

# STATE OF DELAWARE



## EXECUTIVE DEPARTMENT DOVER

EXECUTIVE ORDER  
NUMBER SEVENTY

TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES

RE: MARINAS

WHEREAS, the Inland Bays are one of the state's most valued natural resources and an important component to Delaware's quality of life.

WHEREAS, from the perspective of environmental management, marinas concentrate boating activities, allowing for more effective management than could be attained with numerous private docks. However, potentially adverse environmental effects also are associated with marina construction and operation and with boating activities. These effects may be exacerbated through improper marina siting, design or management.

WHEREAS, the escalating migration of people to coastal areas has produced growing numbers of recreational boaters in coastal waters. With these increases in coastal populations and percentage of recreational boaters has come greater demand for coastal marinas and associated facilities.

WHEREAS, Delaware has instituted a strong policy of protecting existing uses of waters, especially the use of exceptional recreational or ecological significance (ERES) such as the Inland Bays. The ERES designation requires that inputs of pollution from point and non-point sources shall be severely

restricted in order to ensure that the unusual or high value uses shall not be disturbed. The existing use of shellfish harvesting, in particular, has been very influential in affecting marina siting in coastal waters.

WHEREAS, significant portions of Inland Bays are closed for the taking of shellfish due to high bacterial levels. Closing areas for the taking of shellfish will result in a substantial economic loss to those involved in the commercial harvesting of shellfish from Inland Bays. Once a shellfish area has been closed by the Division of Public Health due to the siting of a marina, the shellfish area cannot be reopened.

WHEREAS, partially in response to these restrictions, attention has been focused on creating marinas by dredging basins from uplands and then connecting the basins to existing waters. These newly created marina waters become waters of the United States and are classified by the State either the same as the adjacent natural waters or with another appropriate classification.

WHEREAS, once classified, the marina waters are then subject to the corresponding state water quality standards for that classification. The dissolved oxygen (D.O.) standard in particular may be difficult for many semi-enclosed marina waters to achieve. These waters, because of their physical configuration and because of oxygen demands typically exhibit D.O. values lower by varying degrees than the adjacent natural waters. At times, for natural or man-induced reasons, the D.O. of the natural waters may fall below state and/or federal standards. Marinas may also contribute to violations of standards for toxics, bacteria, and turbidity.

WHEREAS, these situations have raised questions regarding the application of standards to marina basin waters. Other questions involve potential water quality criteria and whether the prediction of water quality standards violations in the marina basin when the marina is not expected to impair the existing uses of adjacent natural waters are enough to recommend against construction.

WHEREAS, other states have adopted marina design criteria that promote maximum flushing in semi-enclosed basins. The philosophy in this approach is that by using the best design, many water quality problems in these basins may be reduced. Delaware does not have such criteria in place and needs time to develop them, however, it is in the best interest of the State to adopt similar designed criteria in Delaware.

WHEREAS, the Governor has requested, and the U.S. Environmental Protection Agency has approved, and provided funding for, the convening of a Management Conference of the Inland Bays (Rehoboth, Indian River, and Little Assawoman Bays)

under the auspices of the National Estuary Program. This Conference will develop a long-term management and restoration plan for these estuaries through the efforts of several appointed committees.

WHEREAS, based upon recommendations from the Governor's Task Force on the Inland Bays and the efforts of the Governor's Inland Bays Monitoring Committee to see that those recommendations are implemented, a proposed goal of the Inland Bays Estuary Program Conference is "to develop a water use plan for the bays which addresses capacity, public access, and establishes designated use areas."

WHEREAS, the Executive Council of the Inland Bays Estuary Program includes the Director, Environmental Services Division, U.S. Environmental Protection Agency, Region III; the Secretary, Department of Health and Social Services; the Secretary, Department of Natural Resources and Environmental Control; and the Administrator, Sussex County, and this body is charged with the approval and implementation of a Comprehensive Estuarine Conservation and Management Plan for Delaware's Inland Bays which will include the development of program policies, ordinances, regulations, and laws.

NOW, THEREFORE, I, MICHAEL N. CASTLE, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order that:

1. There shall be a moratorium on the issuance of permits or leases as provided in 7 Del.C. Chapter 72 for structures over, or making connection with public subaqueous lands of the State of Delaware in the Inland Bays as designated for the National Estuary Program. The term of this moratorium shall be until new regulations are promulgated by the Secretary of the Department of Natural Resources and Environmental Control.
2. This moratorium shall apply to any docking and/or mooring facility whose purpose is to provide safe and secure mooring of berthing for boats and their related ancillary structures and functions. Repair or replacement of an existing facility shall be confined to construction which strictly maintains present configuration and use. Permits for a single boat pier or dock intended to serve a single family dwelling shall be permitted, however, applicants shall certify to the DNREC that docking facilities shall be limited to one boat.

3. The Secretary of DNREC in conjunction with the Secretary of the Department of Health and Social Services shall establish policy, procedures, and regulations including a mechanism for consultation and interagency discussions that will ensure the consideration of the public health, safety and welfare. This undertaking will evaluate marinas in light of projected environmental impacts, direct habitat alteration, natural resource impacts, water quality impacts, and socioeconomic impacts. The Departments will adopt guidelines and or regulations, where required, on the basis of this analysis pertaining to, but not limited to, subaqueous lands, installation and operation of pump out facilities, shellfish closures and water quality standards. Attention shall also be given ensuring the effectiveness of decision-making processes, and compliance with standards and regulations.
4. The Executive Council of the Inland Bays Estuary Program is hereby directed to utilize, where possible, existing manpower and funding, and to seek, as necessary, additional funding and to engage the assistance of consultants to a.) develop design criteria which will reduce, to the maximum extent possible, the water quality impacts of all future marinas within one year from the effective date of this order, and b.) develop a water use plan for the Inland Bays within three years from the effective date of this order. The Executive Council shall require that its Scientific and Technical Advisory Committee formulate said water use plan within one year from the effective date of this Order. The DNREC and Department of Health and Social Services shall adopt this plan as interim policy until such time as a final plan has been developed.
5. As an overall objective in the development of the aforementioned policy, procedures and regulations, the Secretary of DNREC shall provide the user with a stepwise approach to environmentally sound marina development. Key factors to be addressed are impact assessment techniques, siting, shellfish buffer zones, pollutant control, permit process and monitoring and compliance. Optional mitigative measures that the engineer or planner may use or regulatory agency may recommend to reduce or eliminate specific impacts from marina construction

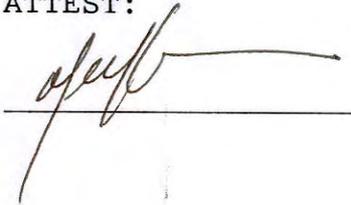
and operation shall be identified. Mitigative measures for water quality, ecological, or other impacts should be presented for marina design and construction activities and for operation and maintenance activities.

6. It is important that agencies responsible for marina development disseminate information and provide positive developmental guidelines. The challenge is to meet this demand through prudent application of environmentally sound principles in the siting, design, construction and operation of coastal marinas.
7. The Secretary of DNREC shall promulgate new regulations no later than March 30, 1990.

APPROVED this 20<sup>th</sup> day of March, 1989.

  
Governor

ATTEST:

  
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