

### §636-A. General permit for tidal energy demonstration project

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Tidal energy demonstration project" or "project" means a hydropower project that uses tidal action as a source of electrical power and that:

- (1) Has a total installed generating capacity of 5 megawatts or less; and
- (2) Is proposed for the primary purpose of testing tidal energy generation technology, which may include a mooring or anchoring system and transmission line, and collecting and assessing information on the environmental and other effects of the technology. [PL 2009, c. 270, Pt. D, §8 (NEW).]

[PL 2009, c. 270, Pt. D, §8 (NEW).]

**2. General permit.** A person may apply for a general permit for a tidal energy demonstration project in accordance with this section. If a general permit is granted pursuant to this section, an individual permit under section 633 is not required for the construction and operation of a tidal energy demonstration project.

[PL 2009, c. 270, Pt. D, §8 (NEW).]

**3. Application requirements.** An applicant for a general permit must file with the department an application that contains the following:

A. Written certification that the applicant has filed an application with the Federal Energy Regulatory Commission for a pilot project license for a proposed tidal energy demonstration project, along with a copy of that application as filed with the commission. The application must contain such information as is required by the Federal Energy Regulatory Commission, including, but not limited to:

- (1) A description of the waters of the State in which the proposed project will be located;
- (2) A description of proposed project facilities and operation;
- (3) Site-specific information regarding the physical environment in which the project is proposed to be located and the anticipated environmental effects of the proposed project;
- (4) A plan for monitoring the environmental effects of the project through the term of the general permit;
- (5) A plan for safeguarding the public and environmental resources through the term of the general permit;
- (6) A plan for removing the project after the termination of the general permit unless the applicant is pursuing a license for a commercial tidal power project at the site; and
- (7) Documentation that, in developing the application, the applicant has consulted with the appropriate local, state and federal resource agencies, as well as local governments, Indian tribes, nongovernmental organizations and members of the public likely to be interested in the project; [PL 2009, c. 270, Pt. D, §8 (NEW).]

B. Documentation, including certificates of insurance, that the applicant has and will maintain a current general liability policy for the project that covers bodily injury, property damages and environmental damages in an amount considered reasonable by the department in consideration of the scope, scale and location of the project; [PL 2009, c. 270, Pt. D, §8 (NEW).]

C. Documentation that the applicant has the financial and technical capacity to construct and operate the project as proposed; [PL 2009, c. 270, Pt. D, §8 (NEW).]

D. A copy of an environmental assessment issued by the Federal Energy Regulatory Commission for the proposed tidal energy demonstration project that includes a finding of "no significant environmental impact" pursuant to the National Environmental Policy Act of 1969, Public Law 91-190, 42 United States Code, Chapter 55, although the department may accept an application as complete for processing prior to the Federal Energy Regulatory Commission's issuance of a finding of no significant environmental impact; and [PL 2013, c. 177, §1 (AMD).]

E. Written acknowledgement that, in accordance with this section, the department may require the applicant to take remedial action, at the applicant's expense, pursuant to subsection 9, including but not limited to removal of the generating facilities and submerged utility line and termination of the project. [PL 2009, c. 270, Pt. D, §8 (NEW).]

[PL 2013, c. 177, §1 (AMD).]

**4. Notification.** The department shall notify an applicant in writing within 60 days of its acceptance of the application as complete for processing or within 30 days of the Federal Energy Regulatory Commission's issuance of a finding of no significant environmental impact, whichever later occurs, if the department determines that the requirements of this section have not been met. The notification must specifically cite the requirements of this section that have not been met. If the department has not notified the applicant under this subsection within the specified time period, a general permit is deemed to have been granted.

[PL 2013, c. 177, §2 (AMD).]

**5. Fees.** Except as otherwise provided by section 344-A, the department shall assess a fee for review of applications filed pursuant to this section as provided by section 352.

[PL 2009, c. 270, Pt. D, §8 (NEW).]

**6. Violation.** Any action taken by a person receiving a general permit under this section that is not in compliance with the plans submitted under subsection 3 or as subsequently modified with the approval of the department in consultation with agencies and other entities with whom the applicant consulted in accordance with subsection 3, paragraph A, subparagraph (7) is a violation of the general permit.

[PL 2009, c. 270, Pt. D, §8 (NEW).]

**7. General permit term.** Except as otherwise provided in subsections 8 and 9, a general permit granted under this section is valid for the term of the pilot project license, including any related annual license, issued by the Federal Energy Regulatory Commission for the tidal energy demonstration project that is the subject of the general permit. The department may grant one or more extensions of the general permit term to coincide with any approved extension of the term of the pilot project license or any related annual license issued by the Federal Energy Regulatory Commission.

[PL 2009, c. 270, Pt. D, §8 (NEW).]

**8. Surrender.** A general permit granted pursuant to this section is deemed to have been surrendered and terminates on the date of approval by the Federal Energy Regulatory Commission of the surrender and termination of the pilot project license or any related annual license for the tidal energy demonstration project that is the subject of the general permit. An applicant may surrender to the department a general permit granted pursuant to this section prior to its expiration pursuant to subsection 7. Subject to conditions regarding project removal under subsection 10, the general permit terminates on the date of its surrender pursuant to this subsection.

[PL 2009, c. 270, Pt. D, §8 (NEW).]

**9. Remedial action.** If the department determines, based on the results of monitoring conducted by the applicant or other information, that there is substantial evidence that the project is having a significant adverse effect on a protected natural resource as defined by section 480-B, subsection 8, wildlife, including avian wildlife, bat species, marine mammals, fish or other marine resources or public health or safety, the department shall order the applicant to take action that the department considers

necessary to address that adverse effect. Remedial action required by the department may include, but is not limited to:

A. Suspension or modification of project operations; or [PL 2009, c. 270, Pt. D, §8 (NEW).]

B. Cessation of operations and removal of some or all elements of the project, including but not limited to the generating facilities, if there is no practicable alternative to address the adverse effect. [PL 2009, c. 270, Pt. D, §8 (NEW).]

[PL 2009, c. 270, Pt. D, §8 (NEW).]

**10. Project removal.** Within 60 days of termination of the project pursuant to subsection 7 or 8, unless the applicant is pursuing a license for a commercial tidal power project at the site, and within 60 days of termination of the project pursuant to subsection 9, the applicant shall initiate implementation of the project removal plan provided for under subsection 3, paragraph A, subparagraph (6). If the applicant fails to begin implementing the plan within this 60-day period, the department may take such measures as it considers necessary to initiate and fully implement the plan by drawing on the financial surety provided pursuant to the project removal plan. The applicant's acceptance of the general permit constitutes agreement and consent by the applicant and its heirs, successors and assigns that the department may take such action as necessary to initiate and fully implement the project removal plan. The holder of the project removal funds shall release the project removal funds when the applicant has demonstrated and the department concurs that the project removal plan has been satisfactorily completed or upon written authorization by the department in the event the department implements the plan pursuant to this subsection.

[PL 2009, c. 270, Pt. D, §8 (NEW).]

**11. Local review.** A municipality may not enact or enforce any land use, zoning or other standard, conditions or requirement regarding a tidal energy demonstration project located within the municipality that is stricter than the standards, conditions or requirements of this section. The municipality has the burden of proof regarding the location of the project in relation to its boundaries. Any action by the municipality regarding its authorization to site, construct or operate a tidal energy demonstration project must be taken within 60 days of the granting of a general permit under this section.

[PL 2009, c. 270, Pt. D, §8 (NEW).]

## SECTION HISTORY

PL 2009, c. 270, Pt. D, §8 (NEW). PL 2013, c. 177, §§1, 2 (AMD).

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