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ENVIRONMENTAL PROTECTION

LAND USE MANAGEMENT

Coastal Zone Management

Energy Facility Use Rule

Readoption of Specially Adopted Amendment: N.J.A.C. 7:7E-7.4

Proposed: January 3, 2012 at 44 N.J.R. 12(a)

Adopted: by Bob Martin, Commissioner, Department of Environmental Protection

Filed: , 2012 as R. **without change**

Authority: N.J.S.A. 12:3-1 et seq., 12:5-3; 13:1D-1 et seq., 13:9A-1 et seq., and 13:19-1 et seq.

DEP Docket Number: 13-11-11

Effective Date:

Expiration Date: July 7, 2013

The New Jersey Department of Environmental Protection (Department) is readopting without change the specially adopted amendment to the energy facility use rule, N.J.A.C. 7:7E-7.4, that implements P.L 2011, c. 20, which amended the Coastal Area Facility Review Act, N.J.S.A. 13:19-10.1. The Energy facility use rule, N.J.A.C. 7:7E-7.4, contains standards specific to various energy uses. Subsection (b) of the rule contains standards relevant to the siting of any new energy facilities, and specifically

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includes standards for the siting of wind energy facilities at N.J.A.C. 7:7E-7.4(b)3. At this time, the Department is readopting N.J.A.C. 7:7E-7.4(b)3iii without change. The rule, like the statute, provides that a wind dependent energy facility can be located on a pier provided the facility is an accessory use to the other uses of, or purposes for, the pier. In addition, the permit application for the wind energy facility on a pier must meet all applicable criteria in Coastal Zone Management rules.

The proposal of the readoption without amendments was published in the New Jersey Register at 44 N.J.R. 12(a) on January 3, 2012. The comment period closed on March 3, 2012.

Summary of Public Comments and Agency Responses:

No comments were received.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. require that State agencies which adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. The Federal Coastal Zone Management Act (16 U.S.C. 1450) was signed into law on October 27, 1972. The Act does not set specific regulatory standards for development in the coastal zone; rather, it provides broad guidelines for states developing

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coastal management programs. The Federal Coastal Zone Management Program guidelines are found at 15 C.F.R. 923. They include the basic components that must be included in a state's coastal zone management plan, including a requirement that the program provide for an orderly process for siting major facilities related to energy development. However, the Federal guidelines do not set forth procedures by which individual activities within a state's coastal zone are to be regulated. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal Standards Analysis.

Full text of the readopted amendment follows:

7:7E-7.4 Energy facility use rule

(a) (No change.)

(b) Standards relevant to siting of new energy facilities, including all associated development activities, are as follows:

1. – 2. (No change.)

3. Notwithstanding (b)2 above, wind and solar energy facilities, including blades, towers and site disturbance, shall be sited at least 50 feet inland of the mean high water line of tidal waters, excluding manmade lagoons and manmade ditches, in the areas identified at (b)2i and ii above, except for the following:

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i. A wind energy facility that meets N.J.A.C. 7:7E-3.49(c)5;

ii. A wind energy facility that meets (1) and (2) below. The Department shall limit approvals under this subparagraph to ensure that the cumulative number of wind turbines approved does not exceed five, each with a power rating as determined by the manufacturer of five megawatts or less, or six, each with a power rating as determined by the manufacturer of four megawatts or less. The wind energy facility shall be:

(1) (No change.)

(2) No closer than 2.5 nautical miles to the mean high water line; or

iii. A wind energy facility located on a pier provided the facility is an accessory use to the other uses of, or purposes for, the pier;

4. – 5. (No change.)

(c) – (s) (No change.)