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June 11, 2007

BY HAND DELIVERY

The Honorable Carlos M. Gutierrez
Secretary of Commerce
Herbert C. Hoover Building
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, DC 20230

Re: Request for Extension of Time to File Consolidated Record, and Notice of Appeal, in the Matter of Federal Consistency for License Renewal of AmerGen's Oyster Creek Nuclear Generating Station, Lacey Township, Ocean County, New Jersey

Dear Mr. Secretary:

The purpose of this letter is to request a fifty-five (55) day extension of time from July 2, to August 27, 2007, to submit the Consolidated Record and Notice of Appeal on behalf of AmerGen Energy Company LLC ("Amergen").

Brief History of the Consistency Certification Submitted by AmerGen for the Oyster Creek Nuclear Generating Station and the New Jersey Response

On December 1, 2006, AmerGen submitted a Federal Consistency Determination for License Renewal of AmerGen's Oyster Creek Nuclear Generating Station ("OCGS") by the U.S. Nuclear Regulatory Commission ("NRC").

On May 31, 2007, New Jersey apparently concluded its review of the AmerGen Consistency statement by the attached letter to AmerGen from Thomas Micai, Director, Division of Land Use Regulation, New Jersey Department of Environmental Protection ("NJDEP"). The NJDEP letter begins that the agency "...cannot make a positive consistency determination" and the letter concludes with a recitation of the NOAA

Template OGC-002

E-Rids: OGC-01

provisions in 15 CFR 930.63(e) setting forth the procedure to request that the Secretary of Commerce override an "objection" to consistency from a state.

Nowhere in the state's May 31 letter does NJDEP specifically state it objects to the Consistency Determination submitted by the OCGS. Rather, the letter discusses several concerns the state has about the plant and the alleged lack of information to decide those issues under *New Jersey's* policies, including some state policies which might not have been approved by NOAA.

For the most part, the State expresses a desire for more information, even though AmerGen had submitted more information to supplement extensive earlier studies. But, at no time during the 6 month review process did the state write to AmerGen that the information AmerGen submitted in support of the certification was insufficient. Indeed, prior to the submittal of the certification, AmerGen presented an extensive "Checklist" of materials it intended to supply the state for review. The state accepted that checklist. Thus, while it is not at all clear whether NJDEP did in fact object to the consistency certification submitted by AmerGen, because NJDEP did include the statement from 15 CFR 930.63(e), we intend to preserve AmerGen's rights by filing a Notice of Appeal. During the course of the appeal, we intend to continue to discuss with the state its request in the May 31 letter for additional information, with the hope that the state will clarify its May 31 letter, and make clear that the state deems the relicensing to be consistent with the applicable state-CZMA policies.

Good Cause for Extension of Time

15 CFR 930.127(i)(2) states in pertinent part: "...the Secretary may extend the time for filing a notice of appeal in connection with an energy project for good cause shown to allow appellant additional time to prepare the consolidated record for filing."

The OCGS is an energy project, and thus subject to the new NOAA procedures established under the Energy Policy Act of 2005. (There is a legal issue about whether a plant that has existed in the state's coastal zone for 40 years is subject to the CZMA just because of license renewal, but we will address that issue in the Notice of Appeal and brief). NOAA made extensive revisions to the consistency review appeal process in regulations published on January 5, 2006, which were supplemented by a Federal Register notice published on December 19, 2006. The new rules require submission of a Consolidated Record with the Notice of Appeal. The Consolidated Record for a facility the size and complexity of the OCGS is extremely large and complex. A very large number of federal and state and local regulatory authorities have commented on the OCGS relicensing. The number of pages of documents is enormous. The documentation ranges from numerous studies of impacts on fishing from OCGS,

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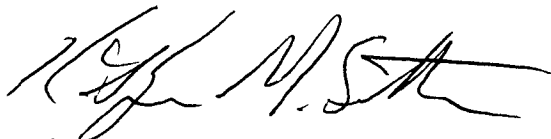
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impacts on fishing due to activities of others totally unrelated to OCGS, and the vital role OCGS fills in providing a secure, clean, and substantial source of electricity in a densely populated region that needs an ever increasing amount of power.

Under NOAA regulations, the U.S. Nuclear Regulatory Commission has the primary responsibility to compile the Consolidated Record. It is our understanding that the NRC has never before prepared a Consolidated Record. To assist the NRC to compile the record, we requested NOAA to answer four questions about the process of preparing the Consolidated Record. NOAA's response to those questions has been very helpful, but it arrived less than a week before the New Jersey letter of May 31, so both AmerGen and the NRC have had little time to address the document processing called for by NOAA. NRC personnel have informed us they expect it will take much longer than the 30 days provided to file a Notice of Appeal for the NRC to compile the Consolidated Record. Indeed, because much of the documentation required to be in the Consolidated Record is not under the control of either the NRC or AmerGen, we do not know how long it will take to acquire, compile, and submit the Consolidated Record. Many of the documents are within the NJDEP, and we request the NJDEP to submit the necessary documentation for the Consolidated Record to the NRC as soon as possible. It will then take additional time for AmerGen to make the electronic and paper copies required under the new rules. Therefore, we have requested the 55 day extension from the otherwise applicable deadline.

Please inform us of your response as soon as possible.

Sincerely yours,



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Attachment: NJDEP letter dated May 31, 2007 to AmerGen

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Morgan Lewis
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Copies of this request have been sent by U.S. mail and by E-mail to the following:

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State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JON S. CORZINE
Governor

LISA P. JACKSON
Commissioner

May 31, 2007

Timothy Rausch, Site Vice President
Oyster Creek Generating Station
AmerGen Energy Company, LLC
Route 9 South
Forked River, NJ 08731

RE: Federal Consistency Request for License renewal of AmerGen's Oyster Creek Nuclear Generating Station
Program File No. 1500-02-0004.4 CDT060001
Applicant: AmerGen Energy Company LLC
Project: Oyster Creek Nuclear Generating Station License Renewal
Location: Lacey Township, Ocean County

Dear Mr. Rausch:

The Division completed the review of your request for a Federal Consistency Determination and found that it cannot make a positive consistency determination pursuant to Section 307 of the federal Coastal Zone Management Act of 1972 (P.L. 92-583) as amended, with New Jersey's Coastal Management Program for the reasons that follow.

FEDERAL CONSISTENCY REVIEW

The New Jersey Department of Environmental Protection's Division of Land Use Regulation is reviewing a request by AmerGen Energy Company LLC (AmerGen) for a federal consistency (FC) statement for relicensing of the Oyster Creek Nuclear Generating Station in Lacey Township, Ocean County, New Jersey. This consistency determination is required pursuant to the federal Coastal Zone Management Act for applicants applying to a federal agency for a license for a new facility or to relicense an existing facility within New Jersey's Coastal Zone. In this case, AmerGen is requesting that the Nuclear Regulatory Commission (NRC) relicense the facility for a period of 20 years, or until 2029. The Department's Coastal Zone Management (CZM) rules at N.J.A.C. 7:27E include the standards for reviewing the FC request.

ADMINISTRATIVE HISTORY

On January 21, 2005, 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). By letter of March 31, 2005, the Division 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 Division letter requested information to cure application deficiencies. The Division requested the applicant to submit the information and an analysis of that information to support the following assertions made by Amergen:

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

In response to the Division's March 31 deficiency letter, the applicant submitted information from various studies conducted from 1965 through 1984, and studies from 1994 to 2005, in an effort to demonstrate a trend indicating an improvement to the Bay's environmental and fish populations. This trend was intended to serve as a basis to make an assertion that the Oyster Creek plant operations have had little to no impact on the aquatic environment. Included in this analysis is the use of the term "small", which was defined to be "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". However, this information was not adequately quantified.

The Division also requested that the applicant identify any public access to the waterfront provided on property owned by AmerGen. The response indicated that Amergen does not believe that every approved use of the coastal zone requires multipurpose public uses and widespread access.

On or about June 15, 2005, the applicant and the Division verbally agreed that a large volume of data was needed to satisfy a deficiency, and the applicant responded with a 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.

On August 19, 2005, the Division objected to AmerGen's Coastal Zone Management Act consistency certification based upon a lack of information.

On September 19, 2005, AmerGen entered into a Memorandum of Understanding with the Division. AmerGen withdrew its consistency certification from Division consideration. The Division also withdrew its consistency objection, dated August 19, 2005. The Division indicated that it will need the information described in its August 19, 2005 objection letter in order to respond to any consistency certification resubmitted by AmerGen. AmerGen agreed to resubmit to the Division its consistency certification and necessary data and information.

On June 1, 2006, the Division sent a "State Guidance for Forthcoming Federal Consistency Request for License Renewal of AmerGen's Oyster Creek Nuclear Generating Station" letter. The applicant was advised to address numerous Rules on Coastal Zone Management, including but not limited to Shellfish habitat, Prime fishing areas, Finfish migratory pathways, Wetlands, and Public Access to the Waterfront.

On December 1, 2006, AmerGen Energy Company LLC, submitted a new 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). A decision is due on or before May 31, 2007.

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))

Your Federal Consistency request sought approval to renew the license for a 20-year period. A Federal Consistency request for a shorter license period would have been reviewed and analyzed differently, and the decision outcome would likely be different as well.

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 at N.J.A.C. 7:7E 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 Division 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), Marine Fish and Fisheries Rule (7:7E-8.2), Basic Coastal Policies I 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.

In a November 23, 2005 letter from Clifford G. Day, Supervisor with the United States Department of the Interior Fish and Wildlife Service, the Service reports that the applicant's environmental report uses data from 1965 to 1977 to describe aquatic biota found in the project area. The age of the data limits its value for assessing current and reasonable foreseeable future impacts. The belief that entrainment and impingement impacts are "small" appears to be inconsistent with statements that numerous unavoidable adverse impacts to the aquatic environment are occurring. Therefore, the Service recommended "expansion of the current biological sampling study to a minimum of three years. A 3-year study would allow the NRC to more adequately determine what effects, if any, the plant's operation is having on aquatic biota."

In a September 7, 2006 letter from John Filippelli, Chief with the Strategic Planning and Multi-Medial Programs Branch of the United States Environmental Protection Agency, EPA commented on the Draft Generic Environmental Impact Statement for License Renewal of Nuclear Plant, Supplement 28 (draft GEIS). Based upon the review of the draft SEIS, the EPA rated the project and document "Environmental Concerns—insufficient information". The most serious concern was how OCNCS would minimize the impacts due to entrainment and impingement of fish and shellfish. A serious shortcoming of the document is that it relies on nearly 20 to 30 year old aquatic resource data to inform the public and decision-makers regarding the facility's impacts for the next 20 years. The SEIS should have evaluated current biological sampling data over a three-year period, as requested by the US Fish and Wildlife Service. They were also concerned with the impacts to the Oyster Creek and Forked River aquatic systems from heat show, and the lack of a consistency determination with the CZM Rules.

In a September 14, 2006 letter from Kenneth Koschek with the NJDEP's Office of Permit Coordination and Environmental Review, it was again brought to the attention of the NRC that the applicant had been conducting entrainment and impingement studies from October 2005 to the present. Without the information of the new ongoing study, the Division is unclear how the NRC could conclude, without reviewing the results of the study, that "there would be no problems associated with the entrainment of phytoplankton and zooplankton during the renewal term beyond those discussed in the GEIS." In addition, the applicant's own GEIS Final Report indicates that NRC staff

cannot arrive at a definitive conclusion concerning the current impact of impingement associated with OCNGS because recent population data are not available. Again, this information was requested by the USFWS.

Based on the lack of definitive information as discussed above, specifically the lack of information from the recommended 3-year study, the Division 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) 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, including Kemp's ridley, green and loggerhead sea turtles.

During review of the original application, the Division requested a copy of the results of the NRC's requested re-initiation of Endangered Species Act Section 7 consultation with NOAA's National Marine Fisheries Service (NMFS), which was not complete at the time. NMFS did, at the time, recommend 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 upon NMFS's Biological Opinion, dated September 22, 2005, NMFS concludes that the continued operation of the OCNGS may adversely affect but is not likely to jeopardize the continued existence of endangered Kemp's ridley, green, or threatened loggerhead sea turtles. NMFS also determined that the proposed action is not likely to adversely affect endangered leatherback or hawksbill sea turtles. Pursuant to N.J.A.C. 7:7E-3.38(b), development of endangered or threatened wildlife or plant species habitat is prohibited unless it can be demonstrated that the habitat would not directly or through secondary impacts be adversely affected. Although no "development" is proposed, the continued operation of OCNGS will result in continued "taking" of endangered and threatened species. Although NMFS's opinion indicated that the continued operation will not likely jeopardize the existence of endangered or threatened turtles, "it may adversely affect" them. Therefore, the Division 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 ensure 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 issued final regulations for Section 316(b) in 2004 which were recently suspended by EPA. States and permitting authorities have been directed by EPA to issue permits in accordance with Best Professional Judgement. As articulated in the draft NJPDES permit issued on July 19, 2005, the Department determined that closed-cycle cooling is the preferred alternative with respect to minimizing impingement and entrainment effects.

The Division 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 any current or reissued 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.

Division staff and the applicant have had numerous discussions concerning public access. Although AmerGen has committed to providing public access to the waterfront at the Finninger Farm if the license is renewed, the Division cannot make a positive finding under this Rule, because no final Public Access plans have been submitted. Therefore, the Division cannot make a positive finding under this Rule.

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 object with the applicant's findings that there are no 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 Division cannot make a positive consistency determination, as the Division 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 complete information to demonstrate their position on Public Access to the Waterfront. Although they are committed to providing public access, no final public access plan has been submitted.

- The applicant did not provide detailed information discussing the impact of the facility on applicable species that are impinged and/or entrained at the facility, as detailed in the November 23, 2005 letter from the United States Department of the Interior, Fish and Wildlife Service.

MEDIATION PROCESS 15 CFR 930.111 OCRM MEDIATION

The Secretary or other head of a Federal agency, or the Governor or the State agency, may notify the Secretary in writing of the existence of a serious disagreement, and may request that the Secretary seek to mediate the disagreement. A copy of the written request must be sent to the agency with which the requesting agency disagrees, to the Assistant Administrator, and to the Director.

Within 15 days following receipt of a request for mediation the disagreeing agency shall transmit a written response to the Secretary, and to the agency requesting mediation, indicating whether it wishes to participate in the mediation process. If the disagreeing agency declines the offer to enter into mediation efforts, it must indicate the basis for its refusal in its response. Upon receipt of a refusal to participate in mediation efforts, the Secretary shall seek to persuade the disagreeing agency to reconsider its decision and enter into mediation efforts. If the disagreeing agencies do not all agree to participate, the Secretary will cease efforts to provide mediation assistance.

If the parties agree to the mediation process, the Secretary shall appoint a hearing officer who shall schedule a hearing in the local area concerned. The hearing officer shall give the parties at least 30 days notice of the time and place set for the hearing and shall provide timely public notice of the hearing.

At the time public notice is provided, the Federal and State agencies shall provide the public with convenient access to public data and information related to the serious disagreement.

Hearings shall be informal and shall be conducted by the hearing officer with the objective of securing in a timely fashion information related to the disagreement. The Federal and State agencies, as well as other interested parties, may offer information at the hearing subject to the hearing officer's supervision as to the extent and manner of presentation. A party may also provide the hearing officer with written comments. Hearings will be recorded and the hearing officer shall provide transcripts and copies of written information offered at the hearing to the Federal and State agency parties. The public may inspect and copy the transcripts and written information provided to these agencies.

Following the close of the hearing, the hearing officer shall transmit the hearing record to the Secretary. Upon receipt of the hearing record, the Secretary shall schedule a mediation conference to be attended by representatives from the Office of the Secretary,

the disagreeing Federal and State agencies, and any other interested parties whose participation is deemed necessary by the Secretary. The Secretary shall provide the parties at least 10 days notice of the time and place set for the mediation conference.

Secretarial mediation efforts shall last only so long as the Federal and State agencies agree to participate. The Secretary shall confer with the Executive Office of the President, as necessary, during the mediation process.

Mediation shall terminate:

- (a) At any time the Federal and State agencies agree to a resolution of the serious disagreement,
- (b) If one of the agencies withdraws from mediation,
- (c) In the event the agencies fail to reach a resolution of the disagreement within 15 days following Secretarial conference efforts, and the agencies do not agree to extend mediation beyond that period, or
- (d) For other good cause.

The availability of the mediation services provided in this subpart is not intended expressly or implicitly to limit the parties' use of alternate forums to resolve disputes. Specifically, judicial review where otherwise available by law may be sought by any party to a serious disagreement without first having exhausted the mediation process provided for in this subpart.

APPEAL TO THE SECRETARY FOR REVIEW RELATED TO THE OBJECTIVES OF THE ACT AND NATIONAL SECURITY INTERESTS § 930.120 Objectives

This subpart sets forth the procedures by which the Secretary may find that a federal license or permit activity, including those described in detail in an OCS plan, or a federal assistance activity, which a State agency has found to be inconsistent with the enforceable policies of the management program, may be federally approved because the activity is (A) consistent with the objectives or purposes of the Act, or (B) is necessary in the interest of national security.

(A) 930.121 Consistent with the objectives or purposes of the Act.

A federal license or permit activity, or a federal assistance activity, is "consistent with the objectives or purposes of the Act" if it satisfies each of the following three requirements:

- (a) The activity furthers the national interest as articulated in § 302 or § 303 of the Act, in a significant or substantial manner,
- (b) The national interest furthered by the activity outweighs the activity's adverse coastal effects, when those effects are considered separately or cumulatively.

(c) There is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the enforceable policies of the management program.

The Secretary may consider but is not limited to considering previous appeal decisions, alternatives described in state objection letters and alternatives and other information submitted during the appeal. The Secretary shall not consider an alternative unless the State agency submits a statement, in a brief or other supporting material, to the Secretary that the alternative would permit the activity to be conducted in a manner consistent with the enforceable policies of the management program.

(B) 930.122 Necessary in the interest of national security.

A federal license or permit activity, or a federal assistance activity, is "necessary in the interest of national security" if a national defense or other national security interest would be significantly impaired were the activity not permitted to go forward as proposed. Secretarial review of national security issues shall be aided by information submitted by the Department of Defense or other interested Federal agencies. The views of such agencies, while not binding, shall be given considerable weight by the Secretary. The Secretary will seek information to determine whether the objected-to activity directly supports national defense or other essential national security objectives.

§ 930.125 Notice of appeal and application fee to the Secretary.

§ 930.126 Consistency appeal processing fees.

§ 930.127 Briefs and supporting materials.

§ 930.128 Public notice, comment period, and public hearing.

§ 930.129 Dismissal, remand, stay, and procedural override.

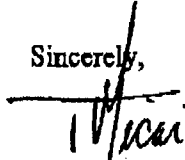
§ 930.130 Closure of the decision record and issuance of decision.

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 me at the above address or at 609-984-0288.

Sincerely,



Thomas Micai, Director
Division of Land Use Regulation
Department of Environmental Protection

- 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
David Kennedy, Director, OCRM
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