



State of New Jersey

Richard J. Codey
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Bradley M. Campbell
Commissioner

August 19, 2005

Keith R. Jury, Director
Licensing and Regulatory Affairs
AmerGen Energy Company LLC
200 Exelon Way
Kennett Square, PA 19348

RE: Inconsistent Determination for a Federal Consistency Request for License renewal of AmerGen's Oyster Creek Nuclear Generating Station
Program File No. 1500-02-0004.4 CDT050001
Applicant: AmerGen Energy Company LLC
Project: Oyster Creek Nuclear Generating Station License Renewal
Location: Lacey Township, Ocean County

Dear Mr. Jury:

The New Jersey Department of Environmental Protection's Land Use Regulation Program (Program) acting pursuant to Section 307 of the federal Coastal Zone Management Act of 1972 (P.L. 92-583) as amended, hereby finds the above referenced request for a federal consistency determination to be inconsistent with New Jersey's Coastal Management Program for the reasons that follow.

The applicant, AmerGen Energy Company LLC, submitted an application for a Federal Consistency Determination Request for License renewal of AmerGen's Oyster Creek Nuclear Generating Station by the federal Nuclear Regulatory Commission (NRC) on January 21, 2005. By letter of March 31, 2005, the Program advised the applicant the State agency's review had begun and a decision was due on or before July 21, 2005. In addition, the March 31, 2005 Program letter requested information on application deficiencies. The Program requested the applicant submit the data and information and an analysis of that data and information to support several statements. On or about June 15, 2005, the applicant and the Program verbally discussed the amount of available data and agreed that due to the large volume of data and information the applicant would need to submit, the applicant would submit an analysis of the data, and if requested, would submit the volume of data and information at a later date. The applicant responded by submittal received on June 21, 2005. By letter of July 20, 2005, the applicant submitted a

letter which accurately stated there was mutual agreement to extend the response date to on or before August 22, 2005.

The discussions below are based on the applicant's responses to the Program's request for information and data.

Discussion on Program Requested Information

After review of the applicant's submittal, the Program requested the applicant support the following statements:

- that the impacts of entrainment during current operations are small;
- that impacts of impingement during current operations are small;
- that the Ristroph traveling screens currently being used reduces the number of fish impinged and impingement mortality;
- that results indicate that the water quality of the Bay, which had been in decline, is recovering and now supports a healthy fish population;
- that impacts of heat shock during current operations are small;
- that results indicate that the water quality of the Bay, which had been in decline, is recovering and now supports a healthy fish population; and
- that results indicate that the water quality of the Bay, which had been in decline, is recovering and now supports a healthy fish population.

In each case the Program requested the applicant quantify the term "small" in the previous sentence using the data and information to be submitted.

The applicant responded with information from various studies conducted from approximately 1965 through 1984. These studies included the 1984 monograph *Ecology of Barnegat Bay, New Jersey*, which was an attempt by a diverse group of biologists working for the utility, academics, and resource agency scientists assembled to synthesize several decades of research on Barnegat Bay's water quality and aquatic communities. Studies conducted by Rutgers University scientists studied the bay and adjacent tributaries from 1965 through 1980. In 1975, Ichthyological Associates, a consultant for the Jersey Central Power and Light Company, initiated investigations of plankton and

fish populations and impacts of station operation on these populations. Some of these investigations were continued to 1984. "A five-volume 316(a) and (b) Demonstration report prepared by the Jersey Central Power & Light Company for the New Jersey Department of Environmental Protection summarized the information and conclusions drawn by these investigations. The last report was dated 1988. Finally, the applicant discussed findings from the previous New Jersey Pollution Discharge Elimination Systems permit (NJPDES) issued in 1994.

In each case, the response was an informative look at the positives contained in reports based on data from the mid 1970s to the mid 1980s. The applicant then jumped to more recent (1994 to 2005) reports, plans, and anecdotal information, which indicated improvement to the Bay's environmental and fish populations, in an attempt to demonstrate the plant has had little to no impact on the aquatic environment.

With regard to the Program's request to quantify the term "small impacts", the applicant responded by stating, "For its certification to the U. S. Nuclear Regulatory Commission (NRC), AmerGen will use the NRC definition of "small" in appendix B, characterizing environmental impacts of OCGS license renewal 10 CFR 51 Subpart A, Footnote 3). Page 3 of the certification provides the NRC definition of "small," which states in part, "Small - For the issue, environmental effects are not detectable or are so small that they will neither destabilize nor noticeably alter any important attribute of the resource."

The Program requested the applicant submit a copy of the results of the NRC's requested re-initiation of Endangered Species Act Section 7 consultation with the National Marine Fisheries Service (NMFS).

The applicant responded the "... NMFS has not completed its Biological Opinion, therefore, results are not available. The NRC sent its Biological Assessment (BA) to NMFS on March 29, 2005. The NMFS's letter of June 3, 2005 advises "The 2001 Biological Opinion along with the revised incidental take statement (ITS) authorized the annual take of five loggerhead, four Kemp's ridley, and two green sea turtles during the annual operation of OCNCS. During 2004, eight Kemp's ridley sea turtles occurred at OCNCS, exceeding the authorized ITS." In this letter the NMFS recommends "the NRC continue to implement the requirements identified in the July 21, 2001 Biological opinion and the August 29, 2001 amended ITS." However, the NMFS also advised the NRC that it "must not make any irreversible or irretrievable commitments of resources that would prevent NMFS from proposing or implementing any reasonable and prudent alternatives to avoid jeopardizing sea turtles." The Program concludes from the above, eight Kemp's ridley sea turtles were "taken" in 2004.

The Program requested the applicant identify any public access to the waterfront provided on property owned by AmerGen. If no public access to the waterfront is available, can public access be provided to Oyster Creek, Forked River, or Barnegat Bay through the Finninger Farm? If AmerGen's response is negative, please detail why public access to the waterfront can not be provided.

The applicant responded by stating, "AmerGen recognizes that the CZMA generally contemplates consideration be given to a wide range of uses of the coastal zone - but it does not mandate that every approved use of the coastal zone allow for multipurpose uses and widespread access at every location. Sometimes multipurpose uses can coexist, but in other circumstances, only one activity may be conducted in a particular location. When dealing with a major preexisting project, other uses of that portion of the coastal zone are limited, especially for the very special situation of a pre-existing nuclear power plant. Finninger Farm is currently the state-approved location for placement of dredged spoils for the plant's intake structure, and intake and discharge canals, and the New Jersey Bureau of Nuclear Engineering (NJBNE) maintains a radiation monitor on the Finninger Farm. NJBNE should be consulted about what additional uses could be made at this location."

As stated in AmerGen's Federal Consistency Certification For Federal Permit And License Applicants, dated January 20, 2005, Enclosure page 2, AmerGen has not identified any refurbishment activities necessary to allow operation for an additional 20 years, and has identified no significant environmental impacts from programs and activities for managing the effects of aging on the plant. Further, in AmerGen's certification, Enclosure page 23, in consideration of Coastal Permit Program Rules (NJAC 7:7), AmerGen states that they are not performing any activities (construction within the coastal area, dredging, excavation, or deposition of material, and erection of any structure in any coastal wetlands; and filling or dredging, or construction in certain upland areas adjacent to tidal wetlands) as a result of license renewal, has no plans to perform such activities as a result of license renewal, and is not seeking a coastal permit for such activities. Finally, in AmerGen's certification, Enclosure page 32, under Subchapter 8 - Resource Rules, AmerGen states that, "since this subchapter applies to development, which AmerGen will not undertake during the license renewal term, the requirements are not relevant." The rationale for AmerGen's statement come from NJAC 7:7E-8.1(a), where it states, Purpose and scope, in addition to satisfying the location and use rules, a proposed development must satisfy the requirements of this subchapter. This subchapter contains the standards the Department utilizes to analyze the proposed development in terms of its effects on various resources of the built and natural environment of the coastal zone, both at the proposed site as well as in its surrounding region."

Compliance With Federal Coastal Zone Management Regulations and Enforceable Rules Under New Jersey's Coastal Zone Management Program

The applicable federal regulations provide that federal activities affecting a State's coastal zone must be fully consistent with a State's coastal management program, unless compliance is prohibited under federal law. In addition, the applicant shall furnish the State agency with necessary data and information along with the consistency certification. Such information and data shall include the following:

- A detailed description of the proposed activity, its associated facilities, the coastal effects, and comprehensive data and information sufficient to support the applicant's consistency certification.
- Maps, diagrams, technical data and other relevant material shall be submitted when a written description alone will not adequately describe the proposal (a copy of the federal application and all supporting material provided to the Federal agency should also be submitted to the State agency).
- Information specifically identified in the management program as required necessary data and information for an applicant's consistency certification shall also be submitted.
- The management program as originally approved or amended (pursuant to 15 CFR part 923, subpart H) may describe data and information necessary to assess the consistency of federal license or permit activities.
- Necessary data and information may include State or local government permits or permit applications which are required for the proposed activity. Required data and information may not include confidential and proprietary material. (15 CFR 930.58a (1) and (2))

The Program asked the applicant to submit the data and information and an analysis of that data and information to support statements made in the application and listed above. Further, the Program requested the applicant quantify the term "small" the applicant used throughout its response submittal to describe impacts using the data and information. The applicant's response was to provide written summaries of 20 to 30 year old data; quotations from more recent reports based on that data; or anecdotal information. In response to the Program's request to quantify the term "small" with regard to impacts, the applicant responded that they rely on the NRC's definition and did not quantify the data. In only one response, did the applicant provide numbers of Keith

incidents and fish mortalities (Cold water shutdowns). The Program disagrees that the levels documented in the 1988 Section 316(a) and (b) Demonstration are consistent with the NRC's definition of small. As noted on page 12 of the July 19, 2005 Draft NJPDES Permit, which contains a decision regarding Section 316(b). "Given the available impingement and entrainment data, the department is concerned about both impingement and entrainment, but is particularly concerned about the entrainment losses.

The Program also notes, the federal regulations at 15 CFR 930.58 (Necessary Data and Information) states, "The applicant shall furnish the State agency with necessary data and information along with the consistency certification. Such information and data shall include the following: ...a copy of the federal application and all supporting material provided to the Federal agency should also be submitted to the State agency". It is the Program's understanding the applicant was unable to provide a copy of the federal application, as the applicant's submittal to the NRC did not occur until July 22, 2005. Therefore, the Program finds the applicant did not comply with this criterion contained in 15 CFR 930.58.

New Jersey's Coastal Zone Management Rules represent the consideration of various conflicting, competing, and contradictory local, State, and national interests in diverse coastal resources and in diverse uses of coastal locations. Numerous balances have been struck among these interests in defining these rules, which reduce but do not presume to eliminate all conflicts among competing interests. One reason for this intentional balancing and conflict reducing approach is that coastal management involves explicit consideration of a broad range of concerns, in contrast to other resource management programs which have a more limited scope of concern. Decision-making on individual proposed actions using the Coastal Zone Management rules must therefore consider all three steps in the process, and weigh, evaluate, and interpret inevitably complex interests, using the framework established by the rules. In this process, interpretations of terms, such as "prudent," "feasible," "minimal," "practicable," and "maximum extent," as used in a specific rule or combinations of the rules may vary, depending upon the context of the proposed use, location, and design. Finally, these principles should not be understood as authorizing arbitrary decision-making or unrestrained administrative discretion. Rather, the limited flexibility intentionally built into the Coastal Zone Management Rules provides a mechanism for incorporating professional judgment by Department officials, as well as recommendations and comments by applicants, public agencies, specific interest groups, corporations, and citizens into the coastal decision-making process.

In the application of administrative discretion, Department officials will be guided by eight basic coastal policies which summarize the direction of the specific rules.

1. Protect and enhance the coastal ecosystem.
2. Concentrate rather than disperse the pattern of coastal residential, commercial, industrial, and resort development, encourage the preservation of open space, and ensure the availability of suitable waterfront areas for water dependent activities.
3. Employ a method for decision making which allows each coastal location to be evaluated in terms of both the advantages and the disadvantages it offers for development.
4. Protect the health, safety and welfare of people who reside, work and visit the coastal zone.
5. Promote public access to the waterfront through protection and creation of meaningful access points and linear walkways and at least one waterfront park in each waterfront municipality.
6. Maintain active port and industrial facilities, and provide for necessary expansion in adjacent sites.
7. Maintain and upgrade existing energy facilities, and site additional energy facilities in a manner consistent with the rules of this Coastal Management Program.
8. Encourage residential, commercial, and recreational mixed-use redevelopment of the developed waterfront.

In the review of this federal consistency request, the Program deems Basic Coastal Policies 1, 4, 5, and 7 above to be applicable and guiding Policies.

Basic Coastal Policies 1 and 4 require consideration of the need to protect and enhance all of the coastal ecosystem components; maintain employment and financial opportunities for commercial fishermen and charter boat owners employed in New Jersey's fisheries, consideration of the need to maintain employment and commercial opportunities for others employed in the related tourism and service industries, and consideration of the need by the general public, as recreational fishermen, to maintain harvestable marine and estuarine fish and invertebrates populations. The Program also considers the importance of the facility as an employer and in providing electricity to residential, commercial and industrial users in the coastal zone.

Basic Coastal Policy 5 requires the Program to create public access areas to the waterfront through protection and creation of meaningful access points and linear walkways and at least one waterfront park in each waterfront municipality.

Basic Coastal Policy 7 looks to maintain and upgrade existing energy facilities, and site additional energy facilities in a manner consistent with the rules of this Coastal Management Program.” The Program recognizes the importance of existing energy producing facilities sited in New Jersey’s coastal zone to its inhabitants, visitors, and commercial and light industrial facilities. However, this Rules tempers its importance by requiring compliance with New Jersey’s Coastal Zone Management Program, including the upgrading of those facilities to meet those New Jersey’s Coastal Zone management Rules (Rules).

Applicable Rules are found under the Special Areas Rules (N.J.A.C. 7:7E-3.0), General Location Rules (N.J.A.C. 7:7E-6.0), Use Rules (N.J.A.C. 7:7E-7.0), and the Resource Rules (N.J.A.C. 7:7E-8.0). The Program notes the applicant does not consider the Resource Rules to be applicable as those Rules are for “proposed development” and the applicant is not seeking to construct any new facilities on the subject property. However, the Program also notes the above Coastal Decision Making Policies compel the Program to review the proposed relicensing in light of applicable Resource Rules, as these Rules analyze a proposed development activity in terms of its effects on various resources of the built and natural environment of the coastal zone, as well as in its surrounding region.

The Prime Fishing Area Rule (N.J.A.C. 7:7E-3.4), Finfish Migratory Pathways Rule (7:7E-3.5), Basic Location Rule (7:7E-6.2) Marine Fish and Fisheries Rule (7:7E-8.2), Basic Coastal Policies 1 and 4 look to maintain the State’s fisheries and to cause minimum interference to the natural functioning of marine fish and fisheries, including the reproductive and migratory patterns of estuarine and marine dependent species of fish and shellfish.” The rationale for these Rules includes the significant economic contribution that the commercial and recreational fisheries provide to New Jersey’s economy. Commercial fisheries provide significant employment and millions of persons participate in estuarine and marine recreational fishing in New Jersey, contributing hundreds of millions of dollars to the State’s economy. Based on the lack of definitive information, as discussed above, the Program is not able to make a positive finding the proposed relicensing meets these Rules or applicable Basic Coastal Policies.

The Rule on Endangered or Threatened Wildlife or Plant Species Habitats (N.J.A.C. 7:7E-3.38), Basic Location Rule (N.J.A.C. 7:7E-6.2), and Basic Coastal Policy 1 look to protect endangered or threatened species and their habitats. In the case

of the subject facility, there has been concern expressed with regard to its impacts on sea turtles.

The Program requested a copy of the results of the NRC's requested re-initiation of Endangered Species Act Section 7 consultation with the National Marine Fisheries Service (NMFS). The applicant advised that NMFS has not completed its Biological Opinion, therefore, results are not available. The NRC sent its Biological Assessment (BA) to NMFS on March 29, 2005. NMFS has, however, recommended that, until the Biological Opinion gets issued, the NRC continue to implement the requirements identified in the July 21, 2001 Opinion and the August 29, 2001 amended ITS.

Based on the 2001 NMFS Biological Opinion and August 29, 2001 revised incidental take statement, the applicant has exceeded the federal incidental take allowance of Kemp's ridley sea turtles. Therefore, the Program can not make a positive finding of compliance with the Rule on Endangered or Threatened Wildlife or Plant Species Habitats or the Basic Coastal policy as the applicant is not in compliance with federal requirements.

The Rule on Water Quality (N.J.A.C. 7:7E-8.4) states: "As required by Section 307(f) of the Federal Coastal Zone Management Act (P.L. 92-583), Federal, State and local water quality requirements established under the Clean Water Act (33 U.S.C. 1251) shall be the water resource standards of the coastal management program. These requirements include not only the minimum requirements imposed under the Clean Water Act but also the additional requirements adopted by states, localities, and interstate agencies pursuant to Section 510 of the Clean Water Act and such statutes as the New Jersey Water Pollution Control Act." ... "Department rules related to water pollution control and applicable throughout the entire coastal zone include, for example, the Surface Water Quality Standards (N.J.A.C. 7:9-4), the rules concerning Wastewater Discharge Requirements (N.J.A.C. 7:9-5), the Ground-Water Quality Standards (N.J.A.C. 7:9-6), and the Regulations Concerning the New Jersey Pollutant Discharge Elimination System (N.J.A.C. 7:14A)." Basic Coastal Policies 1, 4, and 7 also provide the Program with a mandate to insure water quality requirements are met and improved upon.

While the permittee is in compliance with the existing NJPDES permit issued in 1994 with respect to Section 316(b) measures, EPA has recently issued final regulations for Section 316(b). As articulated in the draft NJPDES permit issued on July 19, 2005, the Department has determined that additional requirements are necessary with respect to Section 316(b). This includes improvements to the existing facility, a restoration requirement to offset impingement and entrainment losses, and additional study in accordance with the EPA Federal rule at 40 CFR 125.95. Implementation of the

requirements of the NJPDES permit would serve to minimize or offset impingement and entrainment losses.

In addition, the Program finds the OCGS uses hazardous substances as defined by N.J.S.A. 58:10-23.11b-k, including substances that are corrosive, ignitable, flammable or radioactive. The Program concurs the facility is in compliance with this Rules and these Policies.

The Program finds the applicant in compliance with this Rule with regard to the 1994 NJPDES permit. Should the applicant submit a future determination request, the applicant will need to demonstrate compliance with the 2005 NJPDES permit.

Basic Coastal Policy 5 and the Public access to the Waterfront Rule (N.J.A.C. 7:7E-8.11) requires the Program to promote public access to the waterfront through protection and creation of meaningful access points and linear walkways and at least one waterfront park in each waterfront municipality.

The Program sought public access to the waterfront through the adjacent farm owned by the applicant, which has waterfront on Oyster Creek, Forked River and Barnegat Bay. The applicant advised Finninger Farm is currently the state-approved location for placement of dredged spoils for the plant's intake structure, and intake and discharge canals. In addition, the New Jersey Bureau of Nuclear Engineering (NJBNE) maintains a radiation monitor on the Finninger Farm and the NJBNE should be consulted about what additional uses could be made at this location. Finally, the applicant considers the requirement is not relevant based on N.J.A.C. 7:7E-8.1(a)

The Program rejects those reason as failure to provide public access to the waterfront. The applicant failed to provide the location of the spoil disposal site and the

radiation monitor on a site plan of the farm. The Program has discussed above the Program's authority to require public access, even though the applicant believes the Public Access to the Waterfront Rule is not relative. Therefore, the applicant is not in compliance with these coastal rules/policies.

Basic Coastal Policy 7 applicable to this request states: "Maintain and upgrade existing energy facilities, and site additional energy facilities in a manner consistent with the rules of this Coastal Management Program." The Program recognizes the importance of existing energy producing facilities sited in New Jersey's coastal zone to its inhabitants, visitors, and commercial and light industrial facilities. However, this Rule tempers its importance by requiring compliance with New Jersey's Coastal Zone Management Program, including the upgrading of those facilities to meet those Rules. In

addition, the Energy Facility Use Rule (N.J.A.C. 7:7E-7.4) discusses siting standard for energy producing facilities.

The applicant failed to discuss upgrades to the plant to ameliorate its impacts since its construction, except for the Ristroph traveling screens. Therefore, the applicant has not provided sufficient information to demonstrate compliance with this Policy with regard to maintaining and upgrading existing energy facilities.

Based on the applicant's submittal, the Program does not believe there is a problem with acute effects (electric shock) from "Electromagnetic fields. Therefore, the applicant is in compliance with this Policy with regard to maintaining and upgrading existing energy facilities.

Required Information Under 15 CFR 930.63

This section of the federal regulations requires the State agency, which objects to the applicant's consistency certification to notify the applicant, Federal agency and Director of the objection. In addition, a State agency may assert the objection is based on sufficient information to evaluate the applicant's consistency certification and shall describe how the proposed activity is inconsistent with specific enforceable policies of the management program. The objection may describe alternative measures (if they exist) which, if adopted by the applicant, may permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the management program. The State agency objection may be based upon a determination that the applicant has failed, following a written State agency request, to supply the information required pursuant to Sec. 930.58 or other information necessary for the State agency to determine consistency.

If the State agency objects on the grounds of insufficient information, the objection shall describe the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the management program. The objection may describe alternative measures (if they exist) which, if adopted by the applicant, may permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the management program. If a State agency proposes an alternative(s) in its objection letter, the alternative(s) shall be described with sufficient specificity to allow the applicant to determine whether to, in consultation with the State agency: adopt an alternative; abandon the project; or file an appeal under subpart H.

The Program finds the consistency request to be inconsistent with New Jersey's Coastal Zone Management Program, as the Program has determined the applicant has failed, following a written State agency request, to supply the information required pursuant to Sec. 930.58 or other information necessary for the State agency to determine consistency. As discussed above,

- The applicant failed to submit an analysis of the data and information to support the applicant's submitted statements that the impacts of operations are small as requested by the Program.
- The applicant was not able to quantify the term "small" using the data and information to be submitted.
- The applicant also did not provide information to demonstrate their position on Public Access to the Waterfront.
- The applicant did not provide a copy of the requested NMFS Biological opinion on for sea turtles.
- The applicant did not provide information detailing upgrades to the plant, except for the Ristroph traveling screens.
- The applicant did not submit to this Program a copy of its application and all supporting material submitted to the NRC.

Federal consistency regulations require the state agency to describe alternative measures (if they exist) which, if adopted by the applicant, may permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the management program. Therefore, with respect to the impingement and entrainment effects, the Program notes that the July 19, 2005 draft NJPDES permit implements the newly effective Section 316(b) federal regulations that allow the permittee to pursue more than one compliance option. Specifically, the regulations allow additional technical studies by January 7, 2008 in order to determine a compliance option. However, in this permit action, the Department has determined that enough relevant Section 316(b) data and information is available to make a Best Technology Available determination on a schedule that is more proactive than that set forth in the EPA rule at 40 CFR Part 124 and 125. Specifically, the draft permit sets forth two alternatives:

Alternative 1: Implement Closed-Cycle Cooling - New Jersey's Preferred Alternative

Alternative 2: Attain National Performance Standards

Impingement Mortality Performance Standard – Reduce impingement mortality for all life stages of fish and shellfish by 80 to 95 percent. Improvements to be initiated by January 7, 2008.

Entrainment Performance Standard – Reduce entrainment for all life stages of fish and shellfish by 60 to 90 percent. Improvements to be initiated by January 7, 2008.

In addition to compliance with the national performance standards, the permittee is required to initiate a wetlands restoration and enhancement program for a minimum of 350 acres within the Barnegat Bay estuary to offset any residual impingement and entrainment losses at the facility and comply with all terms and conditions of this alternative. Benefits from the restoration requirements would also work toward minimizing any environmental effects on the bay including water quality, heat shock and

Restoration is allowable under the Section 316(b) regulations as a means to attain compliance with the National Performance Standards. The Department has evaluated the approximation of the fish losses based on the 1987 316 study and has estimated the wetlands restoration acreage required to adequately minimize the effects of the Station's losses. Given the fish losses reported in the study, a preliminary calculation as to the amount of wetland restoration acreage in the Barnegat Bay watershed that would be necessary to offset fish losses at Oyster Creek would equal 3500 wetland acres. However, the Department recognizes that the Phase II Section 316(b) regulation allows for additional time in devising a restoration plan which could include an amount of acreage necessary. The Department is only requiring 350 wetland acres at this time and is not requiring implementation of the 3500 wetland acres value.

Should the applicant chose, implement on time, and successfully demonstrate the design effectiveness of either of the Alternatives above in their entirety, the Program may be able to make a consistent finding with regards to impingement and entrainment impacts under the appropriate Basic Coastal Policies and Rules.

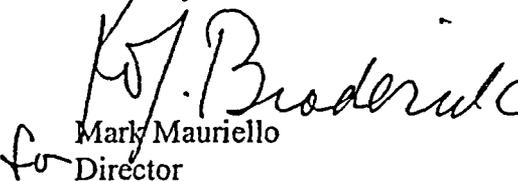
Alternatives with regard to the issues of NMFS Biological Opinion on sea turtles and a copy of the NRC application, the applicant must submit those documents to the Program in any future application. DEP acknowledges the NRC application is a very large, the Program will accept the document on CDs. Finally, the applicant needs to submit appropriate information on the Finniger farm and should probably meet with Program and Department staff to discuss how to comply with the public access requirement.

Statement required by 15 CFR 930.63(e)

Pursuant to 15 CFR part 930, subpart H, and within 30 days from receipt of this letter, you may request that the Secretary of Commerce override this objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the New Jersey Coastal Zone Management Program and the federal permitting or licensing agency. The Secretary may collect fees from you for administering and processing your request.

Should you have any questions or wish to discuss this matter further, please do not hesitate to contact Andrew Heyl, Supervisor, at the above address or at 609-984-0288.

Sincerely,


for Mark Mauriello
Director

c. Andrew Kugler, Chief of Environmental Section, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Agency, One White Flint, 11555 Rockville Pike, Rockville, Maryland 20555

Eldon Hout, Director, OCR-NOAA (N/ORM), 1305 East-West Highway, 11th Floor, Silver Spring, Maryland 20910

Karen Tuccillo, NJDEP, Bureau of Nuclear Engineering

Susan Rosenwinkle, NJDEP, Bureau of Point Source Permitting

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