

**From:** [Schneider, Kathleen](#)  
**To:** [Henderson, Pamela](#); [White, Duncan](#); [Dudes, Laura](#); [Zobler, Marian](#); [Averbach, Andrew](#); [Culler, Sara](#)  
**Cc:** [Janda, Donna](#); [Ford, Monica](#)  
**Subject:** RE: Letter from New Jersey Department of Environmental Protection  
**Date:** Friday, January 10, 2014 9:38:00 AM  
**Attachments:** [NJ LETTER.PDF](#)

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Andrew and Sara;

Per my discussion with Pam Henderson, I have conducted a quick review of the attached December 10, 2013, letter and the proposed changes as provided on the website. I believe that the State was following the requirements to provide routine program changes of the State Coastal Management Program to the general public, affected parties, local and State Agencies and regulatory offices, and relevant Federal Agencies. Since New Jersey is an Agreement State and its program is administered under the New Jersey Department of Environmental Protection, it appears that NRC was provided a copy of the notice.

It is not unusual for the Agreement State Program Branch, MSSA, FSME to get notification from Agreement States on actions like this to verify they do not affect the Section 274b Agreement. The comment period for this action ended on January 6, 2014.

At this time, I recommend that we take no actions other than placing this email and the attachment into ADAMS. Our branch will take the responsibility for getting the email in ADAMS. I am also asking that the Regional State Agreements Officers follow up with the State to provide the appropriate contact for these types of correspondence and notices in the future.

If you have any questions, please don't hesitate to contact me.

Kathleen Schneider  
Sr. Project Manager  
State Regulation Review Coordinator  
USNRC  
Division of Materials Safety and State Agreements (MSSA)  
Agreements State Program Branch (ASPB)  
[kathleen.schneider@nrc.gov](mailto:kathleen.schneider@nrc.gov)  
301-415-2320

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**From:** Culler, Sara  
**Sent:** Thursday, January 09, 2014 3:43 PM  
**To:** Averbach, Andrew  
**Subject:** Letter from New Jersey Dept of Enviro Protection

Hi, Mr. Averbach. I received a letter from the New Jersey Dept of Environmental Protection – it was addressed to “Sara Culler, Office of the General Counsel.” I have no idea how they came to associate my name with OGC. In addition, the letter and envelope are fragile and in shreds, perhaps from the radiating process. Judge Baratta suggested that I email you for guidance on what action to take with this letter. I have attached a copy

of it for your convenience. Please advise. Thanks!

*Sara*

Sara J. Culler, Litigation Support Assistant  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
11545 Rockville Pike, MS T3F23  
Rockville, Maryland 20852  
(301) 415-5694  
[sara.culler@nrc.gov](mailto:sara.culler@nrc.gov)



## State of New Jersey

### DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

Division of Policy Implementation  
P.O. Box 420  
Mail Code: 401-07D  
Trenton, New Jersey 08625  
Phone: 609-633-2201  
Fax: 609-292-4608

BOB MARTIN  
*Commissioner*

December 10, 2013

RE: Program Change to New Jersey's Federally approved Coastal Management Program

Dear Sir/Madam:

This letter is to inform you that the New Jersey Department of Environmental Protection (Department) is seeking approval from the National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resource Management (OCRM) to modify the Federally approved New Jersey Coastal Management Program (NJCMP) to reflect two Department rulemaking actions as a routine program change pursuant to Federal Regulation 15 C.F.R. 923.80-923.84. The proposed changes would incorporate regulatory amendments, repeals and new rules to the Coastal Permit Program rules and Coastal Zone Management (CZM) rules. These regulatory amendments, repeals and new rules were adopted on an emergency basis and subsequently readopted to address the significant adverse, social, economic, and environmental impacts associated with Superstorm Sandy which hit New Jersey's coastline on Monday, October 29, 2012; they were also adopted in support of the rebuilding and economic recovery of New Jersey's coastal areas in an expeditious and resilient manner (see 45 N.J.R. 1141(a), May 6, 2013; 45 N.J.R. 1696(a), July 15, 2013). The proposed changes would additionally incorporate regulatory amendments to the CZM rules to implement legislative amendments to the Coastal Area Facility Review Act concerning the construction of wind energy facilities on piers (see 44 N.J.R. 12(a), January 3, 2012; 44 N.J.R. 1972(a), July 16, 2012).

The Federal regulations at 15 CFR 923.80 through 923.84 require states with approved coastal management programs to submit any changes or amendments to their coastal management programs to OCRM so that they can determine if the program, after the change, remains approvable. Amendments are defined at 15 C.F.R. 923.80(d) as substantial changes in, or substantial changes related to: (1) uses subject to management; (2) special management areas; (3) boundaries; (4) authorities and organization; and (5) coordination, public involvement and national interest. The Department has determined that the above actions do not result in a substantial change related to the five program approvability areas listed above and are, therefore, considered a routine program change. The routine program change package will be available on

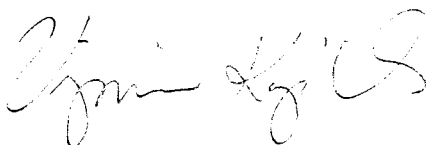
the New Jersey Coastal Management Program's website at [www.nj.gov/dep/cmp/czm\\_news.html](http://www.nj.gov/dep/cmp/czm_news.html) on December 16, 2013.

The Department will be submitting the program change to the OCRM on December 16, 2013. Notice of the submission of the routine program change to OCRM will be published in the December 16, 2013 New Jersey Register and can be viewed at [www.nj.gov/dep/cmp/czm\\_news.html](http://www.nj.gov/dep/cmp/czm_news.html). Any comments concerning whether the above actions constitute a routine program change should be submitted to OCRM by **Monday, January 6, 2014** to:

NOAA Office of Ocean and Coastal Resource Management  
Coastal Programs Division  
Attn: Ms. Joelle Gore, Acting Chief  
SSMC4, Rm. 11305  
1305 East West Highway  
Silver Spring, MD 20910

Should you have any questions concerning this program change, please contact Kim Springer of my staff at (609) 633-2201.

Sincerely,



Virginia Kop'kash  
New Jersey Coastal Program Manager

**NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION  
LAND USE MANAGEMENT**

**Office of Coastal Management and Watershed Restoration**

**Notice of Routine Program Change for Coastal Management Program**

Take notice that the Department of Environmental Protection (Department) is seeking approval from the National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resource Management (OCRM) to modify the Federally approved New Jersey Coastal Management Program (NJCMP) to reflect two Department rulemaking actions as a routine program change pursuant to Federal Regulation 15 C.F.R. 923.80-923.84. The proposed changes, explained in further detail below, would incorporate into the NJCMP regulatory amendments, repeals and new rules to the Coastal Permit Program rules and Coastal Zone Management (CZM) rules. These regulatory amendments, repeals and new rules were adopted on an emergency basis and subsequently readopted to address the significant adverse social, economic, and environmental impacts associated with Superstorm Sandy which hit New Jersey's coastline on Monday, October 29, 2012. They were also adopted in support of the expeditious and resilient rebuilding and economic recovery of New Jersey's coastal areas (see 45 N.J.R. 1141(a), May 6, 2013; 45 N.J.R. 1696(a), July 15, 2013). The proposed changes would additionally incorporate into the NJCMP regulatory amendments to the CZM rules to implement legislative amendments to the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13-19-1, et seq., concerning the construction of wind energy facilities on piers (see 44 N.J.R. 12(a), January 3, 2012; 44 N.J.R. 1972(a), July 16, 2012). A summary of the proposed changes to the NJCMP follows:

**1. Changes in response to Superstorm Sandy:**

On April 16, 2012, the Department adopted regulatory amendments to its Coastal Permit Program rules and CZM rules to facilitate the expeditious rebuilding of more resilient coastal communities and coastal-related tourism industries, and help facilitate the recovery of the coastal ecosystem. These amendments were adopted on an emergency basis and became effective upon acceptance for filing by the New Jersey Office of

Administrative Law. Concurrently, the provisions of the emergency adoption were proposed for readoption pursuant to the rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and on June 17, 2013 the readopted amendments became effective upon filing of the notice of adoption with the New Jersey Office of Administrative Law. Because the regulatory amendments, repeal, and new rules change existing enforceable policies of the NJCMP, the Department is seeking approval to include the following into New Jersey's approved CMP as enforceable policies:

**Coastal Permit Program rules**

Regulatory amendments: Definitions, N.J.A.C. 7:7-1.3; CAFRA, N.J.A.C. 7:7-2.1; Waterfront development, N.J.A.C. 7:7-2.3; Permits-by-rule, N.J.A.C. 7:7-7.2; and Coastal general permit for the construction of support facilities at legally existing and operating marinas, N.J.A.C. 7:7-7.13; and

New rules: Coastal general permit for habitat creation, restoration, enhancement, and living shoreline activities, N.J.A.C. 7:7-7.29; Coastal general permit for the dredging of sand from a man-made lagoon deposited as a result of a storm event for which the Governor declared a State of Emergency, N.J.A.C. 7:7-7.32; Coastal general permit for the dredging of material from a waterway at a residential or commercial development deposited as a result of the failure of a bulkhead as a consequence of a storm event for which the Governor declared a State of Emergency, N.J.A.C. 7:7-7.33; Coastal general permit for dredging and dredged material management of material from a marina that was deposited as a result of the failure of a bulkhead as a result of a storm event for which the Governor declared a State of Emergency, N.J.A.C. 7:7-7.34; Coastal general permit for commercial shellfish aquaculture activities, N.J.A.C. 7:7-7.35; and Coastal general permit for the placement of shell within shellfish lease areas, N.J.A.C. 7:7-7.36.

### **CZM rules**

Regulatory amendments: Correspondence with the Department, N.J.A.C. 7:7E-1.7; Definitions, N.J.A.C. 7:7E-1.8; Shellfish habitat, N.J.A.C. 7:7E-3.2; Submerged vegetation habitat, N.J.A.C. 7:7E-3.6; Intertidal and subtidal shallows, N.J.A.C. 7:7E-3.15; Dunes, N.J.A.C. 7:7E-3.16; Beaches, N.J.A.C. 7:7E-3.22; Wetlands, N.J.A.C. 7:7E-3.27; Purpose and scope (standards for beach and dune maintenance activities), N.J.A.C. 7:7E-3A.1; Standards applicable to routine beach maintenance, N.J.A.C. 7:7E-3A.2; Standards applicable to emergency post-storm beach restoration, N.J.A.C. 7:7E-3A.3; Standards applicable to dune creation and maintenance, N.J.A.C. 7:7E-3A.4; Shellfish aquaculture, N.J.A.C. 7:7E-4.2; Filling, N.J.A.C. 7:7E-4.10; Vertical wake and wave attenuation structures, N.J.A.C. 7:7E-4.19; Resort/recreational use, N.J.A.C. 7:7E-7.3; Dredged material placement on land, N.J.A.C. 7:7E-7.12; and Marine fish and fisheries, N.J.A.C. 7:7E-8.2.;

Repeal and new rule: Coastal engineering, N.J.A.C. 7:7E-7.11; and

New rule: Living shorelines, N.J.A.C. 7:7E-4.23.

### **2. Changes in response to legislative amendments to CAFRA, P.L.2011, c. 20:**

In February 2011, the Legislature enacted N.J.S.A. 13:19-10.1 which amended CAFRA to allow for the construction of wind dependent energy facilities on piers in the coastal area provided the wind energy facility is an accessory use to the other uses of, or purposes of, the pier. As mandated by the legislation, the Department modified the CZM rules' Energy facility use rule, N.J.A.C. 7:7E-7.4, through a special adoption to also except from the CZM rules' siting restrictions wind turbines on piers throughout the coastal area. The Department readopted the special adopted change on June 19, 2012. (see 44 N.J.R. 1972(a)). Because the special adoption and subsequent readoption modifies an existing enforceable policy of the NJCMP, the Department is seeking approval to include the following into New Jersey's approved CMP as enforceable policies:

## CZM rules

Regulatory amendments: Energy facility use, N.J.A.C. 7:7E-7.4.

The Department considers the above actions to constitute a "Routine Program Change" of the New Jersey Coastal Management Program. Under 15 C.F.R. 923.84(a), changes to an approved coastal management program constitute a Routine Program Change when they do not result in the kind of amendments of the state's Coastal Management Program that can be described as "substantial changes to enforceable policies or authorities related to: (1) uses subject to management; (2) special management areas; (3) boundaries; (4) authorities and organization; and, (5) coordination, public involvement and national interest."

Federal regulations mandate that the State provide public notice of its Routine Program Change of the State's Coastal Management Program to the general public, affected parties, local and State agencies and regulatory offices, and relevant Federal agencies.

The Department has submitted a request for the concurrence of the Office of Ocean and Coastal Resource Management in the National Oceanic and Atmospheric Administration (NOAA) with the Department's determination that incorporating the above actions into New Jersey's Federally approved Coastal Management Program constitutes a Routine Program Change. This notice is required to accompany that submission pursuant 15 C.F.R. 923.84. The routine program change submittal to NOAA is available on the Department's Coastal Management Program website at [www.nj.gov/dep/cmp/czm\\_news.html](http://www.nj.gov/dep/cmp/czm_news.html). Comments on whether or not these actions should be considered a Routine Program Change should be sent by **Monday, January 6, 2014** to:



NOAA Office of Ocean and Coastal Resource Management  
Coastal Programs Division  
Attn: Ms. Joelle Gore, Acting Chief  
SSMC4, Rm. 11305  
1305 East West Highway  
Silver Spring, MD 20910

For full text of the Department's submission write or call:

New Jersey Department of Environmental Protection  
Division of Policy Implementation  
Attn.: Ms. Ann Marie Hoagland  
P.O. Box 420  
Mail Code: 401-07D  
Trenton, New Jersey 08625-0420  
(609) 633-2201

For further information about the above described actions, write or call:

New Jersey Department of Environmental Protection  
Division of Policy Implementation  
Attn.: Ms. Kimberly Springer  
P.O. Box 420  
Mail Code: 401-07D  
Trenton, New Jersey 08625-0420  
(609) 633-2201