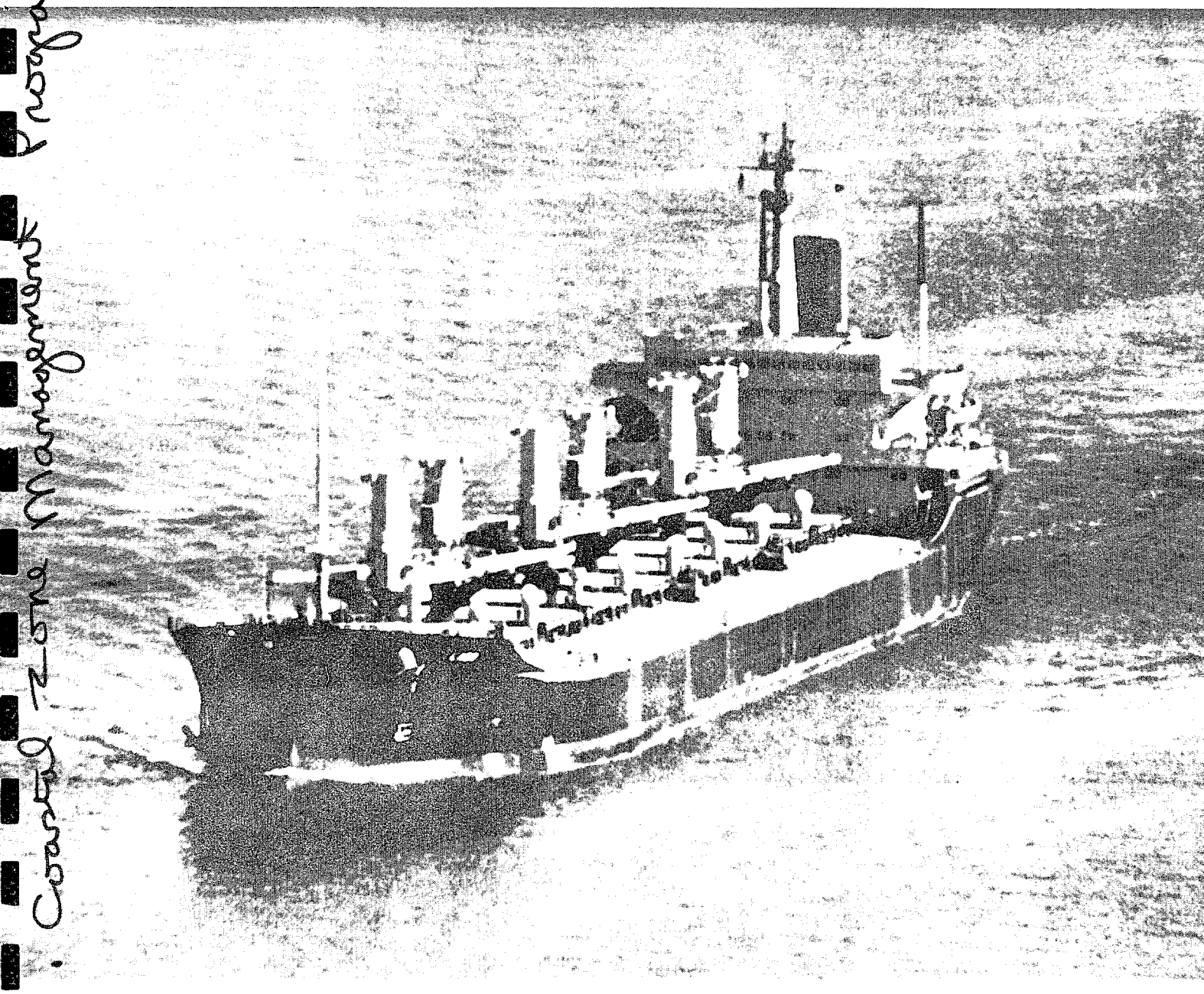
REPORT ON

COASTAL ZONE ACT ADMINISTRATION

July 1977 - December 1983



STATE COASTAL ZONE INDUSTRIAL CONTROL BOARD

AND

RTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

September 1984

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COASTAL ZONE ACT ADMINISTRATION

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State Coastal Zone Industrial Control Board

and

Department of Natural Resources and Environmental Control

September 1984

U.S. DEPARTMENT OF COMMERCE NOAA
COASTAL SERVICES CENTER
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TABLE OF CONTENTS

		Page
Part 1	Background	1-1
Part 2	State Coastal Zone Industrial Control Board	2-1
Part 3	Project Applications and Appeals	3-1

APPENDICES

APPENDIX I	Advisory Legal Opinions	4-1
APPENDIX II	Definitions	5-1
APPENDIX III	Coastal Zone Act and Map	6-1

BACKGROUND

In June 1971 the First State was first in protecting its coastal lands and waters from environmentally harmful industrial development by enacting Delaware's Coastal Zone Act. Since then, under the 1972 Federal Coastal Zone Management Act, twenty-seven coastal states (and territories) have established coastal management programs involving regulation of coastal land and water uses to one degree or another. Delaware's early recognition of the value of its coastal resources and the decision to protect them for the benefit of present and future populations set a national precedent.

Enactment of the Coastal Zone Act was the result of the deep concern of many citizens 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 (or lack of policies) indicated that such industrialization was a real possibility. The absence 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 the uniquely valuable and environmentally sensitive resources of 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 adverse environmental effects resulting from the 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 other 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, Governor Peterson signed the Act into law, (Title 7, Chapter 70, Delaware Code).

Since enactment in 1971 there have been numerous proposals to amend the law. Only two amendments have been adopted, one of these having the basic purpose of reorganizing some agencies of State government.

In 1979 Section 7002 was amended by adding onshore support facilities for Outer Continental Shelf oil and gas activities to a list of industrial land uses not to be defined as prohibited heavy industry uses in the definition of 'heavy industry use'. Such onshore support facilities as warehouses, outdoor storage areas, and equipment repair and maintenance facilities

are not prohibited provided that they occupy less than 20 acres. Tank farms and storage tanks are excluded from the exemption from prohibition.

The second amendment took effect on November 1, 1981 when Reorganization legislation transferred Coastal Zone Act responsibility from the terminated Office of Management, Budget and Planning to the Department of Natural Resources and Environmental Control. Prior to this, in January 1977 when the duPont administration took office, the State Planning Office referred to in the original Coastal Zone Act became the Office of Management, Budget and Planning (OMBP). From January 1977 through October 1981 the Director of the OMBP administered the law. Since November 1981 the Secretary of the Department of Natural Resources and Environmental Control has administered the law.

Within the Division of Environmental Control day-to-day coastal zone administrative activities are housed in the Planning Branch, which also provides staff-support to the State Coastal Zone Industrial Control Board.

STATE COASTAL ZONE INDUSTRIAL CONTROL BOARD

Established by Section 7006 of the Coastal Zone Act, the State Coastal Zone Industrial Control Board authority and responsibilities are:

1. To serve as an appeal board to hear and decide appeals from decisions of the Secretary of the Department of Natural Resources and Environmental Control;

2. To review and approve, disapprove or modify application and procedural regulations prepared by the Secretary; and

3. To review and adopt a comprehensive plan and guidelines concerning acceptable (permitted) manufacturing uses and regulations for elaboration of the definition of (prohibited) heavy industry uses.

Originally, the Board was comprised of ten members including the Secretary of the Department of Natural Resources and Environmental Control. In November 1981 when Coastal Zone administrative responsibility was given to the Secretary by reorganization legislation, the Board was reduced to nine members by eliminating the Secretary's membership. The Governor, with Senate confirmation, appoints five members representing the general public, one of whom is designated Board chairman. Four ex-officio members represent the Delaware Development Office and each of the three county planning commissions. All members are voting members.

As of December 31, 1983 members of the Board were:

the five appointed regular members:

Dr. Donald F. Crossan, Chairman	New Castle County
Mrs. Lynn Williams	New Castle County
Mr. Harry M. Fisher, III	Kent County
Mr. Charles W. Cole	Sussex County
Mr. Robert W. Tunnell	Sussex County

the four ex-officio members:

Dr. V. Eugene McCoy	New Castle County Planning Board Chairman
Mr. Jack Roe	Kent County Regional Planning Chairman
Mr. John Allen	Sussex County Planning and Zoning Chairman
Nathan Hayward, III	Director, Delaware Development Office

Staff and record-keeping services for the Board are provided by the Planning Branch in the Division of Environmental Control, Department of Natural Resources and Environmental Control. Legal assistance to the Board is provided by a Deputy Attorney General in the Department of Justice.

During the period July 1977 through December 1983 there were five appeals of Coastal Zone decisions. Three of these appeals were settled without the Board making an appeal decision. The five appeals were:

Project No. 103 Brandywine Chemical Company, Inc.
Project No. 106 IKO Industries, Ltd.
Project No. 123 Getty Refining and Marketing Company
Project No. 127 Dunn Development Company
Project No. 144 Fischer Enterprises, Inc.

Details about the appeals are given in the project description in Part 3 of this Report.

In addition to appeal hearings, the Board held a series of meetings during this reporting period dealing with improving administration of the Coastal Zone Act.

In December 1980, at the request of the Acting Director of the Office of Management, Budget and Planning, the Board held a workshop meeting in Dover to discuss several administrative matters. The discussion involved the following topics:

> Section 7004(b) of the Act requires that environmental, economic, aesthetic, land use and other effects of projects proposed by permit applicants be examined prior to a permit decision. There was a need for a more systemmatic, objective system for this review and evaluation. The Board discussed a methodology, prepared with federal Coastal Management Program grant funds, to accomplish this.
>
> The law's definition of 'heavy industry use' caused problems of interpretation as to exactly which industry types could be classified as prohibited heavy industries. For example, the definition refers to chemical plants such as petrochemical complexes, leaving the question whether this meant prohibition only of petrochemical plants or of all chemical plants. The law also requires an elaboration of this definition. With Coastal Management Program grant funds, a basis to identify heavy industry uses using the federal census standard industrial classification had been devised by the OMBP, and was briefly discussed by the Board.
>
> A discussion of the potential for industrial development in the coastal zone centered on the idea of identifying and mapping distinctive geographic areas in the zone. The OMBP Acting Director noted that much of the coastal zone south of the Chesapeake and Delaware Canal is publicly-owned and much of it is State-designated wetland. The idea was discussed that particular types of (permitted) industry would have different external effects in different areas depending upon the degree of existing urban and industrial development and the natural resources in each area.

The Board concluded the meeting by asking the OMBP staff to prepare a series of overlay maps of the coastal zone showing local zoning, historic site, public ownership, and critical natural features within the zone. When appropriate the Board would meet again to reach decisions on the subjects discussed at this workshop meeting.

Following this workshop meeting, in 1982 a series of Board meetings was held.

Subjects discussed at the January 5, 1982 meeting included effects of the reorganization legislation on Coastal Zone administration with the transfer to the Department of Natural Resources and Environmental Control of Coastal Zone Act authority, a possible fee system to defray some administrative expenses, improved administrative guidelines, and coastal zone overlay maps for each county. No final decisions were made, work was to continue on these topics.

At its February 8, 1982 meeting the Board was advised by legal memorandum that authority to adopt fees is ambiguous in the Coastal Zone Act, but that other law prevents the Department from retaining any fees. Fee money must go to the General Fund without other specific statutory authority. There would be no point in adopting Coastal Zone fees. The Board voted to approve this memorandum.

A second legal memorandum advised that the Board does have the authority to adopt definitions and administrative regulations provided they are reasonable interpretations of legislative intent. The Board approved this legal memorandum.

The subject of the status decision procedure was discussed in terms of providing an opportunity for public participation prior to the decision. The present system allows only for appeals of the decision, there is no public announcement of or public hearing on the status decision application. The Board decided to keep the procedure as is but to suggest to Secretary Wilson that he can decide to hold an information meeting prior to a status decision if he feels it is a matter of public interest.

Concerning the possibility of differential weighing of environmental, economic, land use and other factors according to the permit applicant's location in the coastal zone, legal counsel advised that the coastal zone is a single entity and that it cannot be divided into sub-types each having different standards for weighing the effects of the proposed manufacturing use. That is, in contrast to traditional zoning practice of having a series of different zones for residences, commercial uses, industry, etc. there is only one coastal zone and only new or expanded manufacturing uses are permitted in that zone. Evaluation of likely effects on the coastal zone, as required in Section 7004(b) of the Act, should not vary in terms of the urban, industrial, rural or undeveloped character of the area around the applicant's proposed site.

On March 16, 1982 meeting, without a quorum, the Board discussed terms which have caused problems of administrative interpretation. The "production capacity" used in the Board-approved definition of expansion or extension of a nonconforming use is whatever capacity figure the applicant customarily uses to describe his operating capacity. Capacity may or may not be the

same as actual production, capacity may exceed production. In the definition of heavy industry use the list of industries as examples of heavy industries is not intended to be all-inclusive, the Board decided. Other industries having identifying characteristics of a heavy industry use including pollution potential can be considered as such. The term "petrochemical" in the definition of heavy industry use does not mean that only petrochemical plants are prohibited. The Board decided that other chemical plants can be heavy industry uses if they have the identifying characteristics in the definition. The Board further decided that, with these clarifications, existing terminology is adequate.

At its May 17, 1982 meeting the State Coastal Zone Industrial Control Board discussed the coastal zone county overlay maps showing prime agricultural soils, federal and state land, local industrial zoning, historic and archaeological sites, and wetlands and other critical natural areas recognized in Delaware's coastal management program. After review of a report suggesting alternative methods to evaluate environmental and other effects of manufacturing uses the Board decided that a methodology using a matrix identifying possible effects would result in more systemmatic and objective staff evaluations of permit applications.

At its meeting of July 14, 1982 the Board again reviewed the coastal zone overlay maps. The Kent County Planner presented overlay maps of the coastal zone in that county and noted that only a small part of the county's coastal zone could be developed for industrial use due to extensive wetlands and public lands. He also noted that nearly all of Kent County's coastal zone is zoned for agricultural-residential use. The Board also reviewed proposed, revised coastal zone permit application forms which were organized in a format encouraging more explicit information from applicants keyed to the language and purpose of the law - whereas the questions in the old form, especially in the environmental section, were expressed in more general terms similiar to the National Environmental Policy Act. Site plan requirements were also simplified. No Board decision was made on the amended application forms.

The Board at its meeting on October 4, 1982 formally approved the revised permit application forms and the use by Coastal Zone Act administrative staff of the matrix methodology for reviewing and evaluating environmental and other effects of permit applicant's projects.

PROJECTS AND DECISIONS

In the six and one-half years from July 1977 through December 1983 a total of 63 projects (applications) were received for Coastal Zone decisions. Between July 1977 and October 1981 these decisions were made by the Director of the Office of Management, Budget and Planning, the successor to the State Planner (referred to in the Coastal Zone Act). Since November 1, 1981 the Secretary of the Department of Natural Resources and Environmental Control has made the Coastal Zone decisions as a result of the reorganization legislation previously referred to.

Summary of Projects and Decisions

Total Number of Projects	63
Status Decision: Not Regulated, No Further Decision	37
Permits for New Manufacturing	8
Permit for Expansion or Extension of a Nonconforming Use	2
Prohibited Use	1
Status Decision Not Regulated - Appeal	1
Status Decision Permit Required - Appeal	2
Permit Required - Project Never Completed or Applicant Located Outside of Coastal Zone	5
Permit Required - No Application Received by Close of This Report Period	1
Status Decision Application Under Review at Close of This Report Period	2
Unusual Decision (not categorized above)	4

The Unusual Decisions involved Projects No. 109, 127, 131, and 144; they are described in some detail in the following projects descriptions.

Most of the decisions, 37 of 63, never proceeded further than the status decision. That is, the decision was that the project was not regulated by the Act and there was no appeal. Nearly all of these involved companies in operation in the coastal zone since prior to enactment of the law and having nonconforming use status.

Given the urban, industrial nature of the northern one-third of the state in contrast to the more rural and non-industrial character of central and southern Delaware it is not surprising that over 75 percent of the projects were located in New Castle County from Delaware City northward, 49 of 63 projects. One project was located in Kent County, which has very little land zoned industrial in the coastal zone. The remaining 13 projects were in Sussex County. This pattern of industrial development and Coastal Zone decisions continues the geographical pattern established in the first six years of Coastal Zone administration.

Brief desciptions of each of the 63 project applications received during the period July 1977 thorugh December 1982, including descriptions of appeals to the State Coastal Zone Industrial Control Board, are provided in chronological order as follows.

Project No. 90 -- Allied Chemical Corporation, Industrial Chemicals Division, Delaware Works at Claymont. Status application: July 27, 1977. Project: Installation of a 10,000 gallon liquid sulfur dioxide storage and handling system within the existing sulfuric acid manufacturing area. The sulfur dioxide is a waste material from another company's pollution control device and will be used by Allied Chemical in a boiler as a raw material in its sulfuric acid process; it is a partial substitution of raw materials. There will be no sulfuric acid production capacity increase, no new manufactured product, and no new effluents, emissions or solid wastes. Status decision: September 2, 1977 not regulated, not an expansion or extension of a nonconforming use as defined in Board-approved regulations.

Project No. 91 -- Getty Refining and Marketing Company at Delaware City. Status application: September 19, 1977. Project: To recover Aromatics-150 from an existing refinery petroleum stream using less than one acre of space within an existing processing and tank farm area. There will be no overall refinery production capacity increase. There will be a small hydrocarbon emissions increase from tanks but no significant adverse environmental effects. Status decision: November 8, 1977, not regulated, not an expansion or extension of a nonconforming use.

Project No. 92 -- Getty Refining and Marketing Company at Delaware City. Status decision: September 27, 1977. Project: To install a Wellman-Lord stack gas scrubbing unit to reduce sulfur dioxide and particulate emissions from boiler stack gases, there would be no effect on refinery production capacity, the project is strictly a pollution control device, recovered sulfur oxides would be converted to sulfuric acid. Status decision: November 8, 1977, not regulated, not an expansion or extension of a nonconforming use.

Project No. 93 -- ICI Americas, Inc. at Atlas Point north of New Castle. Status application: November 23, 1977. Project: Modification of an existing sorbitol processing facility to changeover from a liquid to a crystalline sorbitol, there will be no net increase of total sorbitol production capacity, air emissions will be controlled by a baghouse system. Status decision: January 6, 1978, not regulated, not an expansion or extension of a nonconforming use.

Project No. 94 -- Townsends, Inc., near Millsboro. Status application: December 13, 1977. Project: To construct a scale house for a grain receiving station, not part of the soybean plant, not a plant expansion, no adverse environmental effects. Status decision: January 6, 1978, not regulated, not an expansion or extension of a nonconforming use.

Project No. 95 -- Standard Chlorine of Delaware, Inc., at Delaware City. Status application: February 2, 1978. Project: To replace two older boilers with a new, larger boiler in order to increase steam generating capacity, the older boilers to be put on standby capacity, no increase of plant production capacity, no adverse effect on air quality if use of all three boilers does not exceed 110,000 pounds per hour limit of the DNREC boiler construction permit. Status decision: March 3, 1978, not regulated, not an expansion or extension of a nonconforming use.

Project No. 96 -- Getty Refining and Marketing Company at Delaware City. Status application: March 2, 1978. Project: To separate and recover nitration grade toluene from a refinery stream involving modification of an existing fractionation tower and three new tanks within a one acre area, no additional toluene produced (nitration grade toluene liquids have been proced at the refinery as a small part of the stream going into gasoline blending), toluene emissions to the atmosphere from the new tanks will be within DNREC Air Resources allowed limits, no overall refinery production capacity increase. Status decision: May 24, 1978, not regulated, not an expansion or extension of a nonconforming use.

Project No. 97 -- Georgia Pacific Corporation at New Castle Industrial Park south of Wilmington. Status application: March 30, 1978. Project: A warehouse including an office, some repackaging of nails and plywood cutting incidental to the primary warehousing function, includes two tanks for diesel fuel and gasoline at a truck loading area, no significant environmental effects. Status decision: June 12, 1978, not a new manufacturing use nor a heavy industry use, not regulated; this decision considered the cutting and packaging operations as minor activities, incidental to the main warehousing function in contrast to a prior status decision - Project No. 21 Ferralloy Corporation - where the cutting and slitting of sheet steel was a major part of the operation and involved most of the installed machinery.

Project No. 98 -- ICI Americas, Inc., at Atlas Point north of New Castle. Status application: May 10, 1978. Project: Modification of a sulfonation production facility in operation since 1951 resulting in a 65 percent production capacity increase involving new equipment and rearranging of some existing equipment including a new vacuum system to replace an existing jet stream system; agricultural emulsifiers are produced by blending calcium dodecylbenzene sulfonates with surfactants. Total air emissions of organic vapor, particulates, and sulfur oxides from the modified facility to be less than emissions from the curent facility. Contaminated wastewater from equipment washdowns are to be processed in the Atlas Point treatment plant prior to going to the New Castle County Sewerage system. No significant adverse environmental effects expected. Status decision: June 23, 1978, not regulated, not an expansion or extension of a nonconforming use. By itself a production capacity increase with no significant environmental or land area increases does not necessarily justify a determination that a project is an expansion or extension.

*Project No 99 -- Standard Chlorine of Delaware, Inc. at Delaware City. Status application: June 13, 1978. Project: To install a duplicate distillation system to increase distillation capacity by eliminating downtime enabling a chemical production capacity increase from 150 million to 250 million pounds per year (to match present reactor capacity) - chlorinated benzenes are the product made. The project involves 5 acres of an overall 17 acre plant site, 14 new tanks and 5 distillation columns, an electric power substation and a control room building. Status decision: August 15, 1978, this is an expansion or extension of a nonconforming use requiring application for a coastal zone permit; there would be a significant increase of plant production capacity and a significant potential for increased sulfur dioxide, benzene, possibly increased odors and a potential to aggravate present wastewater iron content treatment problems. Permit application: November 28, 1978, public hearing December 19, 1978. Permit decision: The February 2, 1979 decision to grant a permit attached a number of stipulations to ensure compliance with State air and water pollution regulations. At

* Projects with an asterisk require a permit.

the request of Standard Chlorine, the Director of the Office of Management, Budget and Planning reconsidered his permit decision as to the practicality of implementing some of the permit conditions. He revised his permit decision on February 26, 1979 by adding language about the permit conditions so that in the event of conflict between compliance with the Coastal Zone permit conditions and any DNREC standard or regulation the DNREC requirement would apply. There was no appeal from either permit decision. Permit issued: March 13, 1979 with numerous stipulations to ensure compliance with DNREC air and water quality requirements in connection with this project.

Project No. 100 -- Getty Refining and Marketing Company at Delaware City. Status application: June 21, 1978. Project: Petroleum tank storage capacity for crude oil and for intermediate or finished petroleum products to be increased by 800,000 barrels with two new equal-sized storage tanks within Getty's existing tank farm. The project involved no crude oil refining capacity increase. DNREC advised that negative environmental effects would not be significant, that the new tanks would comply with air quality regulations, that increased hydrocarbon emissions from the two new tanks would be offset by new emissions control equipment to be installed at Getty's truck loading facility resulting in a net reduction of hydrocarbon emissions, and that a slight increase in liquid waste discharged to the refinery wastewater treatment plant would have no serious environmental effect. Status decision: August 11, 1978, not regulated, not an expansion or extension of a non-conforming use.

Project No. 101 -- Dravo Corporation at Wilmington. Status application: September 25, 1978, made by Dravo Corporation on behalf of F. A. Potts and Company, Inc., the site owner. Project: Coal storage and transfer terminal on south shore of Christina River immediately west of the Wilmington Marine Terminal. Metallurgical and steam coal would be brought to the site by railroad, temporarily stored in large piles onsite, then loaded by a conveyor system onto ships docked in the Christina River for ocean transport; in winter there would be some crushing of the coal because it would be frozen. For status decision purposes two aspects of this project are pertinent: (1) the docking facilities, possibly prohibited as an onshore bulk product transfer facility, and (2) the crushing operation as a possible manufacturing use requiring a permit. Status decision: June 13, 1979. (1) the docking facilities are part of the Port of Wilmington and are therefore exempt from prohibition under the exemption in the law for the Port docking facilities; (2) coal crushing would be a seasonal and minor incidental part of the terminal operations and would not be a manufacturing use. The status decision, for these reasons, was that the proposed coal terminal is not regulated by the Act.

Project No. 102 -- ICI Americas, Inc., at Atlas Point north of New Castle. Status application: October 17, 1978. Project: Modification of a sorbitol production facility to increase production capacity. Sorbitol is an edible, non-toxic product, it is a sweetener. A new collection and grinding system for crystalline sorbitol to be within an existing building and a sorbitol crystallization system in an existing building. The project requires less than one acre of new space within a total processing area of approximately 70 acres. No significant environmental effects; particulate emissions to be minor, no liquid wastes, and all solid wastes would be recylcled through the production system. Status decision: December 15, 1978, not regulated,

not an expansion or extension of a nonconforming use.

Project No. 103 -- Brandywine Chemical Company, Inc. Status application: October 30, 1978. Brandywine Chemical, located at Terminal Avenue west of the Wilmington Marine Terminal, is a small specialty chemical manufacturer operating by a batch process rather than a continuous-run production process. Project: To renovate facilities and start-up production of specialty chemicals, no new buildings or facilities and no additional land area required. Legal advisory: A permit for new manufacturing should be required, unless the OMBP decides it is a heavy industry use. Any permit should be worded to allow batch-type operations but not to cover operations not described in the application. Status decision: March 20, 1979. This is a manufacturing use requiring a coastal zone permit; it is not a heavy industry use; it has only a few of the identifying heavy industry characteristics and occupies a site of considerably less than 20 acres. Appeal: On April 2, 1979 Brandywine Chemical filed an appeal with the State Coastal Zone Industrial Control Board claiming that it has nonconforming use status and that a permit for new manufacturing should not be required. On May 7, 1979 the Board held its appeal hearing at the Carvel State Office Building in Wilmington. Principal appeal questions to be decided are: (1) was there a cessation of manufacturing operations during Brandywine Chemical's occupancy of the site - since December 21, 1977; (2) if there was a cessation is the nonconforming use status thereby eliminated? The status decision was based on a cessation of manufacturing operations eliminating the nonconforming use status. The appellant claimed that: (1) due to the nature of specialty chemical manufacturing with frequently changing market demands there were times when no manufacturing operations were conducted at the site but that there was no "abandonment" of operations and facilities; (2) Brandywine's processes, equipment and raw materials are very similar to those of previous specialty chemical occupants of the site; and (3) Brandywine will install no equipment different from its predecessors. Prior to the Board's appeal decision an agreement was reached between the parties to the appeal resulting in a Board order declaring the appeal moot and dismissed without prejudice. Upon legal advice the Board did not advertise its order as a final decision. A legal stipulation agreed-to stated that: (1) the Director of the OMBP withdrew without prejudice that part of the status decision which said that Brandywine Chemical's operations did not have nonconforming use status; (2) Brandywine Chemical agreed the appeal was moot and should be dismissed by the Board without prejudice; and (3) Brandywine Chemical agreed to apply for a coastal zone permit. Permit application: on May 29, 1979 Brandywine Chemical applied for a permit. The permit application public hearing was held in Wilmington on July 10, 1979. On July 18, 1979 a permit was granted with several conditions specific to Brandywine Chemical's specialty chemical manufacturing operations: (1) any new operating parameters and/or expansion of the product operation capacity identified in the permit requires prior notice to the Director of the OMBP; and (2) any operations change and/or production capacity increase which requires a change to any federal or state pollution control permit or change in local wastewater discharge approval requires prior notice to the OMBP Director. The permit was issued on August 3, 1979. (* Since November 1, 1981 the Secretary of the DNREC)

Project No. 104 -- The United States Asphalt Company. Status application: February 28, 1979. Project: U.S. Asphalt Company proposes to purchase the site at EdgeMoor previously used for asphalt roofing manufacturing by Del Val Asphalt and Artic Roofing. U.S. Asphalt would produce saturated

felt and packaged asphalt (roofing material), with the same production capacities as the prior site occupants, claiming nonconforming use status. Status decision: April 17, 1979, U.S. Asphalt must apply for a coastal zone permit as a new manufacturing use. No permit application was filed, the site was purchased by IKO Industries, LTD for asphalt roofing manufacturing (see Project No. 106).

*Project No. 105 -- Delaware Solid Waste Authority. Status application: February 28, 1979. Project: The Solid Waste Authority proposes the Delaware Reclamation Project to burn refuse from the Pigeon Point solid waste reclamation plant in order to generate steam to produce electric power for use at the reclamation plant and to sell low pressure steam to nearby industries. Status decision: April 3, 1979. A permit for a new manufacturing use is required, the project does not have the characteristics of a heavy industry use. Permit application: December 5, 1979. Permit application hearing: February 11, 1980 at Wilmington. At the hearing the Solid Waste Authority's representatives pointed out several advantages of the project: (1) it will reduce the volume of solid waste going to the landfill and extend the useful life of the landfill, and (2) it will generate energy from solid waste thereby saving fuel oil and avoiding emissions to the air from burning fuel oil, although fuel oil would be a supplemental fuel. There would be the possible use of coal as a supplemental fuel necessitating onsite coal storage. Wastewater from the plant would go into the New Castle County sewerage system. Permit decision: On March 4, 1980 a permit was granted for the steam electric generating facility with two conditions: (1) if there are significant deviations from the plan reviewed and approved by the OMBP for this permit the Director must be so notified, and (2) if coal is used as a supplemental fuel the OMBP Director must be notified. The permit was issued on March 19, 1980.

Project No. 106 -- IKO Industries, LTD at EdgeMoor. Status application: March 1, 1979. Project: Proposed manufacturing of asphalt roofing shingles at the site formerly occupied by Del Val Asphalt and Artic Roofing. Status decision: April 24, 1979. A new manufacturing use in the coastal zone requiring a permit. Appeal: May 1, 1979. In its appeal IKO Industries claims it has nonconforming use status inherited, so to speak, from the Artic Roofing asphalt manufacturing operations. IKO further claims that there has been no "abandonment" of the nonconforming use of the site even though actual production ceased when Artic Roofing shut down its plant. Prior to any Board hearing or action on the appeal IKO Industries, represented by its attorney, and the Director of the Office of Management, Budget and Planning reached a written agreement as follows: (1) the IKO plant at EdgeMoor can cleanup the site, renovate the manufacturing plant, and conduct trial run operations as a nonconforming use without a permit; (2) within 6 months of commencement of asphalt production IKO will apply for a permit; (3) IKO must keep the Director of the OMBP informed of plant renovation progress. On the basis of this agreement the appeal was withdrawn with no decision by the State Coastal Zone Industrial Control Board. IKO commenced production of asphalt roofing on May 25, 1981 and notified the OMBP that a coastal zone permit application was being prepared.

Project No. 107 -- Townsends, Inc. near Millsboro. Status application: March 27, 1979. Project: Townsends proposes a soybean meal enrichment process to add hydrated soybean lecithin to soybean animal feed. There

would be no increase of overall soybean meal processing capacity. The project involves a new small building added to the soybean extraction site. No adverse environmental effects are expected. Status decision: April 25, 1979, the project is not an expansion or extension of a nonconforming use and is not regulated by the Coastal Zone Act.

*Project No. 108 -- SunOlin Chemical Company at Claymont. Status application: May 22, 1979. Project: SunOlin proposes to install a carbon dioxide recovery-purification-liquification plant to produce food grade liquid carbon dioxide by liquifying CO_2 now vented to the atmosphere. The project will occupy about one-quarter acre. There will be a slight production capacity increase but no significant adverse environmental effect. In fact, carbon dioxide emissions and some impurities emissions would be reduced. Status decision: July 13, 1979. This is a new manufacturing use, there would be a new product. Permit application: July 19, 1979. Permit application hearing: August 10, 1979 in Wilmington. Permit decision: August 17, 1979, a permit was granted, it was issued to SunOlin on September 4, 1979.

Project No. 109 -- Diamond Shamrock Corporation, Delaware City. Status application: June 1, 1979. Project: Diamond Shamrock's request for a status decision involves three alternative means to transport vinyl chloride monomer (VCM) to the plant site north of Delaware City. Each alternative would involve a pipeline to carry the VCM from the docking facility to the Diamond Shamrock plant. Alternative No.1: Use Getty's Pier #3 at Delaware City to off-load VCM from an ocean-going vessel, then build pipeline from that pier to the Diamond Shamrock plant north of the Getty refinery. Alternative No.2: Build new facilities at the Diamond Shamrock plant by extending a pier and by dredging a channel from the Getty piers to the Diamond Shamrock pier; dredged material would be disposed of on the Getty property. Alternative No. 3: Upgrade the Diamond Shamrock pier so that barges of vinyl chloride monomer from Paulsboro, New Jersey could be docked. The VCM would have to be shipped from the Gulf Coast to Paulsboro prior to barging to the Delaware City Diamond Shamrock plant. Additional storage tanks would be required for the third alternative. Status decision: July 18, 1979. Alternative No. 1: Use by Diamond Shamrock of Getty Pier #3 would eliminate the exemption of that pier (bulk product transfer facility) from prohibition. Alternative No. 2: Extend the Diamond Shamrock pier and dredge an access channel to it would not be regulated provided that only Diamond Shamrock would use the pier. Alternative No. 3: Improve the Diamond Shamrock pier without any dredging to receive barges from Paulsboro, New Jersey would not be regulated provided that only Diamond Shamrock would use the pier. The first alternative was not feasible for Dimaond Shamrock because Getty refused to allow use of its pier. Whether or not Diamond Shamrock improved its own pier is unknown.

Project No. 110 -- Getty Pipeline Incorporated, Delaware City. Status application: June 6, 1979. Project: Getty proposes a 19.7 mile 16 inch pipeline to transport gasoline and #2 fuel oil form its Delaware City refinery to an existing petroleum pipeline in Delaware County, Pennsylvania. For most of the pipeline length road and railroad rights-of-way would be used. Pipeline through-put would be 30,000 barrels per day. The pipeline would replace barge transport of refined petroleum products from the refinery at Delaware City to the New York City area. Status decision: July 13, 1979. The pipeline is not regulated by the Coastal Zone Act. There will be no increase of refinery production capacity, no expansion of a

nonconforming use, and no new heavy industry use. Although the Coastal Zone Act does not apply, the pipeline would be regulated by the National Pipeline Safety Act and by the Army Corps of Engineers for stream crossings and by the Wetlands Section of DNREC for stream crossings and any use of wetlands.

Project No. 111 -- Delaware Terminal Company. Status application: June 15, 1979. Project: Delaware Terminal Company, a subsidiary of Gulf Interstate Company, proposes construction of five storage tanks for #2 fuel oil and gasoline at its tank farm adjacent to the Wilmington Marine Terminal. Petroleum products would be delivered to the tank farm by a 10 inch pipeline from the Marine Terminal's petroleum pier on the Christina River. This is a storage facility, not a refinery. The new tanks would utilize about 5 acres. Status decision: July 18, 1979. The five new storage tanks are not regulated by the Coastal Zone Act, they are not part of a prohibited bulk product transfer facility. All piers and docking facilities of the Marine Terminal are exempt from this prohibition, and tank farms used entirely for storage and not part of a heavy industry or manufacturing use are not regulated by the Act.

Project No. 112 - Helix Associates, Inc. Status application: September 17, 1979. Project: Helix Associates proposes to move its specialty chemicals manufacturing plant from Newark, Delaware, to the New Castle Industrial Park off Lambsons Lane near Pigeon Point. Helix is a specialty chemical manufacturer making such products as biochemicals, pharmaceuticals, and reagents. Products to be made in the new plant would be drilling mud additives, a synthetic vitamin, and a gas well desulferizer. Status decision: The status decision of January 22, 1980 was that the new plant in the coastal zone would not be a prohibited heavy industry use but that it would be a new manufacturing use requiring a permit. The new plant would have most of the physical equipment characteristics of a heavy industry use but the site would be much less than twenty acres and there would be no significant negative environmental effects, in fact by reusing scrap plastic there would be a positive effect. No permit application was filed, Helix decided to located outside of the coastal zone.

Project No. 113 -- Diamond Shamrock Corporation. Status application: October 29, 1979. Project: Diamond Shamrock proposes to install a 500,000 gallon surge tank in its mercury wastewater treatment system at its chemical plant near Delaware City. The project would be entirely for pollution control purposes; there would be no increase in wastewater discharge flow. Status decision: November 8, 1979. The surge tank is not regulated by the Coastal Zone Act. The Act does not regulate industrial projects purely of a pollution-control nature.

Project No. 114 -- The Arundel Corporation. Status application: November 7, 1979. Project: The project involves The Arundel Corporation taking fly ash and bottom ash from the Delmarva Power and Light Company power plant at Indian River in Sussex County for separation of marketable and unmarketable ash particles. Most of the ash would be fly ash which would be transported to an Arundel terminal for air separation by particle sizes. Arundel will

sell the marketable fly ash and dispose of the remainder in a DP&L Landfill. Bottom ash would be gravity separated with marketable pieces to be sold by Arundel as fill and construction aggregate and large unmarketable pieces to go to a disposal site. All unmarketable ash would remain the property of Delmarva Power and Light Company. No coal crushing is involved in the ash separation process. Status decision: December 20, 1979. The coal ash separation land use is not regulated. It is not a manufacturing use because there would be no "transformation of a substance". That is, pneumatic and gravity separation and transportation of ash particles, with no crushing, does not meet the law's definition of manufacturing.

*Project No. 115 -- Trimark Publishing Company, Inc. Status application: November 19, 1979. Project: Trimark proposes to build and operate a commercial printing plant at the Hares Corner Industrial Park near Hares Corner, Route 13, in New Castle County. Status decision: December 14, 1979. Commercial printing is a manufacturing use and requires a permit. Permit application: January 3, 1980. The required public hearing was held in Wilmington on February 19, 1980. Permit decision: March 7, 1980. A permit was granted to Trimark Publishing for commercial printing.

*Project No. 116 -- Delmarva Power and Light Company. Status application: December 4, 1979. Project: Delmarva Power and Light Company proposes to convert two of its power generating units at the EdgeMoor power plant from fuel oil to coal burning. Power generating capacity would not increase. There would be some increase of sulfur dioxide and nitrogen oxide emissions. Increased coal ash disposal would occur at Cherry Island. DP&L claimed nonconforming use status for the power generating units at EdgeMoor. Prior to enactment of the Coastal Zone Act in June 1971 these units burned coal and then were converted to fuel oil in late 1971. In 1975 the federal government ordered DP&L to convert units 3 and 4 back to coal burning. A deputy attorney general's legal opinion advised that conversion of the two generating units to coal would be an expansion/extension of a permitted use requiring a permit for new manufacturing. In 1971 when DP&L's power units converted from coal to fuel oil the nonconforming grandfather rights expired. A permit is required for the fuel conversion of units 3 and 4 as an expansion/extension of a manufacturing use. There will be new equipment including an electrostatic precipitator to control air emissions, land use area would increase substantially due to coal ash disposal needs, and environmental effects from ash disposal dust, coal pile runoff, increased nitrogen oxide and sulfur dioxide emissions and from reduced capacity at Cherry Island for dredged spoil disposal due to DP&L coal ash disposal at that site coal would be significant. Permit application: September 30, 1980. Permit public hearing: November 5, 1980 in Wilmington. Permit decision: November 18, 1980. A permit was granted to the DP&L Company to convert units 3 and 4 to coal burning.

Project No. 117 -- Standard Chlorine of Delaware, Inc. Status application: January 17, 1980. Project: Standard Chlorine proposes to install equipment to convert liquid paradichlorobenzene to a solid crystal form. Overall plant capacity to produce chlorinated benzene products will not increase but capacity for conversion from liquid to solid form will increase. Due to likely increased emissions from crystal production an amendment to the Company's Air Resources permit would be required. Status decision: March 12, 1980. The project is not regulated by the Act, there would be no overall production capacity increase and no new product made. Environmental effects would be within acceptable limits.

Project No. 118 -- All American Engineering Company. Status application: January 22, 1980. Project: The company proposes to move its operations from the old Dravo Shipyard in Wilmington (outside of the coastal zone) to the Hares Corner Industrial Park (in the coastal zone). All American Engineering makes machining and metal fabricating tools. Minor coating, painting, and electroplating are involved. Status decision: January 24, 1980. This is a new manufacturing use in the coastal zone requiring a permit. No permit application was filed, the Company changed its plans and moved to a new site in Delaware outside of the coastal zone.

Project No. 119 -- Allied Chemical Corporation, Delaware Valley Works. Status application: February 15, 1980. Project: Allied Chemical proposes to melt dry sulfur using indirect steam heat to make molten sulfur for use in producing sulfuric acid. There will be no stockpiling of dry sulfur. Overall capacity to produce sulfuric acid would not increase. Status decision: March 24, 1980. The project is not regulated by the Coastal Zone Act, there would be no new or expanded manufacturing use and no significant environmental effects.

*Project No. 120 -- Betts Pond Realty, Inc. (Inter-Continental Biologics, Inc.) Status application: May 16, 1980. Project: Testing and production of veterinary vaccines for poultry diseases and a swine vaccine would comprise the operations of Betts Pond Realty at a site in Millsboro. The applicant claimed that biological production of vaccine is not a manufacturing use because there would be no "mechanical or chemical" transformation of substances into a new product. An advisory legal opinion was requested on this question. The advisory opinion referred to the federal Standard Industrial Classification of vaccine as manufacturing and concluded that the language in the law's definition of manufacturing should not be construed so as to exclude vaccine production as a manufacturing use. Status decision: June 4, 1980. An application for a permit for new manufacturing is required. Permit application: June 13, 1980. Permit decision: June 27, 1980 a permit was granted to Betts Pond Realty Company.

Project No. 121 -- Christina Service Company. Status application: June 23, 1980. Project: At Lambson Lane south of the Wilmington Marine Temrinal Christina Service Company proposes to construct a warehouse for cars and trucks. The company repairs minor damage and re-paints cars and trucks prior to shipment to overseas markets, it is a stevedoring company. Status decision: July 8, 1980. The warehouse operation is not something regulated by the Coastal Zone Act.

Project No.122 -- White Chemical Corporation. Status application: July 31, 1980. Project: White Chemical manufactures specialty chemicals including flame retardants, acid chlorides, and alkyl bromides. It planned to move from Bayonne, New Jersey to a site either at EdgeMoor or near the Wilmington Marine Terminal, both potential sites located in Delaware's coastal zone. There would be possible outdoor storage of chemicals in drums. Status decision: October 7, 1980. The status decision was that this would be a new manufacturing use requiring a permit; it would not have the characteristics of a (prohibited) heavy industry use. The Company never moved to Delaware.

Project No. 123 -- Getty Refining and Marketing Company. Status application: July 31, 1980. Project: A new plant to produce methanol would be constructed as part of Getty's Delaware City petroleum refinery. The project would change the refinery product mix but would not increase overall refinery crude oil processing capacity. Feed materials for the methanol would be existing

desulfurized refinery streams. There would be a methanol pipeline from the product tank farm to Pier #3 within the present pipeline corridor. The methanol would be shipped-out by barge and to a lesser extent by tank truck and railroad tank cars. Status decision: November 18, 1980. The methanol plant is not an expansion or extension of a heavy industry use and is not a new manufacturing use, it is not regulated by the Act. Appeal: December 1, 1980. Three environmental organizations: Watch Out Waterways, Delaware Audubon Society, and Save Our Seashores appealed this decision to the State Coastal Zone Industrial Control Board. The appeal hearing was held in Dover on January 7, 1981. An advisory legal opinion of March 6, 1979 was made part of the hearing record. This opinion said that the word "manufacturing" in the Coastal Zone Act encompasses both heavy industry uses and manufacturing, that if an expansion project is itself a heavy industry use it is prohibited, and that any expansion of a facility which pre-dates the Coastal Zone Act is treated exactly as a new project would be treated. The Board's appeal decision of January 27, 1981 was in two parts stating that: (1) the appellants had standing to appeal (Getty had challenged their standing); and (2) the status decision that the methanol plant is not regulated was upheld by a 5-2 vote with the dissenting Board members voting to remand the project to the Director of the Office of Management, Budget and Planning for him to decide whether or not a permit would be necessary for an expansion or extension of a nonconforming use. There were no further appeals. No permit was required.

Project No. 124 -- Allied Chemical Corporation - Delaware Valley Works. Status application: September 4, 1980. Project: Allied Chemical at its Claymont plant proposes a magnesium oxide regeneration facility to be located on 2.5 acres within an existing sulfuric acid plant. Solid magnesium oxide would be made from magnesium sulfite for use in sulfur dioxide scrubber systems at electric power plant in the Delaware Valley. Byproduct sulfur dioxide gas would be used in Allied Chemical's sulfur dioxide production process. A Prevention of Significant (air quality) Deterioration decision by the Environmental Protection Agency would be necessary. Also, a variance of county wastewater discharge limits would be necessary to allow concentrations of dissolved and suspended inorganic solids exceeding the limits. Status decision: December 3, 1980. The magnesium oxide facility is not regulated by the Coastal Zone Act. It would not be a new manufacturing use and not an expansion or extension of a nonconforming heavy industry use.

Project No. 125 -- American Hoechst Corporation - Film Division. Status application: October 7, 1980. At its chemical plant north of Delaware City, American Hoechst proposes to build a warehouse to store PVC film, no manufacturing is involved. Status decision: October 23, 1980. Warehousing is not regulated by the Coastal Zone Act.

Project No. 126 -- Townsend Farms. Status application: January 19, 1981. At its plant near Millsboro, Townsend Farms proposes to replace an old mill with a new mill to grind grain for chicken feed. There would be a baghouse with filters to control grain dust. No additional milling production capacity is involved. Status decision: February 25, 1981. The new grain mill is not regulated by the Act, it simply replaces an existing mill and does not change any milling capacity.

Project No. 127 -- Dunn Development Company. Status application: May 27, 1981. Project: Dunn Development Company of Annapolis, Maryland, proposes to improve and operate a bulk product transfer facility at an existing bulk product transfer site on 63.5 acres at Lewes Harbor. Possible bulk products to be transferred include liquid nitrogen fertilizer, potash, fishmeal, dry fertilizer, and, most likely, coal. An existing pier, in poor condition, would have to be improved. No specific coal transfer plans were presented. Status decision: September 16, 1981. The decision by the Acting Director of the Office of Management, Budget and Planning was that: (1) the bulk product transfer facility is a nonconforming use, that bulk product transfer operations were ongoing prior to enactment of the Coastal Zone law; (2) the existing pier may be restored to a usable condition but no new or enlarged pier may be built; (3) no expansion or extension of the facility is allowed but Dunn Development may operate the facility provided that the "character of the facility" as it existed in June 1971 (time of enactment of the Act) cannot be substantially changed; (4) the site may be used for manufacturing provided that a Coastal Zone permit is obtained. Appeals: September 23, 1981 and September 30, 1981. Two appeals from this status decision were filed: On September 23rd by the Pilot Point Condominium Council, an association of homeowners, and on September 30th by Port Lewes Limited Partnership, a subsidiary of the Dunn Development Company. The basis for Dunn Development Company's appeal was its contention that the language of the status decision referring to no substantial change of character of the facility (as it was in June 1971) was not in accordance with the law. Dunn particularly objected to the decision reference to "basic design and configuration" (of the facility) not being changed. The basis for the Pilot Point Condominium Council appeal was its contention that the status decision should have been more restrictive, that any coal transfer operation should have been expressly prohibited as an expansion or extension of a bulk product transfer facility, and that only those transfer facilities in use in June 1971 should be used for future bulk product transfer operations. The Board's appeal hearing was held in Lewes at the College of Marine Studies on November 18, 1981. Appeal decision: November 23, 1981. The appeal decision upheld the status decision by the Acting Director of the OMBP, that is: (1) there can be no substantial change of character of the facility including the pier from the design and configuration that existed in June 1971; and (2) future use of the Lewes facility is limited to uses in kind and quantity which could have used the facility as it existed in June 1971. The Board said that the intent of the Act is to prohibit new bulk product transfer facilities and to gradually eliminate existing nonconforming facilities through attrition. The Board affirmed the Acting Director's authority to require detailed plans from Dunn Development Company for any proposed coal transfer facility so that a status decision on a specific project can be made as to whether or not it would be allowed. Concerning the appeal by the Pilot Point Condominium Council, the Board said that the Acting Director was correct in not specifically prohibiting the bulk transfer of coal (prior to detailed, project-specific plans) and that he was correct in not specifying that only those transfer facilities in active use in June 1971 could be used for future bulk cargo transfer. The Board's appeal decision was by a 6 to 0 vote. There was no appeal of the Board's appeal decision. (See Project No.138).

Project No. 128 -- Delmarva Energy Resources, Inc. Status application: June 3, 1981. Project: This is a proposal to drill a geothermal well at Lewes at the entrance of Cape Henlopen State Park to extract hot water from a deep well to be piped to the nearby Barcroft Company plant. An EPA permit

is required for any underground injection and state permits for the well and for any discharge of geothermal fluids to surface waters would be required. Status decision: July 8, 1981. This is simply a natural source of hot water energy for a manufacturing company, in itself it is not a regulated heavy industry or manufacturing use. The well was never drilled.

Project No. 129 -- National Bulk Carriers, Inc. Status application: June 24, 1981. Project: It is proposed to conduct a bulk product transfer operation at Big Stone Anchorage in Lower Delaware Bay. A large (150,000 deadweight tons) bulk cargo ship would be anchored in the Bay to serve as a floating coal storage facility. Barges from Philadelphia and other nearby ports would load coal into the storage ship. Large coal carriers partly loaded with coal would tie-up to the coal storage ship on a regular basis. By a conveyor system, coal would be transferred from the storage ship to the collier. When fully loaded the collier would depart for overseas ports. The storage ship would avoid the necessity to schedule meetings of the barges with the overseas carriers. The deepwater Big Stone Anchorage has been used for incoming crude oil lightering (transfer) operations since the 1950's. It offers the advantages of natural deep water exceeding water depths of all East Coast ports south of New England with no costly dredging necessary and being convenient to northern Appalachian coal fields in Pennsylvania, Virginia, West Virginia, and Kentucky. An advisory legal opinion was requested to answer questions whether or not this would be a prohibited offshore bulk product transfer facility. The legal opinion of June 24, 1981 was that the proposed National Bulk Carrier's (Universal Tankshops) coal transfer would not meet the definition of offshore bulk product transfer facility because the entire operation, within Delaware, would be from ship to ship with no transfer between an onshore facility and a ship. No Delaware onshore facility would be involved. Status decision: July 1, 1981. The proposed Delaware Bay coal transfer operation is not regulated by the Coastal Zone Act, it would not be a prohibited offshore bulk product transfer facility as defined in the law.

Project No. 130 -- Getty Refining and Marketing Company. Status application: July 29, 1981. Project: Getty proposes a Continuous Catalyst Regeneration (CCR) Platforming Unit at its Delaware City refinery to increase its gasoline octane rating. Within its present operating area approximately three acres would be needed. There would be no increase of refinery production (measured by the output capacity of its Crude Unit). Cooling water usage would be reduced; wastewater discharges would be within present state-permitted limits. Status decision: November 2, 1981. This is not an expansion or extension of a nonconforming heavy industry use; it is not regulated by the Coastal Zone Act.

Project No. 131 -- City of Wilmington. Status application: August 6, 1981. Project: A coal port for the export of 5 to 10 million tons per year of U.S. coal involving railroad car delivery, on-site storage, a conveyor for ship loading and a new pier and trestle at a site near Pigeon Point south of the present Wilmington Marine Terminal is proposed. Part of the storage area and railway would extend beyond city limits southward to near the approach to the Delaware Memorial Bridge. A private company will operate the facility, leasing the land from the City. The City's attorney argued that the entire facility is exempt from Coastal Zone Act regulations as an offshore bulk product transfer facility, that the exemption in Section 7002(f) of the law for the Port of Wilmington is not limited to the city boundaries. He suggested a legal agreement between the City and the Department of Natural Resources

and Environmental Control that would extend the "Port of Wilmington" beyond City limits south to the Memorial Bridge and inland to the (1982) extent of land zoned for manufacturing southwest of the Marine Terminal. No agreement was reached. The subject became moot when the private company decided not to go ahead with the project after engineering studies of subsoil conditions showed considerable soil instability which would be very costly to correct. There was no status decision.

Project No. 132 -- Delmarva Power and Light Company. Status application: September 1, 1981. Project: DP&L plans to install reboilers for steam at its EdgeMoor power plant. There would be two reboiler units for low pressure steam to be piped to the Dupont titanium dioxide plant at EdgeMoor north of The power plant. No power generating capacity increase is involved. Non-sanitary wastewater from metal cleaning would be within State permit limits. Status decision: January 15, 1982. The project is not regulated by the Act, it is not an expansion or extension of a nonconforming use.

Project No. 133 -- IKO Manufacturing, Inc. and Delaware Asphalt Products, Inc. Permit application: September 10, 1981. Project: This project is related to project number 106 which involved an appeal by IKO Industries of a status decision requiring a permit for a manufacturing plant to make asphalt roofing shingles and fiberglass mat material at the site of the old Artic Roofing plant at EdgeMoor north of Wilmington. Before the State Coastal Zone Industrial Control Board made its appeal decision a written agreement between the Company and the Office of Management, Budget and Planning was reached requiring IKO to apply for a coastal zone permit within six months of commencement of asphalt roofing or fiberglassmat production; this permit application fulfills that agreement stipulation. Permit decision: November 3, 1981. A permit was granted to IKO Manufacturing, Inc. and Delaware Asphalt Products, Inc. for fiberglass mat production, increased asphalt roofing production and storage capacity, new tank storage capacity, and improvements to asphalt oxidizing and kegging facilities.

Project No. 134 -- Delaware Storage and Pipeline Company, Inc. Status application: September 29, 1981. Project: At its jet fuel tank farm near Port Mahon in Kent County the Company proposes to construct two new storage tanks. Delaware Storage and Pipeline Company is a private contractor supplying jet fuel to the Dover Air Force Base. The fuel is pumped from barges to a pipeline at Port Mahon, then to the tank farm and then by two pipelines to the Air Base southwest of the tank farm. Due to shoreline erosion the Port Mahon pier is exposed to storm waves which sometimes prevent barge unloadings. The lack of reserve storage capacity requires the company to truck jet fuel to Dover from New Jersey when barge deliveries cannot be made. The new storage tanks will eliminate the need for such truck deliveries. The new tanks will be within the tank farmed diked area to contain any leaks or spills, and will require State Fire Marshal approval and Kent County approval for a hazardous use. No new pier or pipeline is required. The new tanks will occupy less than one acre of a 27 acre site. Status decision: December 1, 1981. The new jet fuel storage tanks are not regulated by the Coastal Zone Act. No increase of jet fuel deliveries to the Air Base would result from the two new tanks, the project simply increases on-site storage capacity to avoid truck deliveries when barge deliveries cannot be made due to storm conditions at Port Mahon.

*Project No. 135 -- Formosa Plastics Corporation, Delaware. Status application: September 29, 1981. Project: The applicant proposes to increase polyvinyl chloride (PVC) production capacity at its chemical plant near Delaware City from 180 million to 225 million pounds annually, a 42 percent increase. There would also be increased PVC resin drying capacity, requiring a permit from DNREC Air Resources section. Status decision: October 28, 1981. A permit is required for an expansion-extension of a nonconforming use. Permit application: January 6, 1982. A permit was requested for a new fluid bed dryer to increase PVC resin drying capacity. Increased emissions of vinyl chloride monomer emissions would be DNREC-regulated. Wastewater increase would be within state permit limts. The permit application public hearing was held in Wilmington on March 11, 1982. Permit decision: April 5, 1982. A permit was granted.

Project No. 136 -- Townsends, Inc. Status application: November 6, 1981. Project: Townsends proposes to construct a soybean oil storage tank within its soybean processing plant near Millsboro. Status decision: November 11, 1981. the project is not regulated by the Act, it is not an expansion-extension of a nonconforming use, soybean production capacity would not increase.

*Project No. 137 -- Elias Artmetal Company. Status application: November 6, 1981. Project: Elias Artmetal is a small company which manufactures pewterware. It proposes to move its operations from New York City to an existing small industrial building at Lewes. Status decision: December 16, 1981. A coastal zone permit for a new manufacturing use is required. Permit application: January 13, 1982. The permit application was held in Lewes on February 1, 1982. Permit decision: February 3, 1982. A permit was granted.

Project No. 138 -- Dunn Development Company, Inc. Status application: December 29, 1981. Project: This project is a follow-up to Project No. 127 which was appealed to the State Coastal Zone Industrial Control Board. The company presented specific plans for new and renovated bulk product transfer facilities at its site on Lewes Harbor. The plans described a proposal to store and ship coal, liquid nitrogen fertilizer, and other bulk products involving extended on-site railway tracks, a coal thaw shed, covered conveyors to move the coal to and from storage piles, and a coal storage area of 2.5 acres. Status decision: April 14, 1982. The proposed facility for transfer of coal and other bulk cargoes is prohibited. It would be a violation of Section 7003 of the Coastal Zone Act prohibiting new offshore bulk product transfer facilities. It would be a substantial change of character of the offshore bulk product transfer facility existing in June 1971 when the Act became law; the new facilities proposed by Dunn Development would enable the Company to transfer bulk products which could not have been stored and handled at this site in June 1971 and would be contrary to the status decision of September 16, 1981 upheld by the State Coastal Zone Industrial Control Board which prohibited any substantial change of character of the facility as it was in June 1971. There was no appeal of this decision. Dunn Development Company changed its plans and began construction of townhouses on a part of the site proposed for the bulk product transfer facility; the remainder of the proposed site continues in the ownership of Fischer Enterprises, Inc.

Project No. 139 -- City of Wilmington, Department of Commerce. Status application: February 5, 1982. Project: The City's Department of Commerce, which manages the Marine Terminal, proposes a 220 acre area adjoining the Marine Terminal along the Delaware River extending south to Pigeon Point for disposal of dredged spoil. Additional land for disposal of spoil is essential to continued operations of the Marine Terminal due to the recurring need for dredging of the Christina River; all docking facilities are on the Christina. A detailed environmental impact statement has been prepared by the Army Corps of Engineers on this proposal. Status decision: February 18, 1982. Disposal of dredged spoil is not an activity regulated by the Act. Any future plans to expand terminal operations on this site would require a status decision.

Project No. 140 -- Getty Refining and Marketing Company. Status application: March 8, 1982. Project: At its Delaware City refinery, Getty proposes new sulfur recovery facilities to back-up existing facilities and to allow refinery processing of higher sulfur crude oil. There will be a decrease of SO_2 emissions. Refinery throughput capacity would not increase. Status decision: April 15, 1982. The sulfur recovery unit is a pollution control device, it is not regulated by the Coastal Zone Act.

Project No. 141 -- Coastal Supply Company, Inc. Status application: April 20, 1982. Project: Coastal Supply proposes a plant near Dagsboro to manufacture light industrial springs. The plant would be leased to a company from out-of-state for operations. Status decision: April 26, 1982. Application for a Coastal Zone permit is required for a new manufacturing use. No permit application was received. The manufacturer decided to locate at a site in Sussex County outside of the coastal zone.

Project No. 142 -- Alloy Surfaces Company, Inc. Status application: May 21, 1982. Project: Alloy Surfaces Company, Inc. coats steel parts such as jet engine parts with metallic (nickel, chromium, aluminum) powders to increase heat resistance. The company proposes to move its operations from a Wilmington site not in the coastal zone to the Ludwig Honold property at EdgeMoor north of the DP&L power plant in the coastal zone. Status decsion: July 2, 1982. Diffusion coating of steel parts does not result in mechanical or chemical transformation of a substance into a new product and is not a manufacturing use. It does not have the characteristics of a heavy industry use. It is not regulated by the Coastal Zone Act.

Project No. 143 -- Multichem, Inc. Status application: October 12, 1982. Project: Multichem is a service industry for the disposal of infectious and pathologic medical wastes from hospitals, labs, and clinics. The Company proposes to operate an incinerator at a leased site in the Ludlow Industrial Park at EdgeMoor. There would be temporary storage of the waste material within a building prior to incineration. Environmental Control Air Resources permits to construct and operate the incinerator are required. Ash from the incinerator is non-hazardous and any disposal in Delaware requires a Solid Waste permit. Status decision: December 23, 1982. This is not a manufacturing or heavy industry use, there is no transformation into a new product. It is not regulated by the Act.

Project No. 144 -- Fischer Enterprises, Inc. Status application: November 17, 1982. Project: In 1981 and 1982 Fischer Enterprises moved fourteen (14) large storage tanks from adjoining properties to a site adjoining existing tanks. There were no new tanks. Liquid nitrogen fertilizer has long been stored at this site. Moving of the tanks was brought to the attention of the Division of Environmental Control by a local private citizen who expressed concern about a possible violation of the Coastal Zone Act. The Company was contacted and agreed to request a status decision. When nothing further was heard from Fischer Enterprises, a status application was prepared on the Company's behalf by the Division. Status decision: December 15, 1982. Relocation of the storage tanks is not regulated by the Coastal Zone Act. There was no increase of overall bulk product storage capacity beyond that existing in 1971 at the time of enactment of the Act; there was no substantial change of character of the facility. Appeal: December 29, 1982. The Pilot Point Council of Owners, of Lewes, appealed this status decision to the State Coastal Zone Industrial Control Board. An appeal hearing by the Board by scheduled for February 9, 1983 in Dover but was not held. The appeal was formally withdrawn by the Pilot Point Association of Owners on February 8th on the basis of an agreement with Fischer Enterprises, Inc. to establish lines of communications to keep the Pilot Point Association informed of Fischer's plans for future use of onsite storage tanks.

*Project No. 145 -- Glackin Industries, Inc. Glackin Industries proposes to construct and operate a new manufacturing plant in the coastal zone at the Airport Industrial Park east of Route 13 near New Castle for the production of bedding products including box springs, mattress covers, and sleeping bags. To expedite the Coastal Zone decision process Glackin Industries waived its right to a status decision and applied for a coastal zone permit. Permit application: January 3, 1983. The permit application public hearing was held in Wilmington on February 15, 1983. Permit decision: February 28, 1983. The Secretary granted a permit for a new manufacturing use.

Project No. 146 -- Getty Refining and Marketing Company. Status application: February 1, 1983. Project: Getty proposes to modify the vacuum section of its refinery Crude Unit and to modify its Fluid Coking Unit to enable the processing of a higher percentage of heavy crude oils. The overall project is termed the Refinery Upgrading Project. Heavy crude oil may or may not have a higher sulfur content than lighter crude. This project is related to a new sulfur recovery unit (BSRU) and Scot Tail Gas Unit which are means to control increased sulfur dioxide emissions from the modified Fluid Coking Unit. The end result of all of these related new facilities would be an improved capacity to handle increased SO_2 emissions from the modified Fluid Coking Unit. Overall refinery processing capacity based on its Crude Unit capacity will not increase. In addition to increased sulfur dioxide emissions there could be odor problems due to more hydrogen sulfide in the wastewater discharge if higher sulfur content crude oil is processed. In terms of Clean Air Act requirements the Refinery Upgrading Project constitutes a "Major Modification" due to increased SO_2 emissions and will be regulated by PSD (Prevention of Significant Deterioration) requirements of that Act. As of the end of the period covered by this Report the project was still under review by the Division of Environmental Control. Both EPA and the State are dissatisfied with Getty's air quality model emission values and are requiring revision of the model. Air quality effects will be an important factor in the Coastal Zone status decision for the Refinery Upgrading Project.

Project No. 147 -- Formosa Plastics Corporation, Delaware. Status application: February 18, 1983. Project: Formosa Plastics proposes a new compound plant to make polyvinyl chloride (PVC) pellets from PVC resins at its chemical plant near Delaware City. Additional facilities will include 13 silos, 3 extruders, and 7 tanks. Compound plant maximum annual capacity will be 54 million pounds. However, plant PVC resin production capacity will not increase, the project will simply result in further processing of the PVC resin (into pellets). There will be no additional load to the wastewater system and no solid waste problem. PVC particulate emissions and residual vinyl chloride monomer will be within allowed limits. Status decision: June 3, 1983. The compound plant is not regulated by the Act, environmental effects will not be significant and overall plant production capacity will not increase.

Project No. 148 -- Multichem Corporation. Status application: March 25, 1983. Project: This project is a follow-up to Project No. 143. Within the Ludlow Industrial Park at EdgeMoor, Multichem proposes a second incinerator for the burning of infectious and pathologic medical wastes raising total on-site incineration hourly capacity to up to 1500 pounds of waste. Some of the pharmaceutical waste is listed as hazardous chemicals. Material which cannot be incinerated including medical corrosive liquids will be collected and consolidated for treatment at a commercial site which neutralizes acids or at a solvent recovery facility. A small amount of this material which cannot be treated or reclaimed will be shipped to an out-of-state landfill. Status decision: July 21, 1983. The (second) incinerator is not regulated by the Coastal Zone Act, it is not a heavy industry or manufacturing use. The decision carefully noted that it does not apply to incineration or storage of any hazardous waste. Air Resources permits are necessary for all industrial size incinerators. To date the second incinerator had not been installed.

Project No. 149 -- Formosa Plastics Corporation. Status application: July 27, 1983. Project: This project is a modification of Formosa Plastic's Emulsion II plant to increase PVC emulsion resin yield per batch. Increased production capacity would equal that existing prior to enactment of the Coastal Zone Act until the mid-1970's when the Emulsion-I plant at Delaware City was shut down. There will be no increase in the number of emulsion resin batches, only in the number of solids in each batch. Plant acreage outside of the current operating area would not increase. Status decision: October 6, 1983. Modification of the Emulsion II plant is not regulated by the Act, however any start-up of the Emulsion I plant will be cause for a reconsideration of this status decision - overall emulsion resin production capacity cannot exceed the 100 million pounds annually existing in 1971 when the Coastal Zone Act became law. In the decision Formosa Plastics was required to demonstrate to the Solid Waste Branch of the DNREC that spray drying in connection with the modified Emulsion II plant will not produce dioxin (as a hazardous waste).

Project No. 150 -- Barcroft Company. Status decision: August 3, 1983. Project: Barcroft manufacturs alumina gel at a plant at Lewes. The project is to install equipment in an existing building to produce a new type of alumina gel. There would be a 12 per cent increase of plant production capacity. No additional air emissions or solid wastes would result and wastewater effluent characteristics would not change. Status decision: August 24, 1983. The project is not regulated, it is not an expansion or extension of a non-conforming use. Although production capacity would increase there would be no change or increase of environmental effects and no increase of land use acreage.

Project No. 151 -- Citrus Coolstore, Inc. Status application: November 9, 1983. Project: On a 3 acre site at the Wilmington Marine Terminal, Citrus Coolstore proposes to construct a warehouse-like structure for the importation of orange juice. The orange juice in concentrated form, with water and peel oil removed, will be pumped from tank ships to indoor storage tanks. Some of the orange juice will be shipped out in tank trucks exactly as received, some will have water added, and some will have water and peel oil added. That is, some of the orange juice concentrate will undergo a blending-mixing operation. Except for the ship offloading and the truck loading all operations would be indoors. Status decision: December 9, 1983. A permit application was required for a new manufacturing use. The blending and mixing operations constitute a transformation of an organic substance into a new product. At the end of 1983 no permit application had yet been filed.

Project No. 152 -- Kiernan Petroleum Corporation. Status application: December 5, 1983. Project: At the Texaco site in Claymont, Kiernan Petroleum proposes an oil terminal. The property is for sale by Texaco, which operated an oil terminal- tank farm on the site for many years before and after enactment of the Coastal Zone Act but ceased use of the on-site pier to bring in refined petroleum products in May 1982. Some of the storage tanks require repair or replacement and the pier is currently unusable. At the end of the period covered by this report a status decision had not yet been made on this project. Texaco retained ownership of the site. The decision will involve whether or not the nonconforming use status of this offshore bulk product transfer facility has expired due to the complete absence of transfer operations and the unusable condition of the pier since May 1982. The law makes no mention of nonconforming use expirations but a general principle of common zoning law is to eliminate such uses if they are abandoned or voluntarily cease operations for a long period of time.

END OF PERIOD COVERED BY THIS REPORT

APPENDIX I

ADVISORY LEGAL OPINIONS

Difficulties of interpreting the language and intent of the Coastal Zone Act are a common part of the law's administration. Advisory legal opinions were requested on a number of occasions during the six-and-one-half years covered by this report. The opinions summarized and paraphrased below are those of Department of Justice attorneys assigned to advise the administrators of the law and the State Coastal Zone Industrial Control Board. Only those opinions having general interest are summarized; opinions applicable only to a particular decision, industrial site, or industrial or bulk product transfer facility are omitted. The opinions are organized chronologically.

July 6, 1977 and September 2, 1977 (supplemental opinion)

Question: Does the Coastal Zone Act prohibit or otherwise regulate pipelines?

Answer: It does in particular circumstances. If a bulk product pipeline represents a significant danger of pollution to the coastal zone and generates pressure for construction of industrial plants in the zone, is attached to a regulated industrial facility in the zone, and lies, at least partly, offshore the pipeline is prohibited. The entire pipeline does not have to be in the coastal zone. If the pipeline simply passes through the zone and is not attached to a regulated facility in the zone it is not regulated by the Act.

October 5, 1978

Question: Does the exemption in Section 7002(f) of the Act apply to offshore bulk product transfer facilities within Delaware territorial waters, but on the New Jersey side of the Delaware River? The exemption referred to is for a single industrial or manufacturing facility.

Answer: Yes. That is, an industrial facility on the New Jersey side of the River having an offshore bulk product transfer facility extending into Delaware waters is regulated in the same way with the same exemption as would such a facility totally within Delaware. This question arose because north of Artificial Island to the Pennsylvania--New Jersey boundary all of the Delaware River to the mean low water mark on the New Jersey side is in Delaware. A pier or dock extending into the River from the New Jersey side comes under the authority of Delaware law.

March 6, 1979

Questions: What uses are encompassed by the term "nonconforming use" and how shall they be treated in terms of expansion or extension?

Answers: A nonconforming use is a heavy industry use or bulk product transfer facility which would otherwise be prohibited but which was in lawful operation prior to and at the time of enactment of the Coastal Zone Act, June 28, 1971. Expansion or extension of such a use is treated in the same way as would be a use entirely new since enactment of the law. If the proposed project is not significant in terms of the definition of expansion or extension it is not regulated; if it is significant it is a regulated expansion or extension. If it is a heavy industry use expansion or extension is prohibited; if it is a manufacturing use expansion or extension requires a coastal zone permit.

April 30, 1979

Question: Can a use which existed prior to and at the time of enactment of the Coastal Zone Act but which has since been discontinued for a period of time be renewed under its nonconforming use status?

Answer: The use can be renewed provided that a coastal zone permit is granted for the renewed use if it is manufacturing. If the renewed use is an expansion or extension as defined it is treated as a new use and is prohibited if it is a heavy industry use.

May 27, 1980

Question: Is the production of a vaccine for poultry diseases by biological means a regulated manufacturing use in view of the terms ". . . mechanical or chemical transformation . . ." in the law's definition of manufacturing?

Answer: It is a regulated manufacturing use. The Standard Industrial Classification used in Coastal Zone administration classifies vaccine production as manufacturing. Mechanical or chemical should not be construed so inflexibly as to exclude vaccine production as manufacturing.

August 25, 1980

Question: Can a chemical company which is not a petrochemical manufacturer locate in the coastal zone or is it a prohibited heavy industry use?

Answer: Not all chemical companies are included within the definition of a heavy industry use, but the definition is not strictly limited to petrochemical companies if the equipment and pollution potential characteristics of a heavy industry use apply to a particular project.

June 24, 1981

Question: Is a bulk cargo vessel-to-vessel transfer operation in Delaware Bay not involving any port or on-shore terminal or transfer facility in Delaware regulated by the Coastal Zone Act? The transfer operation is solely between vessels in the coastal zone.

Answer: No, it is not regulated. There is no bulk product transfer between a vessel and any onshore facility in Delaware.

August 6, 1981 (a series of questions were asked)

Question: What effect does involuntary shutdown of a nonconforming or permitted use have on its right to continue operations in the coastal zone?

Answer: The owners intention to abandon a use is a key factor in a decision on termination of a use. Duration of the shutdown is probably the most important consideration. Guidelines for a decision on the voluntary or involuntary nature of a shutdown include: expiration of business licenses; maintenance of machinery and facilities; and presence of the owner or manager onsite.
Case-by-case decisions would have to be made.

Question: What is the effect of destruction of nonconforming use structures on allowing a use to continue in the coastal zone?

Answer: There are no Delaware cases on this zoning issue.
In general, the ultimate extinguishment of nonconforming uses is an objective of zoning ordinances. A rebuilding of completely destroyed nonconforming structure or facility would be contrary to this philosophy.
Rebuilding partially destroyed nonconforming use structures would depend upon some standard for a decision. The Coastal Zone Act provides no standard.

Question: How can a manufacturing use, permitted by the Coastal Zone Act, which pre-dates the Act, be nonconforming?

Answer: There are two categories of nonconforming uses:

1. Manufacturing uses in the coastal zone which were in operation prior to the law's enactment but which have no coastal zone permit -- the nonconformity is the lack of a permit; and
2. Prohibited uses in the coastal zone which were in operation prior to the law's enactment -- the nonconformity is the fact that they are uses prohibited by the Act.

Question: Under what circumstances can there be expansion or extension of nonconforming manufacturing uses?

Answer: A nonconforming manufacturing use which significantly increases production capacity, or land use area, or environmental impact may proceed only with a coastal zone permit provided that the original nature and purpose of the use remains unchanged. That is, the expansion or extension can only be a normal growth of the previous use.

Question: What is the effect of subdividing a property used by a nonconforming use?

Answer: The Coastal Zone Act refers only to "use" not to "lots", "parcels", or "properties" as customary zoning law does. It appears that only the land actually used for the nonconforming purpose has nonconforming use status, that idle land does not have this status.

Question: What is the date for qualification as a nonconforming use?

Answer: The use must have been actively in operation both on and before the date of enactment of the Coastal Zone Act, June 28, 1971.

Question: Can a docking facility or pier or other offshore bulk product transfer facility which comes under the exemption (from prohibition) for a single nonconforming use or manufacturing facility for which a permit is granted be used by other industries or manufacturers?

Answer: The exemption applies only to those offshore bulk product transfer facilities used by the single industrial use which they serve as an accessory use. Such facilities serving more than the single industry are prohibited.

January 15, 1982

Question: Does the Secretary and/or the Board have authority to adopt regulations and definitions not mentioned in the Act?

Answer: Regulations and definitions consistent with the intent and purposes of the Coastal Zone Act can be adopted.

Question: May different standards for permit approval be established in different parts of the coastal zone according to the degree of industrialization existing in the various parts of the zone?

Answer: The Coastal Zone Act does not differentiate between areas within the zone, there is a single coastal zone. There is no authorization in the law to divide the zone according to the degree of industrialization. However, Section 7004(b) requires consideration of:

aesthetic effects
environmental impact, and
adjacent residential and agricultural areas which would be different in the more urbanized, industrialized parts of the zone vs. the more rural, undeveloped parts.

March 17, 1982

Question: What are appropriate and legally defensible criteria to use in determining what a substantive change of character (of use) is?

Answer: Criteria adopted by the Board in defining expansion or extension of a nonconforming use and criteria for evaluating permit requests in Section 7004(b) are appropriate, including aesthetic features.

In evaluating substantive change of character (of a nonconforming use) the dual purposes of the law, land use and environmental effects, should be considered. A large physical expansion of a nonconforming use or a change with deleterious environmental effects compared to the use existing at the time of the law's enactment would be a substantive change. A substantive change of character would not be allowed.

June 1, 1983

Question: Are decisions made by the Coastal Zone Board enforceable policy binding the administration of the Coastal Zone Act when those decisions are made in the absence of regulations?

Answer: The Board and the Department are not bound to adopt any regulations, and may administer the Act by applying the statute's standards and procedures on a case-by-case basis.

The Board could adopt legislative rules, both substantive and procedural and interpretive rules.

Any guidelines adopted under Section 7005 of the law are, in fact, binding legislative rules.

The Secretary of the Department of Natural Resources and Environmental Control has inherent authority to issue non-binding interpretive rules, as does the Board. Interpretive rules can be adopted informally, without the hearing procedure required by Section 7005.

The Department must abide by any adopted regulations.

Copies of all Coastal Zone Act advisory legal opinions are on file at the Planning Branch, Division of Environmental Control, Department of Natural Resources and Environmental Control in Dover and at the Department of Justice in Wilmington.

APPENDIX II

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.

Explanation:

The Coastal Zone Act uses the term expansion or extension of non-conforming uses but does not define the term.

In December 1971 the State Coastal Zone Industrial Control Board approved and adopted the above definition as a Coastal Zone Act administrative regulation.

A large majority of the Status Decisions involve this definition because most of the decisions deal with industrial plants which were in operation on and before enactment of the Coastal Zone Act on June 28, 1971.

CHAPTER 70. COASTAL ZONE ACT

Sec.
7001. Purpose.
7002. Definitions.
7003. Uses absolutely prohibited in the coastal zone.
7004. Uses allowed by permit only; nonconforming uses.
7005. Administration of this chapter.
7006. State Coastal Zone Industrial Control Board created; composition; conflict of interest; quorum.
7007. Appeals to State Coastal Zone Industrial Control Board.
7008. Appeals to Superior Court.
7009. Condemnation.
7010. Cease and desist orders.
7011. Penalties.
7012. Injunctions.
7013. Inconsistent laws superseded; all other laws unimpaired; certain uses not authorized.

§ 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 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 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 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. (7 Del. C. 1953, § 7001; 58 Del. Laws, c. 175.)

Purpose of this chapter is to control the location, extent and type of industrial development that is most likely to pollute Delaware's bays and coastal areas. Kreshtool v. Delmarva Power & Light Co., Del. Super., 310 A.2d 649 (1973).

§ 7002. Definitions.

(a) "The coastal zone" is defined as all that area of the State, 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 intersects Delaware Route 9 south of Wilmington; thence along said Delaware Route 9 to the point of its intersection with Delaware Route 273; thence along said Delaware Route 273 to U.S. 13; thence along U.S. 13 to Maintenance Road 409; thence along Maintenance Road 409 to Delaware Road 71; thence along Delaware Road 71 to its intersection with Delaware Road 54; thence along Delaware Road 54 to Delaware Road 896; thence along Delaware Road 896 to Maintenance Road 396; thence along Maintenance Road 396 to Maintenance Road 398; thence along Maintenance Road 398 to the Maryland state line; thence southward along the Maryland state line to Maintenance Road 433; thence along Maintenance Road 433 to Maintenance Road 63; thence along Maintenance Road 63 to Maintenance Road 412; thence along Maintenance Road 412 to U.S. 13; thence along U.S. 13 to Delaware 299 at Odessa; thence along Delaware Route 299 to its intersection with Delaware Route 9; thence along Delaware Route 9 to U.S. 113; thence along U.S. Route 113 to Maintenance Road 8A; thence along Maintenance Road 8A to Maintenance Road 7 to the point of its intersection with Delaware Route 14; thence along Delaware Route 14 to Delaware Route 24; thence along Delaware Route 24 to Maintenance Road 331; thence along Maintenance Road 331 to Maintenance Road 334; thence along Maintenance Road 334 to Delaware Route 26; thence along Delaware Route 26 to Maintenance Road 365; thence along Maintenance Road 365 to Maintenance Road 84; thence along Maintenance Road 84 to Maintenance Road 384; thence along Maintenance Road 384 to Maintenance Road 382A; thence along Maintenance Road 382A to Maintenance Road 389; thence along 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) "Nonconforming 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 June 28, 1971.

(c) "Environmental impact statement" means a detailed description as prescribed by the Department of Natural Resources and Environmental Control 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 20 acres, and characteristically employing some but not necessarily all of such equipment such as, but not limited to, smokestacks, tanks, distillation or reaction columns, chemical processing equipment, scribbing 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, and on-shore facilities, less than 20 acres in size, consisting of warehouses, equipment repair and maintenance structures, open storage areas, office and communications buildings, helipads, parking space and other service or supply structures required for the transfer of materials and workers in support of off-shore research, exploration and development operations; provided, however, that on-shore facilities shall not include tank farms or storage tanks.

(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 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) "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. (7 Del. C. 1953, § 7002; 58 Del. Laws, c. 175; 61 Del. Laws, c. 116, § 88(a); 62 Del. Laws, c. 119, §§ 1, 2; 63 Del. Laws, c. 191, § 1(a).)

Revisor's note. — Section 27 of 63 Del. Laws, c. 191, provides: "Insofar as the provisions of this act are inconsistent with the provisions of any general, special or local laws, or parts thereof, this act shall be controlling."

Section 28 of 63 Del. Laws, c. 191, provides: "If any section, part, phrase or provision of this act or the application thereof be held invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to that section, part, phrase, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this act or the application thereof."

Section 29 of 63 Del. Laws, c. 191, provides: "This act shall become effective Nov. 1, 1981."

Effect of amendment. — 63 Del. Laws, c. 191, substituted "Department of Natural Resources and Environmental Control" for "Office of Management, Budget and Planning" in subsection (c).

Heavy industry use defined by physical characteristics and potential to pollute. — Heavy industry use is not only defined in terms of its physical characteristics but also in terms of its potential to pollute in the event of equipment failure or human error. Kreshtool v. Delmarva Power & Light Co., Del. Super., 310 A.2d 649 (1973).

Provision defining "heavy industry use" is not intended to be dispositive of all factors to be considered by the Board. Kreshtool v. Delmarva Power & Light Co., Del. Super., 310 A.2d 649 (1973).

§ 7003. Uses absolutely prohibited in the coastal zone.

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. Provided, that this section shall not apply to public sewage treatment or recycling plants. (7 Del. C. 1953, § 7003; 58 Del. Laws, c. 175.)

§ 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. All expansion or extension of nonconforming 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 Secretary of the Department of Natural Resources and Environmental Control 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 subsurface 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. (7 Del. C. 1953, § 7004; 58 Del. Laws, c. 175; 61 Del. Laws, c. 116, § 88(c); 63 Del. Laws, c. 191, § 1(a), (b).)

Revisor's note. — Section 27 of 63 Del. Laws, c. 191, provides: "Insofar as the provisions of this act are inconsistent with the provisions of any general, special or local laws, or parts thereof, this act shall be controlling."

Section 28 of 63 Del. Laws, c. 191, provides: "If any section, part, phrase or provision of this act or the application thereof be held invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to that section, part, phrase, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this act or the application thereof."

Section 29 of 63 Del. Laws, c. 191, provides: "This act shall become effective Nov. 1, 1981."

Effect of amendment. — 63 Del. Laws, c. 191, substituted "Secretary of the Department of Natural Resources and Environmental Control" for "Director of the Office of Management, Budget and Planning" in the introductory language of subsection (b).

Discretion in grant or refused of permit. — The granting or refusal of an application for a coastal zone permit is a discretionary matter. Kreshtool v. Delmarva Power & Light Co., Del. Super., 310 A.2d 649 (1973).

The discretionary power of the Board is not so constrained by statutory standards as to constitute an abuse thereof if there exists the slightest possibility that anti-pollution standards may be exceeded. Kreshtool v. Delmarva Power & Light Co., Del. Super., 310 A.2d 649 (1973).

§ 7005. Administration of this chapter.

(a) The Department of Natural Resources and Environmental Control shall administer this chapter. All requests for permits for manufacturing land uses and for the expansion or extension of nonconforming uses as herein defined 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) 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 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, (1) a heavy industry use under § 7003 of this title; (2) a use allowable only by permit under § 7004 of this title; or (3) a use requiring no action under this chapter. The Secretary of the Department of Natural Resources and Environmental Control shall then, if he determines that § 7004 of this title applies, reply to the request for a permit within 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 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 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" 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 of this title.

(d) The Department of Natural Resources and Environmental Control 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. (7 Del. C. 1953, § 7005; 58 Del. Laws, c. 175; 61 Del. Laws, c. 116, § 88(a), (c); 63 Del. Laws, c. 191, § 1(a), (b).)

Revisor's note. — Section 27 of 63 Del. Laws, c. 191, provides: "Insofar as the provisions of this act are inconsistent with the provisions of any general, special or local laws, or parts thereof, this act shall be controlling."

Section 28 of 63 Del. Laws, c. 191, provides: "If any section, part, phrase or provision of this act or the application thereof be held invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to that section, part, phrase, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this act or the application thereof."

Section 29 of 63 Del. Laws, c. 191, provides: "This act shall become effective Nov. 1, 1981."

Effect of amendment. — 63 Del. Laws, c. 191, substituted "Department of Natural Resources and Environmental Control" for "Office of Management, Budget and Planning" in the first sentence of subsection (a) and in subsection (d), and "Secretary of the Department of Natural Resources and Environmental Control" for "Director of the Office of Management, Budget and Planning" 4 times throughout subsection (a) and once in subsections (b) and (c).

Requirement to "state reasons" is mandatory and not a mere technicality. Kreshtool v. Delmarva Power & Light Co., Del. Super., 310 A.2d 649 (1973).

And it serves 2 essential functions. First, it enables the Board to adequately review the decision. Second, it enables persons aggrieved by an adverse decision to prepare for their appeal before the Board. Kreshtool v. Delmarva Power & Light Co., Del. Super., 310 A.2d 649 (1973).

§ 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 9 voting members. Five of these shall be regular members appointed by the Governor and confirmed by the Senate. No more than 2 of the regular members shall be affiliated with the same political party. At least 1 regular member shall be a resident of New Castle County, 1 a resident of Kent County and 1 a resident of Sussex County, provided that no more than 2 residents of any county shall serve on the Board at the same time. The additional 4 members shall be the Director of the Delaware Development Office, and the chairmen of the planning commissions of each county, who shall be ex officio voting members. The term of 1 appointed regular member shall be for 1 year; 1 for 2 years; 1 for 3 years; 1 for 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 5-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. (7 Del. C. 1953, § 7006; 58 Del. Laws, c. 175; 63 Del. Laws, c. 191, § 1(c), (d).)

Revisor's note. — Section 27 of 63 Del. Laws, c. 191, provides: "Insofar as the provisions of this act are inconsistent with the provisions of any general, special or local laws, or parts thereof, this act shall be controlling."

Section 28 of 63 Del. Laws, c. 191, provides: "If any section, part, phrase or provision of this act or the application thereof be held invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to that section, part, phrase, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this act or the application thereof."

Section 29 of 63 Del. Laws, c. 191, provides: "This act shall become effective Nov. 1, 1981."

Effect of amendment. — 63 Del. Laws, c. 191, substituted "9" for "10" in the first sentence and "4" for "5" and "Director of the Delaware Development Office" for "Secretary of Natural Resources and Environmental Control, the Secretary of Community Affairs and Economic Development" in the fifth sentence.

§ 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 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 him, deny a permit or confirm his 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 subsection (a) of § 7005 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 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.

(c) Whenever a decision of the Secretary of the Department of Natural Resources and Environmental Control 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 1 newspaper of daily publication in the county in which the site designated in the request is wholly or principally located and in at least 1 newspaper of daily publication and general circulation throughout the State the time, location and subject of all hearings under this section at least 10 days prior thereto. (7 Del. C. 1953, § 7007; 58 Del. Laws, c. 175; 61 Del. Laws, c. 116, § 88(c); 63 Del. Laws, c. 191, § 1(a), (b).)

Revisor's note. — Section 27 of 63 Del. Laws, c. 191, provides: "Insofar as the provisions of this act are inconsistent with the provisions of any general, special or local laws, or parts thereof, this act shall be controlling."

Section 28 of 63 Del. Laws, c. 191, provides: "If any section, part, phrase or provision of this act or the application thereof be held invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to that section, part, phrase, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this act or the application thereof."

Section 29 of 63 Del. Laws, c. 191, provides: "This act shall become effective Nov. 1, 1981."

Effect of amendment. — 63 Del. Laws, c. 191, substituted "Secretary of the Department of Natural Resources and Environmental Control" for "Director of the Office of Management, Budget and Planning" throughout subsections (a), (b) and (c).

Board need not state reasons for decision. — There is no statutory command compelling the Board to state reasons for its decision. Kreshtool v. Delmarva Power & Light Co., Del. Super., 310 A.2d 649 (1973).

§ 7008. Appeals to Superior Court.

Any person aggrieved by a final order of the State Coastal Zone Industrial Control Board under § 7007 of this title may appeal the Board's decision to Superior Court in and for the county of the location of the land in question. Likewise, the Secretary of the Department of Natural Resources and Environmental Control 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 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. (7 Del. C. 1953, § 7008; 58 Del. Laws, c. 175; 61 Del. Laws, c. 116, § 88(c); 63 Del. Laws, c. 191, § 1(a), (b).)

Revisor's note. — Section 27 of 63 Del. Laws, c. 191, provides: "Insofar as the provisions of this act are inconsistent with the provisions of any general, special or local laws, or parts thereof, this act shall be controlling."

Section 28 of 63 Del. Laws, c. 191, provides: "If any section, part, phrase or provision of this act or the application thereof be held invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to that

section, part, phrase, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this act or the application thereof."

Section 29 of 63 Del. Laws, c. 191, provides: "This act shall become effective Nov. 1, 1981."

Effect of amendment. — 63 Del. Laws, c. 191, substituted "Secretary of the Department of Natural Resources and Environmental Control" for "Director of the Office of Management, Budget and Planning" in the second sentence of the first paragraph.

In order for Superior Court to adequately review Board's decision, it is necessary that sufficient findings of fact be made by the Board and it must be evident from the decision and from the record below that the Board's decision was based on a consideration of the relevant factors. Kreshtool v. Delmarva Power & Light Co., Del. Super., 310 A.2d 649 (1973).

Superior Court cannot substitute its judgment for that of Board. — In reviewing the record before the Board, the Superior Court cannot substitute its own judgment for that of the Board. Kreshtool v. Delmarva Power & Light Co., Del. Super., 310 A.2d 649 (1973).

§ 7009. Condemnation.

If Superior Court rules that a permit's denial, or restrictions imposed by a granted permit, or the operation of § 7003 or § 7004 of this title, 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. If the Secretary does not use this authority to acquire the fee simple or any lesser interests in the land within 5 years from the date of the Court's ruling, the permit must be granted as applied for. (7 Del. C. 1953, § 7009; 58 Del. Laws, c. 175.)

§ 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 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. (7 Del. C. 1953, § 7010; 58 Del. Laws, c. 175.)

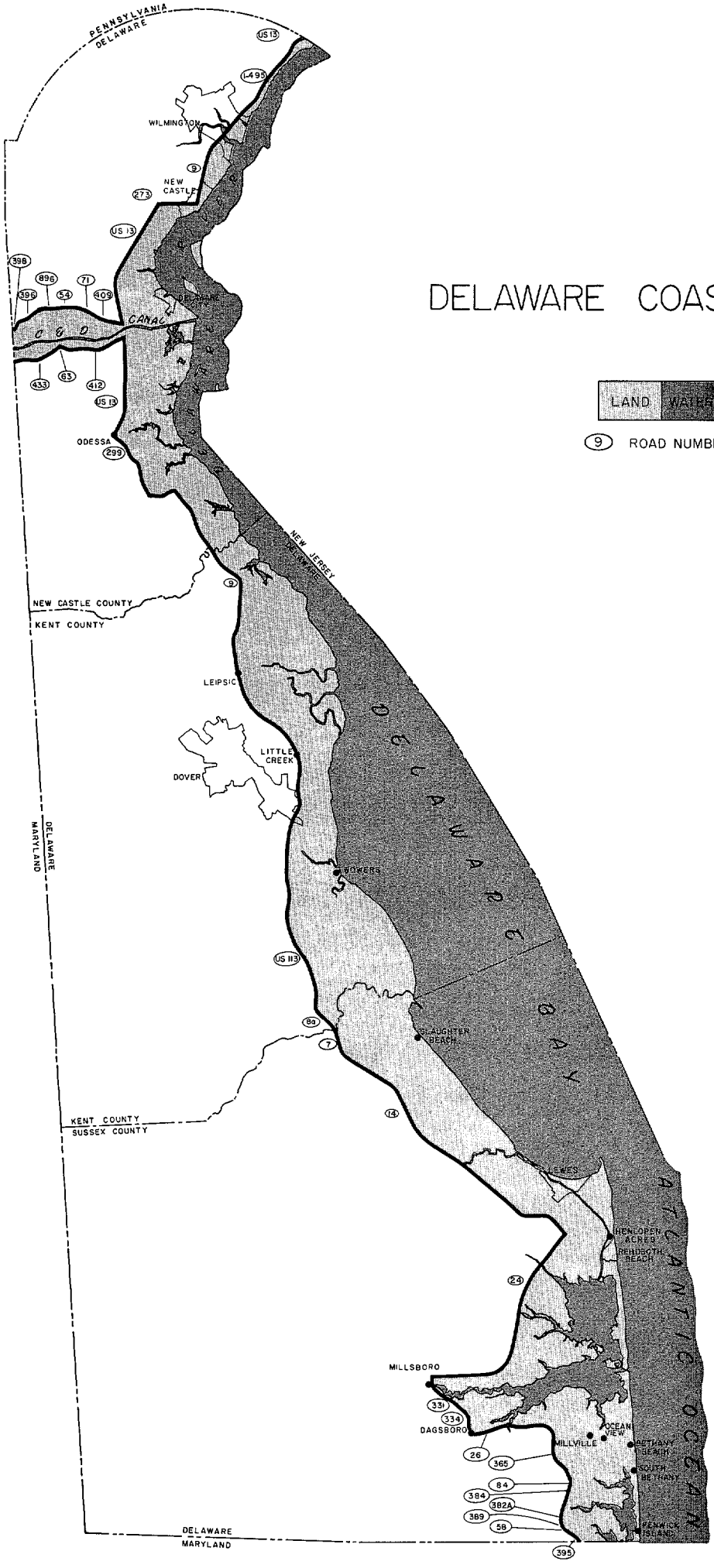
§ 7011. Penalties.

Any person who violates 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. (7 Del. C. 1953, § 7011; 58 Del. Laws, c. 175.)

§ 7012. Injunctions.

The Court of Chancery shall have jurisdiction to enjoin violations of this chapter. (7 Del. C. 1953, § 7012; 58 Del. Laws, c. 175.)

§ 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. (7 Del. C. 1953, § 7013; 58 Del. Laws, c. 175.)

DELAWARE COASTAL ZONE