

SECRETARY O'MARA (DNREC) ACKNOWLEDGES THAT DNREC IS IGNORING THE COASTAL ZONE REGULATION

The Coastal Zone Regulation has the force of law since it was adopted as prescribed by the Coastal Zone Act, Russ Peterson's crowning achievement, internationally renowned.

Recent correspondence, repeated below in chronological order, effectively demonstrates that DNREC has been ignoring it for years, despite the Oath of Office that binds the Secretary to uphold US and Delaware law. He is not alone; his predecessors did the same. But they are gone.

Secretary O'Mara argues that the regulation is outmoded and that there were economic reasons for ignoring it. Certainly that can be argued while seeking changes according to procedures established by law. But it doesn't justify ignoring the law and the lawful change procedures just is it doesn't justify speeding on the JFK Turnpike.

PART ONE: E-Mail Vic Singer to Collin O'Mara, DNREC Secretary

From: VSinger01@aol.com

To: collin.omara@state.de.us

Sent: 7/16/2012 11:20:13 A.M. Eastern Daylight Time

Subj: Environmental Goals and Indicators for Delaware's Coastal Zone

Dear Secretary O'Mara

I have a copy on hand from the distant past, of a 108 page document (plus appendices) with the general title "Environmental Goals and Indicators for Delaware's Coastal Zone." Below the general title on the cover page are several photographs, a subtitle "Recommendations of the Environmental Indicators Technical Advisory Committee," and a March 1999 date. I also have a copy of the signature page of the members of the EITAC that produced the Recommendations report.

This report is the anticipated follow-up to the term "Environmental indicator" that appears at Section C.7 of the Coastal Zone Regulation adopted early during my 13.5 years as a member of the Coastal Zone Industrial Control Board (CZICB). (There is also a version of the Reg with completely numerical section designations, and identical text.) The Goals and Indicators report was anxiously awaited as it was being prepared. To that end, the following text was included as Section C.1 of Appendix C of the Coastal Zone Regulation:

"DNREC will develop within 12 months of the ratification of the Coastal Zone Act MOU a set of Coastal Zone environmental goals and appropriate environmental indicators which will highlight the most significant environmental challenges to the Coastal Zone. The

indicators will serve several important purposes. First, they will assist DNREC in developing a more accurate picture of the environmental quality of the Coastal Zone, and measuring trends in this quality over time. Second, they will assist DNREC and project applicants by providing a means for evaluating the potential impacts of proposed changes in facility operations and proposed offsets on the Coastal Zone environment."

Section D.3 of Appendix C of the Coastal Zone Regulation illuminates how the goals and indicators were to be used. I don't remember any effort soliciting the CZICB's endorsement of the "Environmental Goals and Indicators for Delaware's Coastal Zone" report, and I'm uncertain as to any need for such an endorsement prior to implementation, though it would have been nice to have.

Please verify one of the following as soon as possible:

<> DNREC is and has been using the final draft of the EITAC in relevant Coastal Zone evaluations.

<> DNREC is and has been using a later version bearing an approval by a prior Secretary, that has superseded the EITAC's final report.

If the latter, please provide an electronic copy including approval date and by whom. Thanks in advance.

PART TWO: Response from Leeann Walling (DNREC Sustainable Planning Coordinator)

From: leeann.walling@state.de.us

To: VSinger01@aol.com

CC: Collin.OMara@state.de.us

Sent: 7/25/2012 3:07:15 P.M. Eastern Daylight Time

Subj: Response to your question

Dear Mr. Singer:

The Secretary asked me to respond to your e-mail. I am aware that you had several conversations with Phil Cherry on this subject in the past. I am demurring on answering your have-you-stopped-beating-your-wife options and providing some perspective instead:

The environmental indicators were developed along with the Coastal Zone Act regulations in 1999. The content of the report has shaped the Department of Natural Resources and Environmental Control's thinking around appropriate environmental offsets, but many parts of the report were deemed unworkable by two previous administrations. The Coastal Zone Act has

been successful in its mission to severely restrict or prohibit certain kinds of industrial activities within the Coastal Zone. Projects with environmental impacts have more than offset those impacts. We are confident that, because of the Coastal Zone Act and stringent state and federal requirements, the Coastal Zone is measurably cleaner than it was 40 years ago.

Overall, during this administration, there have been several permits issued that have resulted or will result in demonstrable improvement of our environmental quality, such as:

- DuPont Edge Moor, which recently received a permit for the installation of two new boilers. As its offset project, it agreed to fund the construction of electrical outlets at Trinity Trucking so that refrigerated containers formerly running on diesel would no longer idle noisily and send fumes into the neighborhood. As reported, this project has a sustained environmental and community benefit which significantly exceeds any new impacts from the EdgeMoor facility.
- Croda, which recently received a permit to use landfill gas from Cherry Island to operate a combined heat and power plant for its facility – the first of its kind among Delaware industries.
- Bloom Energy, which will emit only trace amounts of SO_x, NO_x and VOCs, and no particulates or Hazardous Air Pollutants at its Red Lion generating facility.
- Mountaire, which installed a state-of-the-art resource recovery facility at its plant in Millsboro, significantly improving its wastewater treatment capability and reducing nutrient pollutions as its offset project. The facility also keeps trucks with poultry offal and their accompanying odors off the road because the byproducts are now handled on site.

There was often much internal discussion with department experts, back and forth with the applicant, and usually pushback from us over the adequacy of a company's original offset proposal.

In other cases, the program has determined that proposed uses are not allowed under the Coastal Zone Act, such as FCC Environmental. That company was told it could not proceed with plans to move out of Wilmington and into the Coastal Zone with a proposed oil recycling facility, which met the definition of a heavy industry.

Beyond these projects, several others did not proceed after their sponsors understood the high bar they would have to meet under the Act.

The Governor's Executive Order 36 allows agencies and the public to engage in a constructive process that will help streamline our rules while maintaining our protective standards for health and public safety. In the case of Coastal Zone Act regulations, the executive order presents an occasion to jointly – through an open process – recognize modern environmental goals such as recycling and clean, renewable energy. It also could be an opportunity to revisit the offset requirement in an effort to make offsets more measurable and transparent, and to more accurately quantify the continuing improvement to the environmental quality of our Coastal Zone.

Kevin Coyle and I are looking forward to discussing these issues with the interested public and stakeholders. Having studied and lived part of the history of this law, we take the stewardship of the Coastal Zone Act seriously and, as corny as it sounds, often ask ourselves: WWRD? What Would Russ Do? – consulting the intent of the original law and our understanding of its legislative and legal legacy.

Thank you, Lee Ann Walling

PART THREE: 2nd E-Mail Vic Singer to Collin O'Mara

From: VSinger01@aol.com

To: collin.omara@state.de.us

CC: leeann.walling@state.de.us, VSinger01@aol.com

Sent: 7/27/2012 12:17:37 A.M. Eastern Daylight Time

Subj: Environmental Goals and Indicators for Delaware's Coastal Zone

RE: Lee Ann Walling's message to me dated 7/25/2012 3:07 pm EDT (below under 1st line of #####) responding to my message to you dated 7/16/2012 11:20 am EDT (below under 2nd line of #####)

Dear Secretary O'Mara:

My 7/16/2012 e-mail to you included one multiple choice question with two alternatives and one request for an electronic copy of a document. Following are the relevant words in that e-mail:

"Please verify one of the following as soon as possible:

<> DNREC is and has been using the final draft of the EITAC [Environmental Impact Technical Advisory Committee] in relevant Coastal Zone evaluations.

<> DNREC is and has been using a later version bearing an approval by a prior Secretary, that has superceded the EITAC's final report.

If the latter, please provide an electronic copy including approval date and by whom."

The multiple choice question could have been answered with two words, either "FIRST BULLET: or "SECOND BULLET." The request could have been answered with two more words: "SEE ATTACHMENT."

Ms. Walling's response consists of 632 words of lovely prose that were not responsive to either the multiple choice question or the electronic copy request. Her first paragraph advises that she prefers providing some perspective in lieu of addressing my information request. She regards my multiple choice question as having a "have you stopped beating your wife" character. That situation reminds of an old Q & A riddle: Q: What do you say to a woman with two black eyes? A: Nothing; you've already told her twice.

Clearly, my multiple choice question could have a "have you stopped beating your wife" character only if what DNREC is doing currently is a substantial departure from what was contemplated by the Coastal Zone Regulation (CZ Reg) and the EITAC Final Draft Report.

My 7/16/2012 e-mail also included the relevant provisions of the CZ Reg where the activity I'm asking about are required. The CZ Reg has the force of law since it was duly adopted in accordance with the Coastal Zone Act under authority flowing from the Delaware Constitution, which you are under oath to uphold. If DNREC has NOT followed up on the EITAC Final Draft Report and the cited provision of the CZ Reg, DNREC is more than a decade late on meeting a requirement of a regulation that DNREC wrote. You need to establish where the blame appropriately rests, AND CORRECT THE DEFICIENCY.

Will you provide - - as starting points - - the responses that Ms. Walling refused to provide?

Thanks in advance. Victor Singer

PART FOUR: To support a Please Help verbal request to Mike Barbieri (18th District Rep) during a Saturday morning Aug 18 monthly meeting with constituents, the above e-mails were forwarded the same day.

PART FIVE: E-Mail Sept 13 to Mike following up Part Four:

From: VSinger01@aol.com
To: Michael.Barbieri@state.de.us
Sent: 9/13/2012 10:16:29 A.M. Eastern Daylight Time
Subj: Re: Consituent Coffee

At the August seance, I noted the absence of a substantive response from DNREC Secretary O'Mara in prior correspondence, provided the prior e-mail correspondence, and requested help. ANY RESULTS YET????? The underlying issue: Whether or not the oath of office is being adhered to.

PART SIX: E-Mail Sept 13 from Mike responding to Part Five:

From: mabarbieri
To: VSinger01@aol.com
Sent: 9/13/2012 12:41:34 P.M. Eastern Daylight Time
Subj: Re: Consituent Coffee

Spoke with Colin and sent him the emails. He claims that there were economic reasons why the approach was changed. The findings did not support the cost. He said that this will be an issue that they would like to look at as part of the Governor's executive order to review all regulations and identify any that seem to thwart business and do not necessarily protect quality of life or the consumer. He would like your input on this and believes that this provides a good opportunity to address the concerns raised.

PART SEVEN: E-Mail Sept 13 from Vic to Mike responding to Part Six:

From: VSinger01@aol.com
To: Mike Barbieri
Sent: 9/13/2012 1:16:45 P.M. Eastern Daylight Time
Subj: Re: Consituent Coffee

Mike

I can understand many reasons for arguing that a current regulation, duly adopted and given the force of law, is now outmoded. The speed limit on the JFK turnpike is one such.

Collin argues that there are economic reasons for regarding the Coastal Zone Regulation as outmoded. There are also many reasons for regarding it as FAR FROM OUTMODED. Indeed, many of those reasons support honoring it and implementing it BECAUSE it has the force of law.

Neither the Secretary nor the Governor have the authority to ignore laws and regulations that THEY ARE UNDER OATH TO UPHOLD. They have all the authority they need to amend and alter existing laws and/or regulations that they disagree with, FOLLOWING PROCEDURES ESTABLISHED BY LAW. Until they do so regarding the Coastal Zone Regulation, they must apply it as it is written.

Those are the rules under our government by law duly enacted rather than private emotion. If the Secretary doesn't like that, he is invited to find employment elsewhere - - not on MY payroll. He needs to read AND UNDERSTAND the oath he swore to. He is bound whether he likes it or not.