submit an application to the Secretary of the Department of Natural Resources and Environmental Control for a conversion permit under this section for an alternative heavy industry use or an additional heavy industry use that will operate simultaneously with any existing use on that heavy industry use site.

(b) An owner, operator, or prospective purchaser of a heavy industry use site that had a docking facility or pier for a single industrial or manufacturing facility on or before June 28, 1971, including a site that has been abandoned in fact or has been the subject of an abandonment proceeding, may submit an application to the Secretary of the Department of Natural Resources and Environmental Control for a conversion permit to operate a bulk product transfer facility that may be operated simultaneously with other heavy industry uses, industrial uses or manufacturing uses. Provided, however, that a conversion permit may be issued only for a bulk product transfer facility used to receive shipments of bulk products to the extent they are necessary for and fully utilized in the operation of a facility or facilities within the coastal zone, or that is used for the shipment of bulk products to the extent they are produced by a facility or facilities within the coastal zone, unless the product is a grain, as that term is defined in § 1601 of Title 3, in which case it may be transferred without regard to origin or destination. A conversion permit may not be issued for bulk transfer of liquefied natural gas.

(c) An application for a conversion permit made under subsection (a) or (b) of this section must be in writing on a form approved by the Secretary and must include the items listed in § 7004(b) and § 7005(a)(1) of this title, the items required by regulation promulgated under this chapter, and all of the following items to be considered in assessing a conversion permit application:

(1) The environmental impact and economic effect of the existing or previous use. If the application is for a subsequent conversion permit, the Secretary of the Department of Natural Resources and Environmental Control has the discretion to direct the applicant to provide information on the environmental impact and economic effect of any of the previous uses at the site.

(2) The environmental impact and economic effect of the alternative or additional heavy industry use or bulk product transfer activity.

(3) The net environmental improvement or economic improvement, or both, inherent in the alternative or additional heavy industry use or bulk product transfer activity as compared to the most recent heavy industry use engaged in at that site.

(4) Evidence that the owner, prospective owner, or applicant for the conversion permit under this section has complied with, and will continue to comply with, the requirements of the Delaware Hazardous Substance Cleanup Act, Chapter 91 of this title, and any other relevant state or federal environmental statutes, and shall agree to pay all costs of such compliance.

(5) A plan to prepare the site for potential impacts of sea-level rise and coastal storms over the anticipated useful life of the facility and infrastructure in connection with the applied-for use.

(6) An offset proposal that meets the requirements established by and includes the contents specified in regulations promulgated under this chapter and more than offsets the facility's negative environmental impacts on an annual basis. Such proposal shall favor offsets that directly benefit Delaware.

(7) A timeframe for the conversion to an additional or alternative heavy industry use or bulk product transfer facility.

(8) Evidence of financial assurances in sufficient form and amount necessary to ensure that (i) there are sufficient resources for all costs of compliance with the Delaware Hazardous Substances Control Act and other relevant state and federal environmental statutes concerning contamination on the site at the time of application; and (ii) upon the event of an incident resulting in environmental contamination, or upon termination, abandonment, or liquidation of all activities at the site of any heavy industry use, all means will be taken to minimize environmental damage and stabilize and secure the heavy industry use site in accordance with a concept plan that will be approved by the Department of Natural Resources and Environmental Control as part of the conversion permit. A final plan approved by the Department of Natural Resources and Environmental Control is required prior to the initiation of operation of the activity being authorized under the conversion permit.

a. Evidence under paragraph (c)(8) of this section must be in accordance with any regulations promulgated by the Secretary of the Department of Natural Resources and Environmental Control under Chapter 92 of this title and any regulations promulgated under this chapter.

b. If, on the date of an application filed under this section, the Secretary has not promulgated regulations under Chapter 92 of this title or under this chapter, the Secretary shall assess the evidence presented by the applicant under paragraph (c)(8) of this section as follows:

1. By taking into consideration the size of the site of the heavy industry use and the quantities of chemicals maintained and generated as wastes on the site of the heavy industry use.

2. By taking into consideration, and giving due credit for, financial assurances established through other programs operated by the Department of Natural Resources and Environmental Control.

3. By allowing evidence of financial assurance to include insurance, guarantee, surety bond, letter of credit, proof of assets, qualification as a self-insurer, or other agreements acceptable to the Secretary.

(d) For purposes of paragraphs (c)(1) and (c)(2) of this section, “environmental impact” and “economic effect” have the same meanings as in § 7004(b) of this title.

(e) In making a decision on a conversion permit application under this section, the Secretary of the Department of Natural Resources and Environmental Control, in the first instance, and the State Coastal Zone Industrial Board, on appeal, shall consider all of the following:

(1) The factors listed in § 7004(b) of this title.

(2) The items listed in paragraphs (c)(1) through (c)(8) of this section.

(3) Compliance with any regulations promulgated under § 7005(b) and § 7005(c) of this title.

(f) The Secretary of the Department of Natural Resources and Environmental Control may not grant a conversion permit under this section for any of the following heavy industry uses that were not in existence on June 28, 1971:

(1) An oil refinery.

(2) A basic cellulosic pulp paper mill.

(3) An incinerator.

(4) A basic steel manufacturing plant.

(5) A liquefied natural gas terminal.

(g) The Secretary of the Department of Natural Resources and Environmental Control must hold a public hearing prior to issuing a conversion permit under this section. All public hearings must be noticed as required by this chapter, regulations promulgated under this chapter, or applicable law.

(h) Notwithstanding the 90 day response time for a decision by the Secretary of the Department of Natural Resources and Environmental Control on a permit application under § 7005(a) of this title, the Secretary and an applicant under this section may, by mutual agreement, extend such time for a decision.

(i) The Secretary of the Department of Natural Resources and Environmental Control shall publish, on the Department of Natural Resources and Environmental Control’s website, all decisions made under this section including the reasons therefor.

§ 7015. Biennial report.

(a) Beginning on January 1, 2019, and every two years thereafter the Delaware Economic Development Office shall provide a comprehensive report to the General Assembly and the Governor detailing economic development that has been enabled by the Coastal Zone Conversion Permit Act. Such report shall include but is not limited to an assessment of how many jobs were created and track any increase in infrastructure investment and total additional economic activity.

(b) Within 30 days of the passage of the Coastal Zone Conversion Permit Act, the Department of Natural Resources and Environmental Control shall provide to the General Assembly and the Governor a baseline report summarizing the contamination and remediation status of each of the 14 heavy industry use sites as of July 1, 2017. Beginning on January 1, 2019, and every two years thereafter the Department of Natural Resources and Environmental Control shall provide a comprehensive report to the General Assembly and the Governor summarizing the status of contamination and remediation for all fourteen heavy industry use sites compared to the status of the sites on July 1, 2017 and summarizing the environmental status at each site issued a Coastal Zone Act Conversion Permit. Such report for sites issued a Coastal Zone Act Conversion Permit shall include, but is not limited to, a list of remediation and site improvement activities underway, a list of offsets and the status of implementation, a list of environmental enforcement actions, a list of any emergency response incidents, a summary of Toxic Release Inventory submissions, and a summary of any air or water quality monitoring if required by another environmental permit.

Section 8. When regulations governing the Coastal Zone Act are updated in accordance with this Act, the provisions governing abandoned uses and abandonment decisions by the Secretary as they pertain to heavy industry and bulk product transfer shall be removed.

Section 9. The Department of Natural Resources and Environmental Control shall start the public workshop process to promulgate revised regulations consistent with this bill no later than October 1, 2017 and shall promulgate the revised regulations by October 1, 2019. Prior to promulgation of final revised regulations, conversion permits may be issued following the statutory and existing regulatory framework.

Section 10. This Act shall be known as the Coastal Zone Conversion Permit Act.