

DIAMOND STATE PORT CORPORATION

PERFORMANCE AUDIT
JULY 1, 2021 THROUGH JUNE 30, 2025



DIAMOND STATE PORT CORPORATION PERFORMANCE AUDIT

REPORT SUMMARY JULY 1, 2021 THROUGH JUNE 30, 2025

BACKGROUND

The State of Delaware Office of Auditor of Accounts (AOA) declared its intention to conduct a performance audit (the “Audit”) on the Diamond State Port Corporation (DSPC) in February 2025. AOA is authorized under 29 Del. C, § 2906(a) to conduct audits of all financial transactions of all state agencies.

The purpose of the Audit was to evaluate the efficiency and effectiveness of DSPC’s operations, provide objective analysis, findings, and conclusions to assist management and those charged with governance and oversight with improving program performance and operations, reducing costs, facilitating decision making by parties responsible for overseeing or initiating corrective action, and contributing to public accountability. This includes but is not limited to assessments of program effectiveness, economy, and efficiency; internal control; compliance; and prospective analyses.

AOA audited DSPC based on events that transpired during the period July 1, 2021, through June 30, 2025.

KEY INFORMATION AND FINDINGS

The Audit consisted of two main objectives:

1. Assess the effectiveness of the Port’s performance metrics and financial reporting of current operations in tracking progress toward achieving financial goals as described by the DSPC and its Port Operator.
1. Evaluate the accuracy and reliability of the projected economic impact of the Edgemoor container facility improvements at the Port, including job creation, wages, tax benefits, and infrastructure enhancements.

AOA inquired pertinent DSPC board members, contracted vendors, and others, and observed documents to obtain evidence in meeting its objectives. AOA discovered five instances where business processes were lacking proper oversight or utilizing resources that were not expected to be consumed by DSPC.



DIAMOND STATE PORT CORPORATION PERFORMANCE AUDIT

REPORT SUMMARY JULY 1, 2021 THROUGH JUNE 30, 2025

KEY INFORMATION AND FINDINGS CONT. ---

Finding 1: DSPC Board of Directors (BOD) held executive meeting sessions that did not meet the requirements for an executive session according to Delaware Code. Additionally, minutes and agendas were not adequately documented and maintained to capture the information being discussed.

Finding 2: Governance and oversight over the executed Concession Agreement (ECA) with GT USA Wilmington, LLC (GT USA) were not performed in accordance with the requirements of Article 5, Section 5.4, and Article 21, Section 21.3. Similarly, oversight procedures required by Article 5, Section 5.4 of the ECA, as modified by the Second and Third Amendment with Enstructure Wilmington Holdings, LLC (Enstructure), were not carried out.

Finding 3: DSPC was unable to execute the collection of payments, or remedies, in accordance with the ECA with GT USA in a timely manner. The ECA was originally a contract between DSPC (a public sector entity) and GT USA (private sector entity) implemented on September 18, 2018. The agreement allowed GT USA the right to operate and collect revenue for Port operations for a 50-year period. Article 4 Section 4.1 and 4.4 states that GT USA agreed to an initial concession payment of \$11,536,000, and a minimum annual concession fee of \$3 million. In FY19 DSPC received \$3,129,335 upon commencement and received the remaining \$8,406,665 in FY20. GT USA had not made minimum annual concession payments and was in payment default in accordance with Article 10 Section 10.1. DSPC entered into Good Faith Negotiations with GT USA in accordance with Article 10 Section 10.8 and passed Resolution 20-03: Authorization of the First Amendment to the Executed Concession Agreement (First Amendment) with GT USA on December 17, 2019, which modified the rate schedule in the ECA.



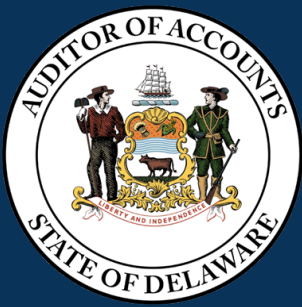
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REPORT SUMMARY JULY 1, 2021 THROUGH JUNE 30, 2025

KEY INFORMATION AND FINDINGS CONT. ---

Finding 4: The Seabury Report states that the Methodology used in estimates is the Impact Analysis for Planning (IMPLAN) model. In reference to the IMPLAN model the report states “like all input-output models is limited in one critical way, specifically, it is not a dynamic simulation model and therefore is not recommended for rigorous forecasting functions. The main reason for this limitation is that IMPLAN ignores technical change that affects its multipliers.” It also acknowledges “...for long-term investment in infrastructure, researchers will need to make adjustments to the IMPLAN multipliers to account for technological change.” IMPLAN models rely on data sets provided by the BEA. Input-Output analysts must collaborate with Census Bureau data-collection staff to identify changes that affect the industry data. The primary data source for the benchmark Input-Output tables is the Economic Census, which the Census Bureau updates every 5 years, most recently in 2022. DSPC referenced the Seabury Report in its 2024 public releases surrounding the JDA as it relates to job projections, but in the IMPLAN model used in the Seabury Report, the sourced data utilized is prior to the 2022 Economic Census.

Finding 5: DSPC did not enforce Article 6 Section 6.5 of the ECA for access and inspection. GT USA entered into an agreement with S&A Marketing Company to pay GT USA to facilitate exporting tire remnants/scraps, resulting in tires and tire remnants/scraps being placed at Edgemoor site without securing proper permits and approvals. DSPC passed resolution 23-04 on May 22, 2023, which authorized the DSPC Chair to exercise DSPC’s right under the ECA to take all necessary action to bring the Edgemoor property into compliance, including emergency bid-waiver authority, expending necessary funds, and/or charging GT USA for all costs. An expenditure of \$2 million was authorized for the removal of the tires and tire remnants in accordance with the Edgemoor Tires Removal Reimbursement Agreement.



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REPORT SUMMARY JULY 1, 2021 THROUGH JUNE 30, 2025

KEY INFORMATION AND FINDINGS CONT.

2018

Gulftainer USA Selected as Port Operator

October: GT USA committed to investing \$580 million in port redevelopment.

Amended Agreement

December: The first amendment to the concession agreement modifies the rate schedule reducing the per-unit concession fee by 50% for the initial ten years in exchange for a fee of \$13.4M.

2019

Edgemoor Expansion Permit Application

August: DSPC submits permit applications.

2020

CARES Act Relief

June: DSPC received a CARES Act COVID-19 Relief grant totaling \$381K.

September: A News Journal Report indicates GT USA is having financial difficulties and plans to increase and adjust revenue streams.

2021

Bond & Capital Improvements Act/ Discovery of Tires

April: DSPC receives a State grant totaling \$1.9 Million to support development expenses.

June: HB475 grants DSPC the authority to amend the concession agreement, appropriates \$5 Million for capital expenditure, and approves use of escheat funds for "maritime terminal facility development."

2022

DNREC regulators discover and order the removal of 10,000 tons of tires from the Edgemoor facility.

October: DSPC board member notes GT USA's breach of the concession agreement due to a delinquency of at least \$3 Million.



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REPORT SUMMARY JULY 1, 2021 THROUGH JUNE 30, 2025

KEY INFORMATION AND FINDINGS CONT.

2023

Enstructure Selected as New Port Operator

January-June: DSPC received \$31.185 million in American Rescue Plan Act COVID-19 relief grants.

July: DSPC amended the concession agreement to transfer port operations from GT USA to Enstructure.

Permits Remanded

May: State officials approve the use of \$195 Million in excess escheat funds for Edgemoor.

October: District Court Judge Mark Kearney rules the U.S. Army Corps of Engineers has not fully considered the Edgemoor project and relied on insufficient data.

2024

2025

Investment and Legislation

January: State transfers \$195M plus \$4.6M in accrued interest from escheat funds to the DSPC.

Senate Bill 44 is introduced; would permit the board to select their own chair without Senate confirmation.

February: AOA undertakes performance audit of DSPC

April: Delaware Superior Court Judge Kathleen Miller rejects Environmental Appeals Board permits and remands to the Board for reconsideration.

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Abbreviations:

AOA	Delaware Office of Auditor of Accounts
GAGAS	Generally Accepted Government Auditing Standards
DSPC	Diamond State Port Corporation
FOIA	Freedom of Information Act
BOD	Board of Directors
GT USA	Gulftainer
ECA	Original Executed Concession Agreement
JGC	Joint Governance Committee
JDA	Joint Development Agreement
IMPLAN	Impact Analysis for Planning Model

For further information on this release please contact **Lydia E. York** lydia.e.york@delaware.gov.



**State of Delaware
Office of Auditor of Accounts**

**Lydia E. York
State Auditor**

INDEPENDENT AUDITOR'S REPORT

Ms. Charuni Patibanda-Sanchez
Board Chair
Diamond State Port Corporation
Carvel State Office Building, 8th Floor
820 N. French St.
Wilmington, DE 19801

November 25, 2025

We present the attached report which provides the results of our performance audit of the Diamond State Port Corporation (DSPC) for fiscal years beginning July 1, 2021, through June 30, 2025, in accordance with the criteria set forth in Delaware Code.

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS) applicable to performance audits issued by the Comptroller General of the United States. These standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We are required to be independent of the DSPC and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This report is intended for the information and use of the DSPC and the Office of Auditor of Accounts. Under 29 Del. C. §10002(o), this report is a matter of public record, and its distribution is not limited. This report, as required by statute, will be provided to the Office of the Governor, General Assembly, Office of the Controller General, Office of the Attorney General, and Office of the Management and Budget.

This report can be accessed online through the State Auditor's website at <https://auditor.delaware.gov/>.

A handwritten signature in blue ink that reads "Lydia E. York".

Lydia E. York
Auditor of Accounts
Dover, Delaware

PERFORMANCE AUDIT OVERVIEW

The United States Government Accountability Office develops and promulgates *Government Auditing Standards* that provide a framework for performing high-quality audit work with competence, integrity, objectivity, and independence to provide accountability and to help improve government operations and services. These standards are referred to as Generally Accepted Government Auditing Standards (GAGAS).

Performance audits are audits that provide findings or conclusions based on an evaluation of sufficient, appropriate evidence against criteria. Government programs are subject to many provisions of laws, regulations, contracts, and grant agreements. Auditors identify any provisions of laws, regulations, contracts, and grant agreements that are significant within the context of the audit objectives and assess the risk that noncompliance with provisions of laws, regulations, contracts, and grant agreements could occur. Based on that risk assessment, we have designed and performed procedures to obtain reasonable assurance of detecting instances of noncompliance with provisions of laws, regulations, contracts, and grant agreements that are significant within the context of the audit objectives.

We conducted this performance audit in accordance with the GAGAS applicable to performance audits issued by the Comptroller General of the United States. These standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We are required to be independent of the granting and recipient organizations to meet our other ethical responsibilities, in accordance with the relevant ethical requirements related to this performance audit engagement. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

AOA executed this Performance Audit in accordance with the standards applicable to performance audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. We were not engaged to and did not conduct an examination or review engagement, the objective of which would be the expression of an opinion. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported.

AUDIT AUTHORITY

AOA is authorized under 29 Del. C, § 2906(a) to conduct audits of all financial transactions of all state agencies.

AOA audited the Diamond State Port Corporation based on events that transpired during the period July 1, 2021, through June 30, 2025, that involved risk of negative outcomes with both federal and Delaware-sourced taxpayer dollars. This report has been prepared as part of this performance audit project.

AUDIT OBJECTIVES AND SCOPE

Objectives

The objectives established for the performance audit of the DSPC were to:

1. Assess the effectiveness of the Port's performance metrics and financial reporting of current operations in tracking progress toward achieving financial goals as described by the DSPC and its Port Operator.
2. Evaluate the accuracy and reliability of the projected economic impact of the Edgemoor container facility improvements at the Port, including job creation, wages, tax benefits, and infrastructure enhancements.

Audit Scope

The period covered by the Performance Audit was July 1, 2021, through June 30, 2025, and includes other dates prior to or after as considered relevant. All information, data, and documentation records included all publicly available information collected during the planning phase of our engagement, and a review of documentation requested from DSPC to begin the fieldwork to complete the objectives of the Performance Audit.

FINDINGS AND MANAGEMENT'S RESPONSES**Finding 22-25/1: Executive Session Meetings Do Not Meet Requirements in Accordance with Delaware Code****Criteria**

Delaware Code Title 29 - State Government; General Regulations of State Agencies; Chapter 100. FREEDOM OF INFORMATION ACT (FOIA)§ 10001 through § 10008:

Executed Concession Agreement (ECA); Article 21 General; Section 21.23 Confidentiality

Condition

DSPC Board of Directors (BOD) held executive meeting sessions that did not meet the requirements for an executive session according to Delaware Code. Additionally, minutes and agendas were not adequately documented and maintained to capture the information being discussed. This includes but is not limited to the following instances:

- On January 21, 2022, DSPC violated FOIA by failing to provide proper public notice of its executive session, and to take the requisite vote of its members in a meeting open to the public before entering the executive session. The information relayed to the public conflicted with the information discussed in executive session.
- On September 23, 2022, a vote was held to enter executive session to discuss personnel matters, strategy sessions involving legal advice, site acquisitions or sales or leases of real property, or the content of documents excluded from the definition of “public record” in §10002 of Title 29. Topics discussed did not involve the aforementioned matters.

Cause

BOD discussions did not meet the criteria of the executive session and went beyond the scope of the executive session's agenda. Upon entering the executive session, discussions are limited to personnel matters, strategy sessions involving legal advice, site acquisitions or sales or leases of real property, or the content of documents excluded from the definition of “public record” in §10002 of Title 29. Upon review of the public and executive minutes, BOD did not limit discussions to the topics that fall under the exception for executive session.

Delaware Code § 10004. Open meetings Section (b)(4) allows for strategy sessions, including those involving legal advice or opinion from an attorney-at-law, with respect to collective bargaining or pending or potential litigation, but only when an open meeting would have an adverse effect on the bargaining or litigation position of the public body.

Effect

On September 23, 2022, the BOD discussed matters that were unrelated to the specific, sensitive purpose for which the executive session was being held and did not disclose pertinent information on Port of Wilmington (Port) operations to the public. Information discussed in executive session directly conflicted with the information provided in the public session immediately following.

Failure to utilize executive sessions properly can have an adverse effect on the principles of transparency and good governance. This premise may erode public trust and prevent legislators from making well informed decisions on Port operations and investments.

Recommendation

We recommend DSPC take the following actions:

1. While executive sessions are closed to the public, DSPC should document and maintain all executive session agendas and minutes for meetings being held. Minutes should reflect the motions made and votes taken to enter and exit the session, as well as the topics discussed, and the legal exemption relied upon to justify confidentiality in accordance with Delaware Code.
2. DSPC should create a detailed agenda to validate the closed session meeting without compromising the confidentiality that makes the meeting necessary. The Port is a public asset. DSPC, constituting a public instrumentality of the State, should disclose pertinent information on port operations to the public. Confidentiality in an executive session is not automatically granted. Confidentiality applies to topics that satisfy the requirements of Delaware Code and are relevant to the meeting's stated agenda.

DSPC Management's Response to Finding 22-25/1

The mistake at the January 21, 2022 DSPC meeting was previously identified and addressed in Atty General Decision 22-IB04, issued February 18, 2022. The issue was addressed and remediated by the Board of DSPC in its April 22, 2022, meeting.

- Absent judicial intervention, the Delaware Department of Justice has exclusive authority to enforce FOIA. DSPC has received two opinions from the Department of Justice, one providing guidance on its Executive Session procedures and the other affirming DSPC proper use of this litigation exemption in the context of FOIA requests from Holt Logistics. DSPC strives to comply with this guidance while still protecting sensitive information in a highly competitive and litigious environment.
- In addition to following the guidance from the Attorney General's Office, the leadership of the Board has changed. With a focus on enhanced transparency, Board meetings are now being held on a routine basis, with additional opportunities for public input. DSPC has also significantly enhanced its website, including meeting agendas and minutes, important documents related to permitting and function where the public can submit comments and suggestions.

The Auditor's finding that DSPC was not properly in executive session on September 23, 2022 is not accurate and/or is incomplete.

- Litigation is an appropriate basis for executive session and DPSC was (and still is) in active litigation as of September 2022. Litigation was initiated in 2021 by PhilaPort and Holt Logistics, a major competitor to the Port of Wilmington, in an effort to stop Delaware's expansion efforts. In addition, as early as 2020, DSPC was made aware, by way of internal PhilaPort documents, of its plans to initiate litigation to stop Delaware's expansion by challenging the permitting processes. As a result, all discussions around permitting are appropriate for executive session, especially since lawyers and lobbyists for PhilaPort and Holt Logistics regularly attend and monitor DSPC meetings and have been doing so since 2020, while also engaging in an active lobbying campaign to stop Delaware's expansion efforts and undermine operations at the Port. Threats of litigation came to fruition with multiples actions in State courts, beginning in 2021 and Federal court in 2023. While transparency is important, FOIA properly allows DSPC to utilize executive sessions to protect DSPC from litigation and threats of litigation. Doing so protects state resources and the Port's future.
- In addition to the use of executive session for discussion of litigation or threats of litigation, Delaware law permits executive session to discuss the contents of documents that are not public, including drafts of documents that are being negotiated. Discussions at the executive session in September 2022 included a discussion of GT USA's financing and issues with AIG. At that time, agreements were in draft between DSPC and AIG that addressed these concerns. As these documents were in negotiation, highly sensitive discussions around these issues with the Board were appropriate and necessary in executive session.

The assertion that DSPC made statements in the September 23, 2022, public session that “directly conflicted” with the executive session is also not correct.

- During the September 22nd executive session, there was a detailed discussion of permit status noting that landside permits had been obtained but that, at that time, DSPC was still working to finalize 204(f) dredging approval. The public session in the September 23, 2022, meeting was brief, with a few short statements by then-chairman Bullock followed by a vote on two resolutions and public comment. The public meeting minutes record a general statement made in public session by then-chairman Bullock that “although it has been a long process, we now have the permits that are needed to begin construction, although we do not have all of the finishing information in terms of the Federal Government’s responsibility for dredging.” The then-chairman later concluded the meeting by noting that “we have the permits that are needed for Edgemoor”. As a more detailed distinction between landside and dredging permits was made earlier in the meeting, the later statement that “we have the permits needed for Edgemoor” was not misleading or in conflict with executive session – it simply reflects the summary nature of meeting minutes.
- In addition, while there was discussion about existing business at the current Port going well in both executive and public session, there were very sensitive, confidential discussions in executive session about the status of GT USA’s failed efforts to provide funding for Edgemoor, the issues being raised by GT USA’s noteholders (which were the subject of the above-referenced documents under negotiation) and the potential consequences thereof, none of which would have been appropriate for public session. In public session, then-chairman Bullock’s reference to existing business at the Port “going very well,” is the same language utilized in the executive session.

Finding 22-25/2: Weaknesses in Governance and Oversight Over Executed Concession Agreement and Amendments**Criteria**ECA

Article 5 Assignment, Subletting & Organizational Structure
Section 5.4 Organization Structure

Article 21 General
Section 21.3 Audit Rights: Second and Third Amendment

Article 5 Assignment, Subletting & Organizational Structure
Section 5.4 Organization Structure: Second and Third Amendment

Article 8 Joint Governance Committee (JGC)
Section 8.03 JGC Voting Matters: Joint Development Agreement (JDA)

Condition

Governance and oversight over the executed Concession Agreement (ECA) with GT USA Wilmington, LLC (GT USA) were not performed in accordance with the requirements of Article 5, Section 5.4, and Article 21, Section 21.3. Similarly, oversight procedures required by Article 5, Section 5.4 of the ECA, as modified by the Second and Third Amendment with Enstructure Wilmington Holdings, LLC (Enstructure), were not carried out.

Cause

DSPC did not select a designated representative to attend all public, private and executive session meetings of GT USA's board of directors in a nonvoting observer capacity (ECA Section 5.4c). Additionally, the agreement allowed DSPC to audit the records of GT USA (ECA Section 21.3) which was not completed during the duration of the ECA.

Enstructure did not hold regular management and quarterly transparency meetings with DSPC and International Longshoreman's Association (ILA) where Enstructure was to provide a financial summary and audited financial statements in accordance with the Second and Third Amendment Section 5.4b. No meetings fitting this description were held during the scope of this engagement.

DSPC stated that they are in frequent communication with Enstructure through its JGC meetings which were created in accordance with JDA Section 8.03. Given the substance of these meetings, and the fact that ILA is not an intended party to them, these meetings are not a suitable substitute for quarterly transparency meetings with the ILA.

Effect

DSPC is not in compliance with the contract's specific terms. The lack of comprehensive governance oversight over the ECA with GT USA produced financial and operational inefficiencies, financial loss, project delays, and loss of public trust. Additionally, DSPC risks the inability to identify, assess, manage and mitigate the risks associated with the Public-Private Partnership with Enstructure and ILA.

Recommendation

We recommend DSPC take the following actions:

1. DSPC should adhere to Article 5 Section 5.4 (b) of the Second and Third Amendment where a transparency meeting is to be held between Enstructure, DSPC, and ILA. The content and purpose of Article 8 section 8.03 are not encompassed by Article 5 section 5.4 of the ECA Second and Third Amendment, notwithstanding the frequent occurrence of JGC Meetings.
2. Additionally, Enstructure should ensure a financial summary is provided to DSPC and ILA five days in advance of the transparency meeting date, and annual audited financial statements are provided within 30 days of completion. DSPC should record minutes of the transparency meetings for full discussion as an agenda item during BOD meetings.

DSPC Management's Response to Finding 22-25/2

The Auditor's finding that DSPC representatives did not attend meetings and conduct Concession Agreement oversight of GT USA is not accurate and is incomplete.

- Then-chairman Jeffrey Bullock, then-vice chairman Rick Geinsenberger and then-executive director Gene Bailey, acted as DSPC's designated representatives for oversight, meetings and negotiations with GT USA, participated in oversight and negotiation meetings with representatives of GT USA and conducted many meetings with the ILA. The Auditor's office did not interview Mr. Bullock, Mr. Geisenberger or Mr. Bailey as part of this review to confirm whether GT USA held board meetings and thus the findings in this regard are inaccurate and incomplete.
- Once the Board of GT USA was reconstituted in October of 2022 and regular board meetings were held, DSPC representatives attended and participated as observers, with board meeting briefing materials reviewed by DSPC representatives, including its financial advisors. In addition, DSPC representatives were in regular contact with Board members, particularly Michael Jackson, an independent director appointed to the Board at the request of DSPC. DSPC was also in regular contract with Ankura, the consulting firm retained to help manage the Port of Wilmington and Jefferies, the investment banking firm retained to seek an investment/operational partner.
- With respect to the ILA, DSPC has an ILA representative on its Board and DSPC representatives regularly meet with the leadership of the ILA, leadership of the ILA attends DSPC board meetings and have attended executive session to discuss confidential matters. Further, representatives [*sic*] of GT USA and Enstructure met with the ILA routinely.
- Currently, Enstructure and DSPC meet at least once a week and such meetings often include the Chair and Vice-Chair of the DSPC, as well as the Co-CEOs of Enstructure. These meetings are in addition to those provided for under the JDA. Representatives of Enstructure and DSPC also meet with the ILA. The Auditor's office did not interview Enstructure as part of this process, nor representatives of the ILA. In short, the Concession Agreement set a minimum standard as the agreement was for a 50-year period but the number of meetings and oversight far exceeds those referenced in the Auditor's findings and what the Auditor recommends.
- In order to further enhance transparency, DSPC recently created a formal Finance Committee that will meet in public session. Going forward, it is DSPC intention that Enstructure, DSPC and ILA meet in advance of Finance Committee meetings so that findings/issues of that meeting can be, if appropriate, promptly reported to the Finance Committee.

The proposed “Effect” is misleading and damaging to the DSPC, the Port and ultimately the workforce.

- The above referenced “Effect” above states: “The lack of comprehensive governance oversight . . . produced financial and operational inefficiencies; financial loss, project delays, and loss of public trust. Additionally, DSPC risks the inability to identify, assess, manage and mitigate the risks associated with the Public-Private Partnership with Enstructure and ILA.” This “effect” has no nexus to a factual finding that DSPC did not label meetings as “transparency meeting,” especially as DSPC has engaged in *more* than the required minimum. This conclusory statement, which is not based in fact, could be damaging to DSPC, the Port and ultimately the workforce, as it will very likely be used against DSPC in pending litigation.

Finding 22-25/3: Discrepancies Identified in the Execution and Collection Processes of the Concession Agreement**Criteria**ECA

Article 2 Commencement, Term, Premises, Assets and Contracts
Section 2.3(e) Matters Affecting Premises

Article 4 Payments, Prorations, Capital Obligations and Other Consideration to DSPC
Sections
4.1 Initial Payment
4.4 Minimum Annual Concession Fee
4.5 Minimum Annual Volume Guarantee

Article 10 Default
Sections
10.1 GT USA Default
10.2 DSPC Remedies Upon GT USA Default
10.8 Good Faith Negotiations

Second and Third Amendment

Article 2 Commencement, Term, Premises, Assets and Contracts
Section 2.3 Matters Affecting Premises

Article 10 Default
Sections
10.1 Enstructure Default
10.2 DSPC Remedies Upon Enstructure Default

Condition

DSPC was unable to execute the collection of payments, or remedies, in accordance with the ECA with GT USA in a timely manner. The ECA was originally a contract between DSPC (a public sector entity) and GT USA (private sector entity) implemented on September 18, 2018. The agreement allowed GT USA the right to operate and collect revenue for Port operations for a 50-year period.

Article 4 Section 4.1 and 4.4 states that GT USA agreed to an initial concession payment of \$11,536,000, and a minimum annual concession fee of \$3 million. In FY19 DSPC received \$3,129,335 upon commencement and received the remaining \$8,406,665 in FY20.

GT USA had not made minimum annual concession payments and was in payment default in accordance with Article 10 Section 10.1. DSPC entered into Good Faith Negotiations with GT USA in accordance with Article 10 Section 10.8 and passed Resolution 20-03: Authorization of the First Amendment to the Executed Concession Agreement (First Amendment) with GT USA on December 17, 2019, which modified the rate schedule in the ECA.

Cause

GT USA did not meet its financial obligations from commencement of the agreement, and the annual volume guarantee in accordance with the volume schedule as stated in section 4.5. DSPC had rights to default remedies and followed the agreement as stated in section 10.8 to enter good faith negotiations. As GT USA continued to remain in default, section 10.2 provides remedies, however the ECA also states, “In the event of a GT USA Default, DSPC may avail itself of the remedies set forth below (but in no event shall DSPC be obligated to do so).”

Effect

GT USA’s default resulted in its departure as Port operator in July 2023, and subsequently, DSPC departed from its original stated objective in Section 2.3 of the ECA that there be no continuing financial commitment from the State of Delaware to DSPC for operating and capital expenditures. Given the circumstances of GT USA’s departure, DSPC committed funds to legacy infrastructure projects as part of the changeover from GT USA to Enstructure.

No collection remedies were implemented by DSPC and losses of \$97 million were written off as stated in the fiscal year 2023 financial statement audit. The July 28, 2023, Second Amendment to the ECA did not include provisions for the commencement of the Edgemoor project. The JDA was negotiated and executed on December 23, 2024, which established the plan and commitments for the Edgemoor project. This included \$195 million commitment from the State of Delaware as part of the Public Private Partnership with Enstructure. The State’s commitment was funded in the FY23 Bond Bill by Escheat funds which were allocated for a maritime terminal facility development pursuant to 29 Del. C., 87, Subchapter II.

Between FY21 and FY25, the State of Delaware allocated \$233.2 million to DSPC from its sources of general, federal, and capital funds:

<u>Source</u>	<u>Amount</u>
Department of Finance - Escheat	\$ 199,688,952
Department of State Delaware Economic Development	1,936,640
Federal Grants – COVID-19 (CARES Act)	381,628
Federal American Rescue Plan Act	31,185,000
Total:	<u>\$ 233,192,220</u>

In addition, DSPC committed \$15.7 million of its own funds, from operating receipts from the ECA and debt financing, for the following:

<u>Source</u>	<u>Amount</u>
Delaware Department of Natural Resources and Environmental Control (DNREC) Permits	\$ 2,000,000
Management Internal Longshoreman's Association National Health Care Trust Fund	2,900,000
Tire and Tire Remnants Removal (see Finding 22-25/5)	2,000,000
DSPC Approved Infrastructure, Equipment and Safety projects	8,800,000
Total:	<u>\$ 15,700,000</u>

Additionally, on February 20, 2024, House Bill 305 relieved DSPC of a \$16,483,003 debt to the State of Delaware Department of Transportation (DelDOT).

Recommendation

We recommend DSPC take the following actions:

We recommend DSPC execute the collection and remedy procedures specified in the Second and Third Amendment, and JDA for any non-payment. By acting on these procedures in a timely manner, the company will minimize the loss of future revenue and profits from the concession.

DSPC Management's Response to Finding 22-25/3

The findings incorrectly state: "Article 4 Section 4.1 and 4.4 states that GT USA agreed to an initial concession payment of \$11,536,000, and a minimum annual concession fee of \$3 million. In FY 19 DSPC received \$3,129,335 upon commencement and received the remaining \$8,406,665 in FY20."

- The findings incorrectly state: "Article 4 Section 4.1 and 4.4 states that GT USA agreed to an initial concession payment of \$11,536,000, and a minimum annual concession fee of \$3 million. In FY 19 DSPC received \$3,129,335 upon commencement and received the remaining \$8,406,665 in FY20."

The finding that DSPC did not pursue collection remedies is not correct.

- Simplistic references to "collection remedies" reflects a misunderstanding of the particularly challenging and complex situation with GT USA, which had operational control over the Port, its customers and the workforce. As GT USA's leadership soured on the business opportunity at the Port and DSPC became increasingly concerned about compliance with the terms of the Concession Agreement, DSPC's highest priority was to manage this difficult situation in a manner that maintained operations at the Port and its customers, so as to maintain jobs for the workforce. GT USA and its creditors/noteholders interests were to minimize their financial losses, not to mitigate any potential disruption and destabilization their actions in pursuit of those interests might cause. For DSPC, maintaining the Port as a vibrant "going concern" in this context was the highest priority and the decisions made around collections and the like reflected that priority. In contrast, finding investors, re-building a customer base and a workforce in the face of a shuttered facility would have been exceedingly difficult.
- Working in cooperation with GT USA's Noteholders (financial institutions/lenders to GT USA), the GT USA Board was re-constituted with three independent directors taking over the Board, operational control of the company secured, and GT USA's management team removed. At DSPC's insistence, the reconstituted Board retained a consulting firm (Ankura) to ensure continuity of operations during this period of transition. This ultimately led to the expulsion of GT USA and the assignment of the Concession Agreement to Enstructure, after a competitive, market driven process administered by a reputable investment banking firm (Jefferies). In short, terminating GT USA's rights to a 50-year concession agreement was the most significant and serious remedy available and it was exercised. Importantly, it was done in a manner so as to minimize disruption, including maintaining operations, the Port's customers, and the workforce. It eventually led to a new operator, Enstructure, which committed to making \$87 Million in new capital investments at the current Port and is now operating the Port such that the number of workers/hours likely exceeds that of any time in the Port's history. This was accomplished without disruptive and potentially destabilizing litigation or bankruptcy proceeding.

- The collection remedies/competitive market driven process as referenced above was shared in significant detail with the offices of the Attorney General and Auditor in August 2023, in response to complaints about that process from Holt Logistics, the Port's most significant competitor, a frequent litigant against DSPC and failed bidder in that process. Having learned the Auditor's office spoke with representatives of Holt Logistics as part of this performance review process but did not meet with Enstructure, the same information was shared with the Auditor again, as part of this review.

The finding that DSPC suffered a "\$97 million loss" is incorrect, incomplete and mischaracterized.

- The \$97 Million was a "paper loss" based on required accounting treatment, *not a loss of actual cash and is not related to collection practices*. Specifically, when the concession agreement with GT USA was executed in 2018, DSPC was required under accounting rules to record a \$120 million "paper gain" on its balance sheet, which was the estimated "present value" of monies to be received over the 50-year transaction. Thus, the "paper loss" was based on required accounting treatment of the 2023 amendment and a discount rate appropriate to Enstructure, it was not related to collection practices. In short, *this was not cash, it was a revision of an estimate of what DSPC would receive if GT USA fully performed, including building and operating Edgemoor, employing a discount rate that was subsequently reviewed and approved annually by DSPC management and its auditors.*
- When it became clear GT USA was not going to fully perform as required under the Concession Agreement, DSPC and GT USA's Noteholders (financial institutions/lenders to GT USA), exercised their remedies and took control of the operating company and eventually assigned the concession to Enstructure, which initially did not include a commitment to build and operate Edgemoor. This required DSPC to represent a portion of the previously reported \$120 million estimated asset as a "loss," since GT USA no longer held the Concession Agreement and the then-current Concession Agreement did not include Edgemoor. These important clarifications and context were shared with the Auditor's office back in 2024, as part of the regular audit process by the Auditor's Office. In fact, the FY 2024 Financial Statement Audit released by the Auditor specifically provided this clarification with respect to the "one-time write down of \$97 Million:"
 - "This reflected the market-driven value of assets based on open market bides, including Enstructure's which was being negotiated at June 30, 2023. *The write down of assets reflected non-cash accounting difference* between the original concession fees (as set forth in 2018) that had been based on long-term projects cargo volumes at the Port of Wilmington and Edgemoor versus the 2024 Amendment to the Concession Agreement wherein concession fee estimates are based solely for the Port of Wilmington" See *Auditor of Accounts, Diamond State Port Corporation Financial Statement Audit FY 2024* at page 5 (emphasis added).

- The reference to “debt financing” is not correct, as no debt was taken on by DSPC and the reference to House Bill 305 and the DelDOT loan in connection with the more recent events subject to this performance review is misleading. This loan dates back decades to when the State and DSPC were funding all operational and capital expenses. Neither GT USA nor Enstructure assumed this loan and thus forgiveness of the loan was not related to current events that are the subject of this review.

Finding 22-25/4: Outdated Economic Impact Analysis for Direct Jobs Projected**Criteria**

Edgemoor Development Plan Public Session Presentation: Seabury Maritime Port of Wilmington Economic Impact Study (Seabury Report)

Bureau of Economic Analysis (BEA) Concepts and Methods of the U.S. Input-Output Accounts

Condition

The Seabury Report states that the Methodology used in estimates is the Impact Analysis for Planning (IMPLAN) model. In reference to the IMPLAN model the report states “like all input-output models is limited in one critical way, specifically, it is not a dynamic simulation model and therefore is not recommended for rigorous forecasting functions. The main reason for this limitation is that IMPLAN ignores technical change that affects its multipliers.” It also acknowledges “...for long-term investment in infrastructure, researchers will need to make adjustments to the IMPLAN multipliers to account for technological change.”

IMPLAN models rely on data sets provided by the BEA. Input-Output analysts must collaborate with Census Bureau data-collection staff to identify changes that affect the industry data. The primary data source for the benchmark Input-Output tables is the Economic Census, which the Census Bureau updates every 5 years, most recently in 2022.

DSPC referenced the Seabury Report in its 2024 public releases surrounding the JDA as it relates to job projections, but in the IMPLAN model used in the Seabury Report, the sourced data utilized is prior to the 2022 Economic Census.

Cause

The Seabury Report was completed in February of 2018 using data from 2010 – 2017 and is still being utilized by DSPC as the primary source of jobs data through the scope period of this engagement.

The public meetings discuss the importance of Port-related positions that will be available to Delawareans, however there is no information offered on the current number of employees at the Port to compare to the projected amount being presented.

Effect

By utilizing a study that does not source the most recent Economic Census data, DSPC runs the risk of distorting the project's true benefits and risks, and leads to misinformed public policy decisions and the misallocation of public resources.

Recommendation

We recommend DSPC take the following actions:

1. During open meetings DSPC should provide a more detailed, role-based breakdown of direct jobs and their associated percentages, both current and projected. This would offer the public a clearer understanding of the opportunities currently at the Port and projected to be created.
2. DSPC should commission an updated Economic Impact Study to provide more current and reasonable estimates of the Port's financial capability, economic viability, and job growth. In addition, the study should factor in contingency plans of possible changes to the economic and technological environments surrounding the Maritime Industry.

DSPC Management's Response to Finding 22-25/4

The findings with respect to job projections are incomplete, as they fail to reference all of the studies undertaken and do not acknowledge that there is no auditable standard.

- The jobs projections were not based solely on the Seabury Report but also included input from Enstructure as to their projections for jobs at the current facility and Edgemoor, once it fully built out and operating at 1.2 million TEUs.
- The referenced IMPLAN model is utilized by the Delaware Division of Small Business (the "Division") and is commonly used for economic development projects in Delaware. At the request of DSPC, the Division took the Seabury Report, the above-referenced information from Enstructure and utilized the IMPLAN Model to provide the referenced job projections. These materials were provided to the Auditor's Office in connection with this review.
- There were additional studies undertaken by the U.S. Army Corps of Engineers in connection with 204(f) approval, which was included in the data room provided to the Auditor's Office in connection with this performance review, as well as a commercial viability study undertaken Enstructure, which was also provided in the data room. These studies also provided important economic analysis that is consistent with the Seabury Report and this analysis informed DSPC's policy decisions. Neither of these studies, which were updated analyses are mentioned in the Auditor's findings.
- In addition to the above-referenced studies, DSPC has been the recipient of two federal grants – one by MARAD and one by EPA. Both of these grants included a submission regarding economic viability. Both MARAD and EPA reviewed these submissions and awarded grant funds. Again, none of this is referenced in the findings but the information was included in the data room in connection with this review.
- The feasibility of development of a container port specifically in Delaware has been rigorously and repeatedly tested, and the general expectation of future demand for container terminals on the eastern seaboard is irrefutable. Further, in an effort to continue updating studies and analysis of the Edgemoor project, DSPC recently submitted a grant application for a federal grant which would fund yet an additional study.

Finding 22-25/5: Non-Compliance with Permitting and Approval Requirements: Removal of Tires and Tire Remnants at Edgemoor Site**Criteria**

Resolution 23-04: Authorizations Related to the Removal of Tires and Remnants from the Edgemoor Property: Edgemoor Tires Removal Reimbursement Agreement between DSPC and Enstructure: Executed Concession Agreement Article 6 Maintenance, Alterations, Improvements, and Dredging; Section 6.5 DSPC Access and Inspection: DNREC Secretary's Order No. 2022-WH-0009.

Condition

DSPC did not enforce Article 6 Section 6.5 of the ECA for access and inspection. GT USA entered into an agreement with S&A Marketing Company to pay GT USA to facilitate exporting tire remnants/scrap, resulting in tires and tire remnants/scrap being placed at Edgemoor site without securing proper permits and approvals. DSPC passed resolution 23-04 on May 22, 2023, which authorized the DSPC Chair to exercise DSPC's right under the ECA to take all necessary action to bring the Edgemoor property into compliance, including emergency bid-waiver authority, expending necessary funds, and/or charging GT USA for all costs. An expenditure of \$2 million was authorized for the removal of the tires and tire remnants in accordance with the Edgemoor Tires Removal Reimbursement Agreement (see Finding 22-25/3).

Cause

DSPC was unaware of the agreement with S&A Marketing Company (S&A Marketing), and no documentation of the initial agreement between GT USA and S&A Marketing was obtained or documented. GT USA filed a legal action against S&A Marketing in the Justice of the Peace Court in New Castle County for a writ possession to authorize the possession and removal of the tires. Justice of the Peace accepted the writ of approval, and in accordance with Secretary's Order No. 2022-WH-0009, DNREC approved GT USA's plan for removal of the tires and tire remnants. GT USA did not remove the tires, and in order to obtain a new port operator and continue the Edgemoor project, DSPC entered into the Edgemoor Tires Removal Reimbursement Agreement with Enstructure.

Effect

DSPC footed the bill for the environmental clean-up.

Inadequate corporate oversight of the Port's Public-Private Partnership operations increases the risk of susceptibility to improper spending, conflicts of interest, and other financial and commerce irregularities.

Recommendation

We recommend DSPC take the following actions:

DSPC should implement Section 6.5 of the concession agreement to inspect the premises, assets, and operational records whenever it reasonably suspects a failure to meet any material obligation. This includes failures related to the standard of care, basic condition, or safety and security.

DSPC Management's Response to Finding 22-25/5

The finding that DSPC did not engage in proper oversight is incomplete.

- The expulsion of GT USA was driven, in part, by GT USA's failures with respect to securing proper permits and providing notice with respect to the S&A Marketing contract to store tires and tire remnants. To that end, it was DSPC that demanded the reconstituted Board of GT USA initiate the referenced legal action against S&A Marketing, so the tires could be legally removed.
- Given the uncertainty regarding GT USA, DSPC paid for the clean-up to promptly resolve the health and safety risk associated with the tires and tire remnants as a matter of sound public policy.

DSPC Management's Response to Findings – Cover Letter



November 25, 2025

BY EMAIL: [REDACTED]

[REDACTED]
Delaware Office of Auditor of Accounts
Townsend Building, Suite 1
401 Federal Street
Dover, DE 19901
Attn: [REDACTED]

Re: Responses to Proposed Performance Audit Findings

Dear [REDACTED]

On behalf of the Diamond State Port Corporation ("DSPC"), we appreciate the opportunity to review and comment on the proposed findings from the performance audit undertaken by the State of Delaware Office of Auditor of Accounts. As a steward of critical port infrastructure, DSPC is committed to continuous improvement, strong governance practices, and responsible service to the State of Delaware and we welcome the opportunity to strengthen our internal processes wherever appropriate.

Attached please find DSPC's detailed responses to each proposed finding. Where our comments note factual clarifications and/or corrections or provide additional operational context, these comments are offered to ensure the final report accurately reflects DSPC's structure, obligations, and decision-making processes.

We welcome further dialogue with your team and would be pleased to provide additional documentation or discussion regarding our responses as you finalize the audit report.

Sincerely,

Joel Heller, Treasurer

Enclosure

DIAMOND STATE PORT CORPORATION OVERVIEW

DSPC was created on August 3, 1995, in accordance with the provisions of Section 24(1) of Senate Bill 260 enacted by the 138th General Assembly of the State of Delaware (the State). DSPC is a public instrumentality of the State pursuant to 29 Del. C., Chapter 87, Subchapter II.

Its purpose is to own, preserve, and exercise government functions necessary in connection with the acquisition, establishment, construction, rehabilitation, improvement, operation, and maintenance of the Port and related facilities, including without limitation marine terminal facilities, which are deemed and held to be essential government functions of the State.

The Port was acquired by DSPC on September 1, 1995. DSPC is empowered without limitation, and notwithstanding any other laws, to adopt bylaws and rules and regulations to govern the conduct of its affairs and carry out and discharge its powers, duties, and functions, to sue and be sued, and to enter into contracts and agreements. DSPC does not have power to tax, to issue bonds, to exercise the power of eminent domain, or to pledge the credit or create any debt or liability of the State.

Prior to October 2018, DSPC was responsible for all operations of the Port. Since October 2018, DSPC has operated as a landlord owner of the Port. At that time DSPC entered into a long-term agreement under which responsibility for all operations was ceded to a private firm, including employees, operating assets, etc. Real property and other fixed assets still owned by DSPC are leased to the concessionaire. Although the agreement is referred to as a "concession," it does not meet the definition of a concession agreement per Governmental Accounting Standards Board Statements 60, *Accounting and Financial Reporting for Service Concession Arrangements*, and 94, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements*. Specifically, the Port operator/transferee (GulfTainer and Enstructure) determines the rates that can be charged to the customers of the Port. Rather, under the Statements, it is required to be accounted for as a lease.

**DIAMOND STATE PORT CORPORATION CONCESSION AGREEMENT
BACKGROUND**

Effective October 3, 2018, DSPC and GT USA entered the ECA to transfer the right to commercially operate the Port to GT USA for 50 years with DSPC becoming a landlord with certain oversight and consent rights. The agreement was intended to remove DSPC from any continuing financial commitment for operating expenses and capital expenditures. GT USA gained operating control of the Port and the right to bill, collect, and retain all revenues from the Port's operations without undue interference from DSPC. Terms were established for potential future land acquisitions at Pigeon Point, Wilmington South Disposal, and Riveredge. DSPC and the concessionaire had the option to pursue expansion of the Port to an additional site, the former site of DuPont's Edgemoor plant (Edgemoor), which DSPC purchased in 2017.

In return for the right to commercially operate the Port, the ECA required GT USA to invest \$580 million to redevelop the existing Port facilities, to establish new Port facilities at Edgemoor, and to pay DSPC annual concession fees. GT USA agreed to minimum capital expenditure thresholds related to the existing Port, warehouse facilities, and the Edgemoor Site development and set an expected start date for the Edgemoor facility of December 31, 2020, with an option to defer the project to December 31, 2022. GT USA agreed to an initial concession payment of \$11.5 million upon commencement of the agreement and assumed responsibility for dredging costs post-commencement. GT USA also agreed to minimum volume guarantees for Port cargo, and quarterly concession payments, including a minimum annual concession fee of \$3,000,000 per year for the first ten years of the term, \$13,100,000 for the eleventh year, and up to \$12,017,560 per year during the remaining thirty-nine years. The minimum concession fee was based on volume of services provided by GT USA. The minimum concession fee was adjusted every third year based on the change in consumer price index.

In January 2019, GT USA exercised their right under Article 18: LEASHOLD MORTGAGES: Sections 18.1 – 18.5, to secure a \$350 million mortgage from Wilmington Trust, N.A., secured by the right to use assets of the Port in relation to the Agreement. However, the assets of the Port (as owned by DSPC) were not subject to default remedies. New Castle County Recorder of Deeds records reflected the Mortgage was satisfied in September 2023.

DSPC held a Board meeting on December 17, 2019, which discussed and passed Resolution 20-03: Authorization of the First Amendment with GT USA. This amendment modified the rate schedule in the ECA and gave the Chairman, Jeffrey Bullock, the ability to negotiate the concession agreement rates, and allowing for the following changes:

- Modifying language for Years One through Nine of operation to base the concession fees on Forty Foot Equivalent Units (FEU) instead of Twenty Foot Equivalent Units (TEU).
- Setting a guaranteed concession fee for GT for year ten of operation at the greater of calculated fees or \$13,100,000.
- Reaffirming the minimum annual concession fee.
- Altering language regarding the Minimum Annual Volume Guarantee to reflect FEUs instead of TEUs.
- Setting satisfaction terms for the initial payment of the concession agreement.
- Agreeing to transfer \$5,000,000 to DSPC which will be applied towards land acquisition related to the Edgemoor project.

Effective February 10, 2020, the per unit concession fee was reduced 50% for the first ten years of the ECA. DSPC received a fee of \$13,406,665 from GT USA as fee for the First Amendment to the ECA. In conjunction with the amendment, DSPC agreed to accept payment of the concession fee for the period from July 1, 2019, through February 10, 2020, in four equal payments. The first two payments were received in April 2020 and February 2021. The remaining two payments of \$647,478 each were scheduled to be due on February 10, 2022, and 2023. As of June 30, 2022, the February 10, 2022, payment was not received and was included in the concession fee receivable.

In August 2020, DSPC submitted permit applications for the proposed Port expansion at Edgemoor. The permits required included the following to be approved and issued by the U.S. Army Corps of Engineers:

- Section 408 – Evaluation of the federal navigation channel
- Section 10 and 404: Rivers and Harbors Action and Clean Water Act
- 204F

DSPC was also required to obtain permitting from the State of Delaware Department of Natural Resources and Environmental Control (DNREC), including a Subaqueous Land Permit. A joint public hearing was held on September 19, 2020, where DSPC proposed to construct a new container port on the Delaware River at DSPC's Edgemoor Site, located at 4600 Hay Road, Edgemoor, New Castle County, Delaware, 19809.

On June 17, 2021, DSPC accessed the State's COVID-19 Relief Grant funds totaling \$381,628 for eligible equipment and service expenses, as outlined in an agreement between the State of Delaware and DSPC.

On September 30, 2021, DNREC issued a permit for the Edgemoor Site expansion, which included the Subaqueous Lands Permit and a Federal Consistency Certification for the initial phase of the expansion (DNREC Secretary's Order No.: 2021-W/CCE-0026). The issuance of this permit would be appealed separately on October 20, 2021, by several parties including The Philadelphia Regional Port Authority, Greenwich Terminals LLC, and Walter F. Curran. These appeals were consolidated on March 10, 2022.

In September 2021, GT USA Wilmington CEO Eric Casey was fired during a period of cash flow problems with GT USA Wilmington. Joe Cruise was announced as taking over as GT USA Wilmington CEO. GT USA CEO Peter Richards held a late August 2021 company meeting, a recording of which was obtained by the News Journal, in which he acknowledged that GT USA had been losing money throughout its three years as Port operator. Richards acknowledged the cash shortfall and having to obtain a \$10 million cash infusion from investors as well as another \$10 million investment from those investors into the facility due to the operation losing money. Richards claimed there was \$23 million from customers that "wasn't being collected" and stated GT USA would improve their situation by charging existing customers more for Port services and transitioning to "different revenue streams".

On April 22, 2022, DSPC Board passed the following resolutions:

- 22-05 Authorization for MILA – DSPC disbursed a payment of \$2.9 million to GT to fund upfront premiums associated with membership in the MILA National Health Care Trust Fund that provides health benefits to certain members of ILA employed by GT USA at the Port.
- 22-06 Authorization for Development Expenses at Edgemoor – DSPC also accessed funds from the State’s Infrastructure Grant administered by the Department of State Division of Small Business totaling \$1,936,639 to help reduce environmental emissions, expand the capability, capacity, and efficiency of the current Port and to expand to Edgemoor with new facilities, all of which will serve to retain existing permanent port related jobs, create hundreds of additional port related jobs, while also providing significant construction related jobs.

On June 30, 2022, Governor John Carney signed HB475, the Fiscal Year 2023 Bond and Capital Improvements Act which contained the following related to the Port:

- DSPC has the authority to amend the ECA and/or enter into a new Concession Agreement with the subsequent concurrence of the co-chairs of the Bond and Capital Improvement Committee, the Controller General, the President Pro Temp of the Senate, and the Speaker of the House.
- DSPC can defer loan payments to the Transportation Trust Fund, which had an outstanding balance of \$16,152,601.
- DSPC is appropriated \$5 million for a Port Terminal Access and Training Facility.
- Escheat funds can be used for a “maritime terminal facility development” pursuant to 29 Del. C. 87. Subchapter II.

In the summer of 2022, regulators from DNREC first learned that approximately 10,000 tons of tire piles were delivered to Edgemoor as an approved arrangement between GT USA and S&A Marketing, which GT USA did not obtain a permit for the operation.

On September 19, 2022, State of Delaware Vice Chancellor Lori W. Will ruled that GT USA owed \$21 million in damages for breach of an agreement made in 2018 to purchase the Port’s former stevedoring firm, Murphy Marine. GT USA was also found in contempt for violating a court confidentiality order by using materials it obtained in defending itself.

Between September and October of 2022, GT USA borrowed \$100 million from American International Group (AIG), which also provided AIG with the option to replace the members of the GT BOD at the Port if GT USA defaulted. The News Journal published the story “Port operator’s financial issues prompt board changes, pushback from key supporters” with the following:

- DSPC Board Member Representative Debra Heffernan-D Bellefonte sent a letter to Governor John Carney and Secretary of State Jeffrey Bullock noting GT USA had not made a concession payment in more than a year and was delinquent by at least \$3 million and in breach of the Concession Agreement.
- AIG exercised its option after GT USA Wilmington defaulted on \$100 million to dissolve GT’s BOD and reconstituted with corporate restructuring consultants Tim Pohl and Michael Sullivan, as well as Mike Jackson, a former director of Delaware OMB.

On January 12, 2023, DSPC and GT USA entered into an Agreement with Respect to the Edgemoor Project at the Port (Early Works Construction). Pursuant to Resolution 22-06, DSPC acknowledged and anticipated receiving funds from allocations to the State of Delaware under the American Rescue Plan Act of 2021 (ARPA) and utilizing such funds in connection with, among other things, the Edgemoor Project.

From January 27, 2023, through July 31, 2023, DSPC accessed State of Delaware American Rescue Plan Act funds totaling \$30,760,000, as administered by the Governor’s Office through its Senior Accounting Manager. \$21.5 million was disbursed on June 21, 2023, to the USACE for the design and construction of a dredged material placement facility estimated to cost approximately \$22.8 million with an annual operating cost estimated to be \$400,000 to accommodate 3.1 million cubic yards of dredged material over 20 years of maintenance dredging.

On April 21, 2023, DSPC Board passed Resolution 23-02: Amendments to the ECA and Related Funding. This authorized the Chair and DSPC Finance and Audit Committee to select one of three remaining bidders on or before May 22, 2023, to negotiate final amendments to the ECA. DSPC enacted the bid process during the winter of 2023.

On May 22, 2023, DSPC Board passed the following resolutions:

- 23-03: Authorizations Related to Amendments to the ECA and the Expenditure of Funds related thereto. This allowed the DSPC Chair to exclusively negotiate the final amendments to the ECA with Enstructure, consistent with the Term Sheet attached to the resolution, as approved by DSPC Board, and take all necessary action to effectuate the transaction and related transition.
- 23-04: Authorizations Related to the Removal of Tires and Remnants from the Edgemoor Property. This authorized the DSPC Chair to exercise DSPC’s right under the ECA to take all necessary action to bring Edgemoor into compliance, including emergency bid-waiver authority, expending necessary funds, and/or charging GT USA for all costs. However, in accordance with the concession agreement, DSPC covered the cost for the tire removal, approximately \$1.1 million during fiscal year 2024, as maintenance to the site for Enstructure to officially take over.

Effective July 28, 2023, DSPC amended the ECA to transfer from GT USA to Enstructure. The Second Amendment with Enstructure extended the term through 2078 (60 years) and amended certain other provisions.

On January 15, 2024, Greenwich Terminals LLC, Gloucester Terminals LLC, and The Philadelphia Regional Port Authority filed suit seeking to vacate the 404/10 and 408 permits issued by the U.S. Army Corp of Engineers to DSPC (*Greenwich et al. v. USACE*).

On February 13, 2024, The DNREC Environmental Appeals Board heard oral arguments in an appeal brought by the Philadelphia Regional Port Authority, Greenwich Terminals LLC, and Walter F. Curran regarding the body's issuance of a Subaqueous Land Permit to DSPC. The appeals board ruled against the appellants on May 10, 2024.

On February 20, 2024, DSPC entered into a cancellation agreement with the DelDOT to forgive all notes and forego all amounts owed under the original loan agreement, including any outstanding principal, accrued interest, and capitalized interest. DSPC recognized a gain of \$16,483,003 for the forgiveness of the loan. The loan originated on November 30, 2021. During fiscal year 2020, DSPC and DelDOT renegotiated terms to allow for the deferral of debt service principal and interest payments and to restructure the principal balance at a rate of 3.99%. During FY2022, DSPC and DelDOT renegotiated terms again to reduce the interest rate from 3.99% to 1.18%.

On April 30, 2024, the Secretary of Finance and Vice Chair of the DSPC BOD Richard Geisenberger wrote a letter to Director of the Office of Management and Budget Cerron Cade, Capital Improvement Committee Chair and DSPC Board Member Debra Heffernan and Capital Improvement Committee Vice Chair John Walsh informing them that in accordance with the FY23 and FY24 Bond Bills, he deemed there is an excess of \$195,000,000 of Escheat Funds and proposed these be expended for a new maritime facility known as Port Delaware North located on the Edgemoor property as part of a Public-Private-Partnership development deal with Enstructure. All three recipients signed for consent.

On May 8, 2024, the State of Delaware announced a Public-Private Partnership to develop a new port terminal at Edgemoor. The project was expected to cost \$635 million with the State absorbing responsibility for approximately 31% (\$195 million) of the cost. State funds were expected to come from "excess abandoned property revenues made available in previous state bond bills for specific one-time uses."

On May 10, 2024, DSPC Board passed Resolution 24-03: Approve and Authorize Enstructure Development Plan, which DSPC later incorporated into the Third Amendment of the ECA, which reflected the terms of the agreement between DSPC and Enstructure as it relates to the operation of the Port, and made adjustments based on the JDA becoming enacted.

On May 29, 2024, the Secretary of Finance Vice Chair of the DSPC BOD Richard Geisenberger sent authorization to Director of the Division of Accounting requesting \$195 million be transferred from the reserve to a separate special fund with the State Treasurer on behalf of DSPC. On June 20, 2024, the Director of the Division of Accounting confirmed the transfer of escheat funds, creating Appropriation 25268 as a non-appropriated special fund.

On July 23, 2024, DSPC entered into a Reimbursement of Approved Projects Agreement with Enstructure, which provided funding for critical deferred maintenance and improvements, mainly due to the inadequate conditions of the Port as left by GT USA upon exit of the concession agreement. This agreement provided \$8.8 million of funding for approved projects that address infrastructure, equipment, and safety issues. As of June 30, 2024, DSPC accrued a liability of approximately \$6.2 million, of which approximately \$4.4 million was for capital improvements and \$1.8 million was for repairs and maintenance.

On October 27, 2024, DSPC accessed ARPA funds totaling \$325,000 in connection with the Agreement with Respect to the Edgemoor project at the Port.

On October 28, 2024, Judge Mark A. Kearney of the US District Court for the Eastern District of Pennsylvania issued a decision in *Greenwich et al. v. USACE* vacating the Army Corps' 404/10 and 408 approvals for the Edgemoor project citing a failure of USACE to engage in 'reasoned decision making' and 'arbitrarily and capriciously' departing from its own procedures. The decision stated that USACE 'may now reevaluate DSPC's applications and take action consistent with their obligations as it relates to the scope of USACE's review under the Clean Water Act and the Rivers and Harbors Act, the need for reconsideration of navigation and safety issues, and the Corps obligation to ensure Diamond State obtains a Statement of No Objection from the Philadelphia Port Authority'.

On October 30, 2024, the State announced award of a \$127.5 million grant from United States Environmental Protection Agency's Clean Ports Program for zero emission technology deployment.

Gunnip & Company completed an audit on December 5, 2024, of DSPC's Financial Statements as of and for the year ended June 30, 2024, indicating in a management discussion & analysis section that 2024 operating expense increased over 2023 primarily due to legal and consulting fees with Second Amendment and a development of the JDA. AOA posted the audited financial statements on its website on December 19, 2024.

On December 19, 2024, DSPC accessed ARPA funds totaling \$100,000 in connection with the Agreement with respect to the Edgemoor project at the Port.

DSPC and Enstructure entered into the JDA, which became effective upon full execution on December 23, 2024. The development is currently in a “Phase 0” pre-development stage of planning and preparation. Subsequently, the development will be undertaken in three phases:

- Phase 1 will include the development of a portion of the Contributed Property by DSPC (DCT Property) including changes provided in Phase 1 Owner’s Requirements. Enstructure shall manage the development as a Reasonable and Prudent Developer, including pursuing appropriate rights and remedies against the Design-Builder, consistent with such Reasonable and Prudent Developer standard, if Phase 1 is not completed on the timeline agreed in the applicable Design-Build Agreement. Phase 1 will be further divided into the projects related to the Port Infrastructure Development Grant (PIDP Grant), and the Clean Ports Program Grant (CPP Grant). Public Private Partnership has secured \$177 Million in EPA CPP and PIDP Grant funds. \$50 Million of PIDP funds have been allocated to the procurement and development of the container yard, new modern and efficient truck gate complex, and terminal buildings for the Edgemoor project. \$69 Million of CCP funds have been allocated to the procurement and development of new rubber-tire gantry cranes, electric top handlers, electric terminal trucks and associated charging stations for the Edgemoor port. \$58 Million of the CPP funds are allocated to the development and procurement of electrification of ship-to-shore container cranes and rubber-tire gantry cranes, electric forklifts, top handlers, terminal trucks and associated charging stations, and additional required electrical infrastructure for the Port. In addition to the grants, 100% of the DSPC Phase 1 Commitment of Two Hundred Fifteen Million Dollars (\$215,000,000), and Twenty-Five Million Dollars (\$25,000,000) of the Enstructure Phase 1 Commitment, will be contributed on a prorated basis. General Funds shall be used for all hard and soft costs relating to the Development, including certain costs and expenses related to litigation, other than the hard costs of the Operating Equipment. One Hundred Twenty-Five Million Dollars (\$125,000,000) of the Enstructure Phase 1 Commitment is earmarked for cranes and other operating equipment. Any excess Enstructure Phase 1 Commitment not used for such purposes will be paid into General Funds after one hundred percent (100%) of the DSPC Phase 1 Commitment has been expended. The Parties will share any underbudget savings in proportion to their relative obligations with respect to the DSPC Phase 1 Commitment and the Enstructure Phase 1 Commitment.
- Phase 2 is currently anticipated to include the development of an additional portion of the DCT Property and is currently estimated to result in an increase of an additional 400,000 TEU per year annual capacity, 650,000 TEU total per year. Upon receipt of all applicable permits, Enstructure shall be permitted to complete Phase 2 without any further consent of DSPC. If no DSPC funds are used, and DSPC is not a sponsor for any grants used, in connection with Phase 2, the governance rights (but not the rights to information) of the JGC shall not apply to Phase 2. If DSPC funds are used, or DSPC is a sponsor for any grants used, in connection with Phase 2, the provisions of the JDA relating to the JGC shall continue to exist and apply to Phase 2.

- Phase 3 is currently anticipated to include the development of the final portion of the DCT Property and is currently anticipated to result in an increase of an additional 550,000 TEU per year annual capacity, 1,200,000 TEU total per year. The Parties agree to negotiate and enter into an agreement similar to this JDA to govern the construction of Phase 3 if and when such development is undertaken. Enstructure shall be permitted to complete Phase 3 with the consent of DSPC. If no DSPC funds are used, and DSPC is not a sponsor for any grants used, in connection with Phase 3, DSPC shall have similar rights to information as the JGC but shall not have consent rights with respect to Phase 3. If DSPC funds are used, or DSPC is a sponsor for any grants used, and DSPC has consented to Phase 3, the JDA the parties intend to enter into include provisions that give DSPC the same governance and informational rights as the JDA. The amount of required funding for Phases 2 and 3 remains to be determined, but the Parties currently estimate that Enstructure will provide Fifty Million Dollars (\$50,000,000) to complete Phase 2 and One Hundred and Fifteen Million Dollars (\$115,000,000) to complete Phase 3. The Parties agree that, unless otherwise agreed, Phases 2 and 3 will be fully funded by Enstructure.
- The information presented during public meeting sessions subsequent to the signing of the JDA references the number of direct jobs to be created at the Port in the form of a Seabury Report, which was commissioned in February 2018. The report extrapolated traffic and activity in and around the Port at a point in time while using data compiled by Economic Census information available from 2010 - 2017. The analysis estimates 2,951 direct jobs, 1,188 indirect, and 1,578 induced in 2017 for a total of 5,717. The report broke down the direct jobs per the following:

Category %	Category Type	Number of Direct Jobs Projected
45.3%	Truck Drivers	1,336
16.7%	Auto Processing Workers	492
9.3%	In Port/Out Port Warehouse Workers	273
7.9%	Longshoremen	233
6.1%	Port Operations Workers	180
3.8%	Rail Crews	112
0.8%	Other Stevedoring	24
10.2%	Not Allocated	301
Total		2,951

Between January 13, and January 23, 2025, which coincided with the transition of State of Delaware Governor administrations, the following events occur simultaneously:

- DSPC Treasurer and Director of the State of Delaware Division of Accounting transferred the \$195,000,000 from Appropriation 25268 with the State Treasurer to DSPC.
- A suit was filed in the State of Delaware Superior Court by Greenwich Terminals LLC, Gloucester Terminals LLC, GMT Realty LLC, and Walter F. Curran over the May 10, 2024 ruling by DNREC's Environmental Appeals Board to uphold DNREC's issuance of the Subaqueous Land Permit to DSPC (*Greenwich et al. v. DNREC*).
- SB44 (An Act To Amend Title 29 Of the Delaware Code Relating To DSPC) was introduced, which limits the Governor's ability to nominate a chairperson for DSPC, instead, allowing board members to nominate the chair. SB44 remains in committee as of the date of this report.
- Voucher 8083675 is processed transferring \$195,000,000 from the special appropriation via the Escheat Reserve Funds to DSPC as permitted in the FY24 Bond Bill.
- DSPC Treasurer and Director of the State of Delaware Division of Accounting transferred the \$4,668,952 of accrued interest from the inception date of June 20, 2024, from Appropriation 25268 with the State Treasurer to DSPC.

On April 14, 2025, Delaware Superior Court Judge Kathleen Miller ruled in *Greenwich et al. v. DNREC* that the Environmental Appeals Board failed 'to reflect a rational consideration of the evidence' and reversed their May 10, 2024, decision to uphold the issuance of the Subaqueous Lands Permit to DSPC, remanding it back to the Environmental Appeals Board for further evaluation.

On May 19, 2025, a meeting was held with the Port of Wilmington Task Force and DSPC BOD. DSPC BOD passed the following resolutions:

- 25-05: Fourth Amendment to Executed Concession agreement (Fourth Amendment) adding 701 Christiana Avenue to Enstructure's Leasehold Interest. Enstructure will pay approximately \$10,000 additional per month with this property added to the agreement.
- 25-06: Fifth Amendment to the Executed Concession Agreement (Fifth Amendment) to 1995 Acquisition Agreement with City of Wilmington (extending deadline to exercise Pigeon Point Option). This extended the option for DSPC to acquire the property from the city for \$1 to June 2026.
- 25-07: Ratification of Agreement with Respect to the Port (Approved Projects) and Authorize of Disbursement Transfer Thereunder. This allowed Enstructure to receive a disbursement of a committed \$8.9 million DSPC had allocated for repairs deemed necessary upon Enstructure's takeover of operations from Gulftainer.
- The chair tabled Resolution #25-08 until the next meeting.

On June 23, 2025, DSPC Board passed the following resolutions:

- 25-08: Subaward Agreement for EPA Clean Ports Grant Award which allows Enstructure to act as the subrecipient for the Clean Ports Grant.
- 25-09: Authorizing USACE Leases (No. DACW-31-1-24-182 and No. DACW-31-1-24-183) which allows DSPC to sublease the 'Wilmington Harbor South Disposal Area' to Enstructure which has previously been leased long-term by DSPC from USACE.

On July 14, 2025, the DNREC Environmental Appeals Board again unanimously ruled against the appeal of The Philadelphia Regional Port Authority, Greenwich Terminals LLC, and Walter F Curran regarding the issuance of a Subaqueous Lands Permit to DSPC.

On July 25, 2025, Enstructure announced that Bayard Hogans, president of the company's Mid-Atlantic operations including Delaware, had departed the company.

At the DSPC Board meeting held on July 28, 2025, the DSPC BOD announced a revamp of the DSPC website, pledging greater transparency and access to more documentation surrounding the existing Port and Edgemoor.

DSPC continues to work with Enstructure on the development of the Edgemoor Container Terminal and resolve legal challenges to permitting. The overall project is in the preliminary design stage with an anticipated groundbreaking in Quarter 2 of calendar year 2026.

AUDIT APPROACH, METHODOLOGY, AND CRITERIA***Audit Approach and Methodology***

Determine whether BOD reviewed and approved all agreements

- Gather all agreements DSPC negotiated with Port operators GT USA and Enstructure.
 - JDA
 - ECA
 - First, Second, Third, Fourth, and Fifth Addendums
 - Edgemoor Tires Removal Reimbursement Agreement
- Interview the BOD or key officials to confirm their involvement in the approval process.
- Obtain DSPC's governance policies outlining procedures for agreement approvals and verify that the BOD actions:
 - Request official approval records, such as signed resolutions or approval sheets.
 - Cross-reference agreements with these records to confirm alignment
 - Document the reasons for exceptions, such as delegated authority to other committees or executives.
 - Inspect agreements that may not have been approved by the BOD.
- Obtain DSPC's governance policies outlining procedures for Segregation of Duties
- Review logs or systems that track agreements reviewed and approved by the BOD
 - Check for entries indicating BOD approval, including dates and signatures.
- Report on any discrepancies, missing approvals, or procedural weaknesses for further action.

Read BOD meeting minutes to determine how port operators GT USA and Enstructure reported financial information regarding the Port's operations on a monthly, quarterly, or annual basis to the DSPC BOD

- Obtain meeting minutes and Board Packets determine if the DSPC board is receiving, reviewing, and approving information related to the existing Port and the Edgemoor Container Terminal Project.
- Identify and list the names, position, and term dates of the BOD within the scope of the audit.
- Extract portions of the minutes that relate to:
 - Budget vs Actual
 - Monthly/Quarterly/Annual Financials
 - Discussion of the circumstances surrounding GT USA departure as Port Operator in 2023.
 - Port Operator progress and benchmark events for projects and financials
 - Permitting progress status and updates
 - Narrative consistency between regular and executive sessions
- Verify discussions or resolutions related to the agreements in question.
- Ensure the minutes document any formal approval votes.
- Evaluate the processes for collecting, analyzing, and reporting data.
- Review reports and related statements related to DSPC's day to day operations
 - Vouch underlying data from the financial statements or summaries.
 - Identify discrepancies or inconsistencies.

Obtain and review the Seabury Report conducted for the Edgemoor container facility

- Document the rationale, goals, and expected benefits of the project
 - Identify key performance indicators (KPIs) used to measure progress.
 - Evaluate the methodologies used in the studies.
 - Assess whether these metrics align with the organization's strategic goals.
 - Verify the data sources and assumptions.
 - Compare metrics with industry benchmarks for relevance and accuracy.
- Review reports and related statements related to DSPC's expansion project projections
 - Cross-check financial data with projections.
 - Identify discrepancies or inconsistencies.
 - Assess the allocation and utilization of funds for the project.

Interview key stakeholders, including port officials, project managers, external consultants, and Enstructure representatives to understand the JDA between DPSC and Enstructure

- Assess the timeline from inception of concept (whitepaper) to studies involving economic and environmental impacts
 - Review studies conducted to assess the economic and environmental impacts.
 - Analyze how data was derived, including methodologies and assumptions used.
 - Review findings on job creation, economic growth, and environmental sustainability.
- Determine whether DPSC, explicitly or implicitly, gives or sells partial ownership of DSPC entity to Enstructure if any/all mileposts of JDA are achieved
 - Identify clauses related to ownership transfer, equity stakes, or financial contributions tied to achieving specific mileposts.
 - Examine explicit terms regarding ownership transfer or sale of equity.
 - Assess whether any implicit ownership changes could occur through financial arrangements, voting rights, or operational control.
 - Identify triggers that could shift financial responsibility or ownership.
 - Verify whether the BOD reviewed and approved any agreements or amendments that could alter ownership or financial commitments.
 - Identify and review the different sources of funding that DSPC has obtained for the Edgemoor Project
- Compare the provisions within the ECA and determine how information regarding those provisions were translated or modified into the JDA.
 - Review provisions that have been modified within the ECA related to the Edgemoor Container Terminal Project.
 - Record provisions within the JDA that have been updated from the ECA to amend the provisions from GT USA to Enstructure
 - DSPC's and Enstructure's financial commitment compared to agreement between DSPC and GT USA
 - DSPC oversight
- Review and analyze Enstructure's updated timeline for Edgemoor expansion project
- Report on the evolution of the major agreements regarding the Edgemoor Project and how DSPC's role in the project has been altered over time
- Summarize the JDA's role in materializing DSPC's financial commitment and oversight.
- Review the provisions within the JDA in relation to DSPC's financial commitment and oversight

- Review DSPC’s oversight provisions that are set forth in the JDA
 - Audit Rights
 - JGC
 - Rights regarding Defaults and Termination
- Identify and review the different phases within the JDA and outline specific financial commitments from each party.
 - Phase 0
 - Phase I
 - Phase II
 - Phase III
- Compare how the financial commitments in the JDA differ from the ECA originally established.

Criteria

We reviewed and/or used the following criteria to conduct the performance audit:

- The U.S. Government Accountability Office’s Generally Accepted Government Auditing Standards (GAGAS/Yellow Book 2018 TU 2021)
- Generally Accepted Accounting Principles (GAAP)
- The U.S. Government Accountability Office’s “Standards for Internal Controls in the Federal Government” (Green Book) and “Assessing Data Reliability”.
- The Committee of Sponsoring Organizations of the Treadway Commission (COSO) “Internal Control- Integrated Framework”
- Titles of Delaware State Law (Delaware Code)
 - Delaware Code Title 29 – State Government
 - Chapter 87. Department of State; Subchapter II. Diamond State Port Corporation
 - General Regulations of State Agencies; Chapter 100. Freedom of Information Act § 10001 through § 10008
- The State of Delaware Budget and Accounting Manual (BAM)
- Executed Concession Agreement
- First Amendment to Concession Agreement
- Second Amendment to Concession Agreement
- Third Amendment to Concession Agreement
- Joint Development Agreement
- Edgemoor Tires Removal Reimbursement Agreement
- Seabury Maritime Port of Wilmington Economic Impact Study
- State of Delaware Appropriation 25268
- DNREC Secretary’s Order No. 2022-WH-0009
- DNREC Secretary’s Order No.: 2021-W/CCE-0026 (Subaqueous Land Permit)