

Should Delaware provide an exemption to its Coastal Zone Management Act to allow the construction of the Crown Landing LNG Terminal?

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October 18, 2007**

Abstract:

A conflict currently exists between Delaware and New Jersey regarding the construction of a Liquefied Natural Gas (LNG) terminal proposed by Crown Landing LLC, a “wholly owned subsidiary of BP American Product Company.” The terminal location is proposed for Logan Township, NJ, situated across the Delaware River from the State of Delaware. This dispute is a direct result of Delaware’s rejection of Crown Landing LLC’s request for a Delaware Coastal Zone Act permit, which would have allowed the construction of a pier on subaqueous soil within Delaware’s territory. At the center of this conflict is the question of whether Delaware’s Coastal Zone Management Act was intended to be used as a method of preventing construction on New Jersey’s coast and the effect this has on interstate relations. The dispute has reopened a 1934 Supreme Court case and reignited the historic conflict between Delaware and New Jersey over border issues. The Supreme Court is scheduled to hear arguments pertaining to this issue on November 27, 2007.

In addition to the Supreme Court’s decision, there are other factors that could potentially affect this conflict. The first is the idea of “federal consistency” with respect to projects in the coastal zone. The federal consistency provision was an enticement on the part of the federal government to encourage coastal states to adopt coastal zone management acts. The provision provides that any project in a coastal zone, which requires federal approval, will not receive this federal approval unless the project is consistent with the coastal zone management act of the state in which is located. The federal government, in releasing the Energy Act of 2005, has alluded to the idea that federal consistency provisions could be overridden for essential energy projects. This means that the federal government would go against over thirty years of tradition and approve projects that are not consistent with a state’s coastal zone management act if a national energy need is served. It is possible that this could occur with respect to the Crown Landing terminal. If such an action is taken, the implications could affect all coastal states and their ability to regulate their coastal zones.

In conducting my research, I will study the history of similar project approvals and denials under Delaware’s Coastal Zone Management Act. In an effort to gain a better understanding of LNG terminals and the issues surrounding their operation, I will compare two LNG sites currently in operation to the Crown Landing terminal, focusing on the Coastal Zone Management Acts of those states, controversies surrounding their construction, as well as any issues that have arisen since they became operational. This is important, because when LNG terminals are proposed, safety, environmental, and operational concerns are typically raised by local officials and residents. The information gathered by studying these two terminals will enable me to provide a more accurate picture of what can be expected if the Crown Landing terminal is permitted to move forward. In addition, I will conduct interviews of individuals with knowledge of the Crown Landing Project, the federal consistency provision, and Delaware’s Coastal Zone Management Act development and administration. Furthermore, I will review documents pertaining to Delaware’s denial of Crown Landing LLC’s Coastal Zone Management Act permit. Through this research, I hope to determine whether or not Delaware would benefit from providing an exemption to its Coastal Zone Management Act for this project.