FEATURE

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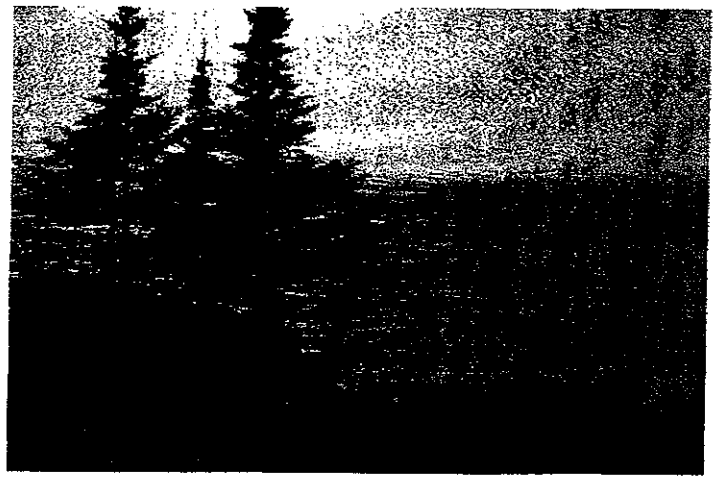
PUBLIC PARTICIPATION IN THE COASTAL ZONE ACT PERMITTING PROCESS: Too Much of a Good Thing?



In the past year or so, Delaware's Coastal Zone Act[1] ("CZA") has received attention from the environmental activist community at a significantly increased level Under the claim of asserting the rights of the public generally, environmental activists have sought to intervene as "parties" in the CZA permitting and appellate processes, with full rights to examine witnesses, introduce evidence, and make legal arguments Certain of these activists have also sought such status not on their own behalf, but on behalf of the organizations they represent In virtually all recent CZA permitting and appeal activity, environmental activists have employed the tactic of engaging in argumentative confrontations with counsel, hearing officers, and appellate board members. Notwithstanding a significant degree of latitude afforded them, these environmental activists complain loudly that they are not being afforded sufficient procedural due process under the CZA and even under the U S Constitution

In this article, the authors briefly discuss the history of the CZA and the procedures for the issuance of permits, and the rights of the public as set forth in the governing statutes and regulations Against that background, the authors suggest procedural guidelines for public hearings that would ensure that interested members of the public may be heard in a way that does not undermine the permitting and appellate processes

History of the Coastal Zone Act

In response to concerns expressed by public officials and Delaware citizens over the possibility of a supertanker terminal or additional petroleum refineries being located along the Delaware River and Bay, and over the likelihood of unchecked industrial growth generally along Delaware's coastal areas, the Peterson administration introduced legislation into the General Assembly (H B 300) that would, as signed into law on June 28, 1971, become the CZA [2]

The CZA is generally recognized as one of the first pieces of legislation adopted in Delaware designed specifically to preserve critical aspects of Delaware's environment — indeed, the CZA predates Delaware's Environmental Protection Act[3] by two years Adoption of comprehensive regulations to implement the CZA was slow in coming, and for years the only regulations implementing the CZA were a simple set of largely non-substantive regulations adopted in December 1971. On May 11, 1999, a comprehensive set of regulations was adopted by the Coastal Zone Industrial Control Board (the "Board") [4] Entitled *Regulations Governing Delaware's Coastal Zone* (the "1999 Regulations"), these regulations remain in force today.[5] Initially, the CZA was administered by the State Planning Office, which, under the DuPont administration, became the Office of State Management, Planning and Budget in 1977 In 1981, administration of the CZA was

again transferred, this time to the Secretary of DNREC (the "Secretary")

Patterned after land use statutes, the CZA prohibits new heavy industry uses and new bulk product transfer facilities in the Coastal Zone, but grandfathers such uses that were in existence prior to June 28, 1971 The CZA allows new manufacturing uses as well as the expansion or extension of existing non-conforming uses, but only by permit Within this simple structure, however, there are a myriad of exceptions, inconsistencies and ambiguities that have proven fertile ground for debate since the CZA became law[6]

Procedure Under the Coastal Zone Act

Procedure under the CZA is unusual in several respects First, the CZA allows, but does not necessarily require, an applicant who wishes to know whether a proposed use is permissible in the Coastal Zone to file a "status decision" request with the Secretary.[7] If a status decision is sought (or required by the Secretary), notice is given and public comment is sought, but a hearing is not held [8] The status decision may result in a finding that the proposed activity is unregulated, allowable only by permit, or impermissible altogether

The procedure changes when the applicant files a request for a permit Under the CZA, the Secretary must consider the environmental, economic and aesthetic impact of the proposed use, the number of supporting facilities, the effect on neighboring land uses and county/municipal development and conservation planning In addition, the 1999 Regulations layer on the additional requirement that the applicant propose an offset project that "must more than offset the negative environmental impact associated with the proposed activity "[9] The Secretary is required to hold a public hearing on all Coastal Zone permit applications

DNREC is not subject to the Administrative Procedures Act ("APA") in permitting proceedings, so the Secretary's decision is not a "case decision" within the meaning of the APA However, the 1999 Regulations require all CZA hearings before the Secretary to be "conducted in accordance with the Delaware Administrative Procedures Act (29 Del C Chapter 101)," though it is less than clear whether this is a reference to Subchapter III of the APA (case decisions) or Subchapter IV (licenses). Irrespective of whether the APA governs the Secretary's hearing, what is clear is that neither the CZA, nor the 1999 Regulations, nor the APA provide any standard with respect to the rights of the public, *qua public*, at a "public hearing" before the Secretary

As a practical matter, CZA hearings before the Secretary are conducted much the same as other DNREC permit hearings The Secretary assigns a hearing officer who will, at the time and place set for the hearing, take evidence from the applicant and DNREC and will accept comments from the public In recent years, the hearing officer has permitted members of the public to ask questions directly of the applicant's witnesses, and even of the Secretary's witnesses This practice, which in the absence of a statute requiring it is really an indulgence, has lead to the assumption by certain environmental activists that they are entitled to be treated as "parties" at the hearing with the same rights as the applicant or the Secretary to introduce evidence, examine witnesses and make legal argument Unfortunately, hearings before the hearing officer are now frequently marred by confrontational and aggressive behavior of environmental activists any time the hearing officer attempts to limit the scope of their comments or examination of witnesses to matters relevant to the proceeding The atmosphere of these public hearings often devolves into acrimonious and irrelevant debate, and the presence of armed environmental protection officers is not uncommon

Procedure Before the Coastal Zone Industrial Control Board

Unlike the actions of most Delaware administrative agencies, final decisions of the Secretary are generally not reviewed initially by the Superior Court Rather, appeals are first heard by administrative appellate boards made up of lay members of the community Most of these appeals are heard by the Environmental Appeals Board However, in the case of appeals under the CZA, such appeals are heard by the Coastal Zone Industrial Control Board Under § 7007(b) of the CZA, "[a]ny person aggrieved by a final decision of the Secretary under subsection (a) of 7005 of this title may appeal same under this section " The statute is silent on what makes a person "aggrieved" sufficient to allow an appeal Environmental activists take the position that this language should be broadly construed to mean that any person who finds fault with a decision of the Secretary should be permitted to take an appeal In fact, as discussed below, "person aggrieved" more properly equates to standing which, under a well developed line of case law, is limited to persons who can show that their personal interests are directly harmed above and beyond the interests of the public at large

Unlike the decision of the Secretary, the action of the Board is governed under the APA In practice, procedure before the Board is somewhat more formal, with the parties being given an opportunity to present opening statements, introduce evidence, and make closing statements Counsel for the parties, as well as their witnesses, are subject to examination by the Board At the conclusion of the presentations made by the parties, the Board typically opens the matter to public comment

Appeals taken by environmental activists have constituted the majority of the Board's activity over the past year As to these appeals, the Board has been very relaxed in its determination of who might be a "person aggrieved" under the CZA As with the hearings before the Secretary, environmental activists frequently become argumentative and confrontational with the Board, its attorney, and counsel for the permittee or appellant when displeased with particular rulings or findings

Where Does the Public Fit In?

There are generally two types of public attendees at CZA hearings The first type of attendee is a member of the potentially affected public, i e , a person in attendance because he or she lives, works or recreates in close proximity to the site of the activity at issue and is concerned that the activity might have an effect on his or her personal health or economic interests Most often, such members of the public are satisfied to observe the proceedings and to offer comments to the tribunal The second type of public attendee at these hearings is what we have termed herein the *environmental activist*, a person typically allied with a group or organization dedicated to environmental or conservation issues These persons are in attendance because they, or their organizations, hold certain beliefs and attitudes respecting the environment and the activities of government and commercial interests within that environment

As noted, a handful of environmental activist groups have sought to assert themselves forcefully into the CZA

process Great latitude has been granted by both the hearing officer and by the Board with respect to their participation, and yet, they remain unsatisfied The vitriolic debate and lengthy discourse on matters of minimal relevance that now characterizes these hearings leads to the unfortunate result that the voices of other members of the public, those who might be directly and personally affected, are rarely raised Moreover, to the extent that the environmental activists have points that might truly be of interest to the Secretary or the Board, these points are likely to be missed, awash as they so often are in a sea of irrelevance.

Unquestionably, the public has a right to attend hearings conducted both by the Secretary and by the Board To deny the public this basic right would not only violate the terms of the CZA and the 1999 Regulations, but also would likely violate the due process rights of those members of the public who might be impacted directly by the matter addressed at the hearing But what rights does the public have beyond merely attending these hearings? Are certain members of the public entitled to be admitted to these proceedings as "parties"? Should representatives of public interest groups be allowed to "cross-examine" the applicant — as they so often demand? Should non-attorneys be able to represent the interests of organizations before the Secretary and the Board and, if so, how and in what capacity? Lastly, if the interest groups are afforded a right to cross-examine under oath, should not the representatives of these groups who offer factual information also be sworn and subject to cross-examination?

Participation vs. "Party Status" in Hearings Before the Secretary

One of the principal issues raised by environmental activists is whether they can be "parties" to the process before the Secretary, such that they will have rights to call witnesses, introduce evidence, and cross examine the witnesses of the permit applicant. Neither the CZA, nor the 1999 Regulation, nor the APA (to the extent it applies) specifically allow members of the public to be admitted as parties, and for good reason To allow all members of the public to have rights as parties would cause the process to grind to a halt Oft woven into the environmental activists' claims that they should be afforded party status are allegations that failure to do so deprives them of "due process " In fact, to the extent that they are permitted to question witnesses in hearings before the Secretary, environmental activists are accorded far more process than they are due

The reference to "due process" is, of course, a reference to the Fourteenth Amendment of the United States Constitution, which prohibits a state from depriving any person of "life, liberty or property without due process of law"[10] The flaw in the environmental activists' due process claim is that, irrespective of the quantity and quality of the process afforded them by the hearing officer, the State of Delaware has at no time proposed to deprive environmental activists, as members of the public generally, of any liberty or property interest The Fourteenth Amendment does not create property or liberty interests; rather, it extends various procedural safeguards to certain interests that stem from an independent source such as state law[11] To be enforceable therefore, a claim of entitlement to "due process of law" under state law must be derived from statute or legal rule or through a mutually explicit understanding[12] A mere "expectancy" is not sufficient[13] As noted, however, neither the CZA nor the 1999 Regulations grant any special "party status" rights to any groups or any particular member of the public, and one is hard pressed to find anything remotely resembling a "mutually explicit understanding" between the state and any particular environmental activist or organization that grants special procedural rights

What about those members of the public with direct tangible interests that may be affected by a particular activity? Should these persons be granted full party status? Such persons would seem to have due process rights resulting from the process of granting environmental permits Thus, for example, were the Secretary to permit the construction and operation of a hazardous waste dump in the middle of a residential neighborhood, the dump's neighbors would surely be entitled to "due process of law" because the state's action, in granting the permit, has the effect of depriving these neighbors of the value and enjoyment of their real estate The question remains, however, as to the extent of the due process to which such persons are entitled So long as they are given the right to observe the hearing, the public hearing requirements of the CZA and the 1999 Regulations would appear to be satisfied; and, to the extent that such persons are given the opportunity to make comments to the hearing officer, such persons will be afforded more than the statute requires More importantly, any "person aggrieved" may appeal to the Board Because the Board is subject to the APA, it is fully empowered to issue subpoenas,[14] and a person who is "aggrieved" and properly takes an appeal will, in this manner, have the opportunity to call and examine witnesses under oath Of course, the appellant will also have access to the full record of the proceedings before the Secretary in preparing for the appeal

For purposes of Fourteenth Amendment procedural due process, Delaware has adopted the balancing test utilized by the U S Supreme Court to evaluate the sufficiency of administrative standards under the Fifth Amendment[15] This balancing test requires an evaluation of:

1) The importance of the individual interest involved
2) The value of the specific procedural safeguards to that interest
3) The governmental interest in fiscal and administrative efficiency

Considering the availability of an appeal to the Board to any "aggrieved" person and the full panoply of procedural rights available in that proceeding, the relative value of full party status rights in the hearing before the Secretary is quite low Yet, the administrative burden of allowing all persons with a real and tangible interest to have full party status rights is considerable indeed Thus, application of this balancing test simply does not compel the conclusion that members of the public should be afforded full party status rights at the Secretary's hearing

Standing in Appeals to the Board

The issue of "party status" is one of far less importance in the context of appeals to the Board because the CZA and the 1999 Regulations do not limit appeals to the Board solely to persons who were parties to the proceedings before the Secretary. Instead, one need demonstrate only that he or she is a "person aggrieved" in order to take an appeal

Environmental activists have urged that the term "person aggrieved" should be liberally construed to allow virtually anyone who is dissatisfied with the Secretary's decision to take an appeal to the Board In recent appeals, the Board has not looked closely at the

"person aggrieved" standard, but as the same environmental activists return to the Board again and again, the Board may well decide that a closer analysis is warranted When this occurs, the Board should conclude that "person aggrieved" requires that a person have standing in order to take an appeal

Although Delaware courts have not directly addressed the meaning of the term "aggrieved" in the context of the CZA, the courts have addressed the phrase "person or persons, jointly or severally aggrieved" as it appears in the Delaware statute dealing with appeals from Boards of Adjustment [16] In that context, the Superior Court recently held that this phrase limits potential appellants to those who are "potentially affected" by Board of Adjustment actions and who are landowners [17] The Court reasoned that failure to limit the universe of potential appellants in this fashion would allow an appeal by any "individual or group who had a philosophical or perceived objection to the Board's action "[18]

The seminal Delaware case dealing with the issue of standing in environmental cases is *Oceanport Industries, Inc. v. Wilmington Stevedores, Inc*, 636 A 2d 892 (Del. 1994) *Oceanport* involved appeals of various permits[19] granted by DNREC with respect to a pier constructed by Oceanport Industries at its facility in Claymont, Delaware Following the award of the permits, Wilmington Stevedores, Inc , a corporation engaged in the stevedoring business in the Port of Wilmington, appealed to the Environmental Appeals Board After litigation before the Environmental Appeals Board and the Superior Court, the issue of Wilmington Stevedores, Inc 's standing was ultimately presented to the Delaware Supreme Court as an issue of first impression

Initially, the *Oceanport* Court noted that, under general principles of standing, a plaintiff must have an interest distinguishable from that of the general public, and that "state courts apply the concept of standing as a matter of self-restraint to avoid the rendering of advisory opinions at the request of parties who are 'mere intermeddlers '"[20] Thereafter, relying heavily on principles developed in federal environmental litigation, the *Oceanport* Court set forth comprehensive standards with respect to standing in Delaware environmental litigation and appeals from permitting decisions of DNREC The *Oceanport* Court applied two notable Supreme Court cases; *Assoc. of Data Processing Serv. Org., Inc. v. Camp*, 397 U S 150, 90 S Ct 827, 25 L Ed 2d 184 (1970), and *Lujan v. Defenders of Wildlife*, 504 U.S 555, 112 S.Ct 2130, 119 L Ed 2d 351 (1992), and articulated the test for standing as follows:

> First, a party must have suffered an injury in fact, which is the invasion of a legally protected interest within the zone of interest sought to be protected or regulated by the statute *Id* at —, 112 S Ct at 2136 The invasion must be 1) concrete and particularized, and 2) "actual or imminent not 'conjectual' or 'hypothetical'" *Id* at —, 112 S.Ct at 2136 (citations omitted) Second, "there must be actual connection between the injury and the conduct complained of — the injury has to be 'fairly trace[able] to the challenged action of the defendant, and not th[e] result [of] the independent action of some third party not before the court '" *Id* at —, 112 S.Ct at 2136 (citations omitted) Finally, it must be likely that the injury will be redressed by a favorable decision, rather than merely speculative *Id* at —, 112 S Ct at 2136 [21]

Concrete and particularized injury means that an individual must have a *personal stake* in the outcome, not just a mere interest [22] Injury to the environment is not sufficient Rather, to have standing, a person must somehow differentiate himself from the mass of people who may find the conduct of which he complains to be objectionable only in an abstract sense [23] It is simply not enough to be a "roving environmental ombudsman seeking to right environmental wrongs wherever they may be found "[24]

While the ownership of land ought not be a prerequisite to standing in CZA appeals, a direct and adverse effect on the putative appellant should be To construe this standard more broadly, for instance meaning merely "dissatisfied" or "displeased," would permit persons to appeal a decision of the Secretary, notwithstanding that the decision has no impact on them As environmental activists repeatedly take appeals to the Board, it is likely to become more apparent that such activists are in precisely this position — they cannot demonstrate a personal interest at stake, but instead have purely philosophical or moral objections to the activities in question

and the decisions of the Secretary Absent an injury to their personal interests, such roving environmental ombudsmen are not "persons aggrieved" sufficient to have standing before the Board

Unauthorized Practice of Law

When environmental activists attempt to take appeals on behalf of their organizations, not only is the standing of the organization at issue, but the very ability of environmental activists to represent the organization *pro se* is also called into question Last summer, the Board dismissed the appeals of three organizations that sought to appeal through non-attorney representatives In its initial order, the Board did not include a full discussion of its reasoning [25] When the dismissed appellants took an appeal (this time through Delaware counsel acting *pro bono*) to the Superior Court, the permit applicant petitioned the court, over the objections of the appellants, to remand the matter to the Board so that it could re-issue an order that fully explained the rationale underlying its decision The court did so,[26] and on November 5, 2003, the Board issued an Amended Order and Decision which, citing multiple Delaware cases, noted that the appellants, none of whom were licensed to practice law in Delaware, sought to pursue a legal remedy as advocates for their respective organizations In the eyes of the Board, this came squarely within the definition of the practice of law[27] The Board cited rules established for the Board on the Unauthorized Practice of Law to support its conclusion that non-lawyer representation of organizations before governmental agencies was the unauthorized practice of law It further noted that even attorneys licensed in other jurisdictions were, pursuant to Supreme Court Rule 72, required to be admitted *pro hac vice*, and that it would be "difficult to imagine" that non-attorneys should be held to a lesser standard [28]

The issue attracted media attention at the time, and there was a negative visceral reaction expressed by many in response to the Board's ruling. However, the difficulties encountered by the Secretary and the Board in dealing with both the irrelevancies advanced by *pro se* environmental activists and the circus-like atmosphere many actively foster, highlight the importance of having accountability through trained lawyers, subject to accepted rules of practice, representing all parties in these proceedings

DNREC and the Board Need Guidelines to Control their Processes

In response to the increasingly rancorous and confrontational behavior of environmental activists at public hearings, the Secretary proposed to limit the scope of questioning that could be directed to DNREC witnesses at a CZA hearing last March Due to outcry amongst the environmental activists, these ground rules were not used in future hearings However, the Secretary has not abandoned the goal of returning a measure of control to public hearings In late 2003, the Secretary issued proposed guidelines that would govern all hearings before the hearing officer, and a number of comments were received On a parallel track are guidelines proposed to be adopted by the Board, which guidelines would also set limits on the participation by the public at Board hearings. Both sets of guidelines are still under development

Adoption of guidelines to govern the hearing process is a good first step Controlling the monopolistic and disruptive actions of environmental activists, while still allowing them to be heard, will create an atmosphere that allows average citizens, who might be affected by a proposed permit, to feel welcome in providing comments A controlled atmosphere will also allow the hearing officer to focus on the issues of greatest importance, and will foster an atmosphere in which the hearing officer is more likely to hear the important points that environmental activists do have, without those points being drowned by rhetoric

The authors suggest that any guidelines adopted by the Secretary should include the following:

- Clarify that the only entities at the public hearing that will have rights as "parties" are the applicant and DNREC
- Require that questions from the public that would otherwise be directed to witnesses should instead be directed to the hearing officer Thus, for example, a question from the public might be addressed to the hearing officer as follows: *"Mr. Hearing Officer, I would like to know if the witness can explain why the applicant proposes to install a Claus Unit rather than a newer technology."* This will allow the hearing officer to screen public questioning and focus on those that will prove relevant and useful in formulating recommendations
- Provide for the presence of environmental protection officers, and identify conduct that will subject persons in attendance at the hearing to removal therefrom [29]

Similarly, any guidelines adopted by the Board should include the following:

- Clarify that a "person aggrieved" to take an appeal is a person with standing under *Oceanport* This would require a putative appellant, as a threshold issue, to *credibly* demonstrate that the activity at issue will cause an injury in fact to the appellant Mere displeasure or disagreement with a decision of the Secretary should not be sufficient An appellant should be required to satisfy this basic test before the appeal would be permitted to proceed on the merits
- Clarify that the only parties to the appeal shall be such appellants as are able to demonstrate standing, the Secretary, and the applicant/permittee Only such parties will be permitted to call witnesses and cross examine the witnesses of other parties
- Permit members of the public who are not parties to nonetheless comment on the appeal following the conclusion of presentations by the parties In this way, an environmental activist who cannot establish standing will still have the opportunity to express his or her views to the Board
- As with the Secretary's hearing guidelines, the Board's guidelines should provide for the presence of Environmental Protection Officers, and provisions identifying conduct that will subject persons in attendance at the hearing to removal therefrom by a majority vote of the Board members present

From the authors' point of view, it appears that environmental activists use these hearings primarily to stage a battle in which the activist "David" sets out to defeat the state and industry "Goliaths," and to build a soapbox from which to spread their message and garner publicity (and perhaps membership contributions) Of course, public hearings are not intended for these purposes Rather, hearings before the Secretary and the Board are legal proceedings designed to determine whether established standards have been satisfied such that the

Secretary, or the Board, can make informed decisions, and also to create a record for the courts to review, should it become necessary The limits the authors propose are not intended to silence the environmental activists, but rather allow to all members of the public an appropriate opportunity to be heard in a fair and balanced forum ◆

FOOTNOTES

1 7 *Del C* Ch 70

2 *See* Coastal Zone Act Administration, June 28, 1971 – June 30, 1977, State Coastal Zone Industrial Control Board and Office of Management, Budget and Planning (September 1977)

3 7 *Del C* Ch 60

4 The Board is charged with approving implementing regulations as well as hearing appeals from permit applications or status decision requests 7 *Del C* § 7005

5 A 1993 set of regulations was invalidated because the procedures used by the Board in adopting them violated the Freedom of Information Act *Chemical Industry Council of Delaware, Inc , et al v State Coastal Zone Industrial Control Board*, 1994 WL 274295 (Del Ch 1994)

6 In September, 1972, the Coastal Zone Industrial Control Board heard its first appeal, and by July of the following year, the Superior Court had issued its first decision on an appeal from the Board *See Kreshtool v. Delmarva Power and Light Co.*, 310 A 2d 649 (Del Super 1973)

7 7 *Del C* § 7005; 1999 Regulations at § G

8 1999 Regulations at § G 3

9 1999 Regulations at § I 1 a

10 U S Const Amend XIV

11 *Leis v. Flynt*, 439 U S 438, 441, 58 L Ed 2d 717, 99 S Ct 2185 (1979)

12 *Id* (*citing Perry v. Sindermann*, 408 U.S 602, 603, 92 S Ct 2694, 33 L Ed 2d 570 (1972))

13 *Perry v. Sindermann*, 408 U S 602, 92 S Ct 2694, 33 L Ed 2d 570 (1972)

14 29 *Del C* § 10125(b)(1)

15 *See In the Matter of Arons, et al*, 756 A 2d 867, 873 (Del 2000) (*citing Mathews v. Eldridge*, 424 U S 319, 335, 96 S Ct 893, 99 L Ed 2d 645 (1988))

16 22 *Del C* § 328(a)

17 *Healy v. Board of Adjustment*, 2003 WL 21500330 at *2 (Del Super 2003)

18 *Id*

19 The permits granted were: air quality, water quality, private subaqueous lands permit and public subaqueous lands lease The Secretary had previously issued a status decision, ruling that a CZA permit was not required Nonetheless, the CZA figured prominently in the *Oceanport* decision

20 *Oceanport Industries, supra*, 636 A 2d at 900 (*citing Stuart Kingston v. Robinson*, 596 A 2d 1378 (Del 1991))

21 *Oceanport Industries, supra*, 636 A 2d at 904

22 *Arbor Hill Concerned Citizens Neighborhood Ass'n v. City of Albany, New York, et al.*, 250 F Supp 2d 48, 56 (2003) (*citing Warth v. Seldin*, 422 U S. 490, 489-99, 95 S Ct 2197, 45 L Ed 343 (1975))

23 *See Friends of the Earth v. Gaston Copper Recycling Corp*, 204 F 3d 149, 156 (4th Cir 2000)

24 *Id.* at 157

25 *See In the Matter of Appeal No CZ 2003-01*, (Decision dated August 1, 2003)

26 *Common Cause of Delaware, et al v. Coastal Zone Indust. Control Bd*, C A No 03A-08-001-HLA, Jurden, J (September 10, 2003)

27 *In the Matter of Coastal Zone Permit 403P Issued to Sunoco, Inc*, Appeal No CZ 2003-01 at 4 (November 5, 2003)

28 *Id.* at 5 (no appeal was taken from this Amended Order and Decision)

29 DNREC law-enforcement officers have "police powers similar to those of police officers when enforcing the laws, regulations, rules, permits, licenses, orders, and program requirements of the Department of Natural Resources and Environmental Control "