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3 Myths About Coastal Zone Act Proposal

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3 myths about Coastal Zone Act proposal



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DELAWARE VOICE

House Bill 190 proposes to change and “modernize” the Coastal Zone Act, Delaware’s unique environmental protection statute.

In a nutshell, HB 190 alters two CZA absolute prohibitions to allow “conversion permits” for new heavy industry uses or bulk product transfer facilities (BPTFs) at 14 sites in the Coastal Zone. Supporters claim this will lead to development and cleanup of these sites, producing jobs and environmental improvements.

The 14 sites are “nonconforming uses” under the act (because their heavy industry or BPTFs were in operation the day the CZA was passed) and were thereby “grandfathered” in so the act’s prohibitions would not apply.

Twelve were heavy industry uses, two BPTFs. Five of the 14 are still operating. Of the 9 non-operating sites, one—Chemours’ Edgemoor plant—was sold to the Port of Wilmington for expanding Port operations, while another is the Standard Chlorine/Metachem federal Superfund site. For BPTF opportunities, only 10 are actually on the water (essential to being a BPTF). Thus, only a subset of the 14 sites is actually available for development.

HB 190 is touted as “win-win” because only after its changes will the 14 sites be developed and cleaned up. This

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claim rests on three assumptions: (1) The current CZA prevents development of these sites; (2) Changing the CZA is necessary for environmental contamination cleanup at these sites because only new developers will clean them up; and (3) The proposed changes will in fact lead to new development. Unfortunately, these assumptions are false.

Fallacy No. 1: The current CZA prevents development at these sites

The CZA does not prohibit all development—only new heavy industry uses and new BPTFs. Manufacturing uses are expressly allowed (with a permit), and uses not falling within CZA definitions are not regulated at all. Under the current CZA, things like auto assembly plants, Amazon-like warehousing operations, and other manufacturing plants could be built on properly-zoned sites anywhere in the Coastal Zone (not just the 14 sites), bringing thousands of good-paying jobs. That these 14 sites have not been developed in this way is not the fault of the CZA. All HB 190

does is allow two additional development options (heavy industry and BPTFs). Environmentalists have requested (but never received) examples of interested companies dissuaded solely because of the CZA prohibitions.

Fallacy No. 2: Changing the CZA is necessary to clean up these sites

The notion that cleanups cannot occur without developers is not true. Under Delaware’s Hazardous Substance Control Act (HSCA), owners and operators of sites are liable for cleanup. According to DNREC, 11 of the 14 sites are in HSCA and/or federal cleanup programs currently (the other 3 are operating)—without any changes to the CZA.

Fallacy No. 3: The proposed CZA changes will lead to new development at these sites

As grandfathered “nonconforming uses,” the 14 sites had favored status under the CZA because they could con-

tinue their heavy industry uses or BPTFs. Yet nine of those operations went out of business. The CZA didn’t cause Chemours to shutter Edgemoor; market conditions did. HB 190 cannot rewrite the laws of economics. The business community’s recommendations on DEDO suggest heavy industry should not be focus of future economic development in Delaware. Allowing BPTFs at up to 10 sites on the River creates competition for the state-supported Port of Wilmington. Are HB 190’s “solutions” really good ideas?

Since the CZA’s passage in 1971, persistent efforts have tried to weaken CZA protections to create business opportunities in Delaware. When HB 190 fails to produce much development, the clamor for broader changes—and ultimate dismantling of the CZA’s protections—will grow louder, and passage of HB 190 will make it easier. Environmentalists don’t oppose development like manufacturing and non-regulated facilities allowed under the Act. Rather, groups like Delaware Audubon, Delaware Nature Society, and others have called for a stakeholder process (done in 1998-99 with the CZA Regulations) to review the CZA in a way that respects all viewpoints and find solutions that really address all issues. The CZA legacy created by Russ Peterson deserves nothing less.

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