



Date Received (to be filled in by the Secretary)

2013-01  
Appeal Application Number (to be filled in by the Secretary)

**STATE COASTAL ZONE INDUSTRIAL CONTROL BOARD  
APPLICATION TO APPEAL FROM  
A COASTAL ZONE ACT DECISION**

**Date** June 13, 2013

**Name of Appellant:** Sierra Club

Address and Telephone Number: 100 West 10<sup>th</sup> Street, Suite 106, Wilmington, DE 19801  
302-351-2776

**Name of Appellant:** Delaware Audubon

Address and Telephone Number: 56 W Main Street, Suite 212A, Christiana, DE 19702 302-292-3970

**A. Identify the Coastal Zone Decision Being Appealed**

Secretary's Order 2013-A-0020 issued May 31, 2013 July 23, 2010 concerning Delaware City Refinery Company, LLC. (Copy attached)

**B. Date of Public Notice of the Coastal Zone Decision** \_\_\_\_\_  
(to be filled in by the Secretary)

**C. Signature of Appellant or Appellant's Representative**   
Kenneth T. Kristl, Esq.

**Position or Title (if any)** \_\_\_\_\_ Counsel for Appellants

**D. Briefly State the Reasons for Your Appeal. For example, if you believe the Decision is contrary to the Coastal Zone Act, identify those parts of the law involved and state why the Decision is contrary to them. Your Statement of Reasons for Appeal should be attached to this Application Form.**

See attached

Please include the appeal fee of One Hundred Dollars (\$100) with this Appeal Application. The check or money order should be made out to: **Department of Natural Resources and Environmental Control**

Submit the completed Appeal Application, including the appeal fee, within fourteen (14) days following the public notice of the Coastal Zone Act decision to:

Chair  
State Coastal Zone Industrial Control Board  
c/o Department of Natural Resources and Environmental Control  
89 Kings Highway  
Dover, DE 19901

**Reasons for Appeal to the Coastal Zone Industrial Control Board concerning Secretary's Order 2013-A-0020 concerning Delaware City Refinery Company, LLC.**

Pursuant to 7 *Del. C. §7007*, the Sierra Club and Delaware Audubon (collectively, "Appellants") submit these Reasons for Appeal as part of and attached to their Application to Appeal from a Coastal Zone Act Decision form. The Appellants challenge the Secretary of the Delaware Department of Natural Resources and Environmental Control Order 2013-A-0020, issued May 31, 2013 (Order), which grants Delaware City Refinery Company, LLC an amendment to Air Pollution Control Permit 95/0471 for a Marine Vapor Recovery System (MVRS) at its petroleum refinery located at 4550 Wrangle Hill Road, Delaware City, New Castle County (Refinery) in order to allow crude oil to be loaded onto vessels at its Delaware River docking facility for shipment to one or more other refineries. Kenneth T. Kristl, Esq. and the Widener University School of Law's Environmental and Natural Resources Law Clinic represent the Appellants in this matter.

The MVRS is a small part of a larger operation at the Delaware City Refinery in which crude oil from various sources (including the Bakken Fields in North Dakota and tar sands oil from Canada) are shipped via rail to the Refinery, unloaded, and then a portion used as raw material for the Delaware City refining operations and a portion is to be loaded onto barges for shipment to a sister refinery in Paulsboro, NJ (and perhaps to other refineries). As a result, the Refinery has built a large rail loop used for unloading the hundreds of tank cars coming into the refinery each week, expanded unloading facilities, and created a system for piping the crude to the barges for shipment to Paulsboro (and potentially elsewhere), and plans to use certain existing docking facilities for making these crude oil shipments. The Appellants refer to this entire operation as the "crude oil transfer operation" because it is one integrated operation at the Refinery. The MVRS is designed to control emissions during the barge loading process—the last step in the crude oil transfer operation. It is clear, therefore, that the MVRS is part of this larger crude oil transfer operation, and that without the infrastructure of the entire operation, the MVRS as proposed in the Order would not be needed or need to be permitted.

While the Order deals with an amendment to an air permit for the MVRS, the Order (at pp. 3 – 5), in response to public comments specifically raised by the Sierra Club, provides an extensive discussion of whether or not the Coastal Zone Act (CZA) applies to the proposed transfers of crude oil to vessels for shipments offsite, an activity in which the MVRS would control some (but not all emissions). The Order makes a specific finding (at p. 6 - 7, Finding #2) that "[w]ith respect to the applicability of the CZA, the Department finds, based on the current record, that the proposed activity is allowable and does not require a Coastal Zone permit" for three stated reasons. As such, the Order constitutes a decision concerning the applicability of the CZA under 7 *Del. C. § 7005(a)*. Appellants, with members whose interests will be injured and adversely affected by the operation of some or all aspects of the crude oil transfer operation, are persons aggrieved by this final decision of the Secretary and are therefore entitled to appeal the decision concerning the applicability of the CZA to the proposed crude oil transfer operation to the Coastal Zone Industrial Control Board (CZICB).

Appellants believe that the CZICB has jurisdiction and should decide the merits of this appeal. Nevertheless, because the Order does not decide a Request for Status Decision or a permit application under the CZA, there is at least a question that could be raised as to whether the CZICB has jurisdiction to decide this appeal. To avoid the situation where they file before the CZICB only and then find out too late that the CZICB does not believe it has jurisdiction, out of an abundance of caution the Appellants are simultaneously filing an appeal of the Order with the Environmental

Appeals Board under 7 Del. C. § 6008 as a prophylactic measure to assure that the CZA issues are decided on their merits (as opposed to being decided on the failure to file in the correct appellate forum within the statute of repose). The Appellants intend to ask both the CZICB and the EAB to allow the CZICB to decide the CZA issues.

Appellants ask the CZICB to reverse the Secretary's findings concerning the applicability of the CZA to the proposed crude oil transfer operation at the Refinery for one or more of the following reasons in the alternative:

1. In issuing the Order, the Secretary erred as a matter of law and fact in finding that the proposed crude oil transfer operation is allowable under the CZA because it is a bulk product transfer facility prohibited by § 7003 of the Act.
2. In issuing the Order, the Secretary erred as a matter of law and fact in finding that the proposed crude oil transfer operation is allowable under the CZA as an existing nonconforming use because it was not in operation on June 28, 1971 and/or does not use land or structures used in June 1971 therefore does not qualify as a nonconforming use under 7 Del. C. § 7002(b) and the CZA Regulations.
3. In issuing the Order, the Secretary erred as a matter of law and fact in finding that the proposed crude oil transfer operation is allowable under the CZA and does not require a CZA permit because it is an extension or expansion of a nonconforming use requiring a permit under 7 Del. C. § 7004(a) and the CZA Regulations.
4. In issuing the Order, the Secretary erred as a matter of law and fact in making factual findings in connection with the decision concerning the CZA which are not supported by, and in some instances inconsistent with, the record and the Hearing Officer's Report.