

## **State Agriculture Development Committee**

**August 4, 2010**

### **Solar, Wind and Biomass Energy on Farms**

P.L. 2009, c. 213, which affects the ability to install solar, wind or biomass energy generation systems on farms, was signed into law in January 2010. The law provides for the installation of solar, wind and biomass energy generation systems and identifies limits and criteria for these activities on preserved farms, and to qualify for farmland assessment and right-to-farm protection on both preserved and non-preserved farms.

The questions and answers below provide more information on the new law and the State Agriculture Development Committee's responsibilities for implementation purposes.

#### **What is the State Agriculture Development Committee's role?**

The State Agriculture Development Committee (SADC) must review/approve *all* new energy projects on preserved farmland in consultation with the owner of the development easement (e.g., county agriculture development board or nonprofit entity). It also is responsible for administering – in cooperation with county agriculture development boards – Right-to-Farm protection for energy projects on commercial farms that meet the Right to Farm Act's basic qualifying criteria and the requirements set forth in the new law (for farmland assessment and, where applicable, preserved farms). The law requires the SADC to adopt rules to implement its various provisions, including developing and adopting Agricultural Management Practices (AMPs), pursuant to the Administrative Procedure Act, that establish the standards for right-to-farm protection.

#### **How much energy will I be able to generate on my preserved farm?**

The law will allow you to install a solar, wind or biomass energy system that generates up to 110 percent of your farm's previous calendar year's energy demand **or** that occupies up to 1 percent of the area of your entire farm – including both preserved land and exception areas. The 110 percent calculation does not include "*energy generated from facilities, structures or equipment existing on the roofs of buildings or other structures on the farm as of the date of enactment*" of the law – January 16, 2010. This provision of the law is understood to mean that any solar, wind or biomass energy generation equipment that existed on the farm as of January 16, 2010, is not included in the 110 percent calculation, provided that it was used solely to generate energy for the agricultural operation.

#### **Are there any other criteria that need to be met for preserved farms?**

Yes. The installation and operation of solar, wind or biomass energy projects on preserved farmland must also meet all eligibility criteria for farmland assessment. These criteria include, but are not limited to, the following:

1. for every 1 acre devoted to energy generation, another 5 acres of land must be devoted to agricultural/horticultural operations; and

2. the total area devoted to energy generation cannot exceed 10 acres in size (or 1% of the farm, whichever is less); and
3. no more than 2 megawatts (MW) of power may be generated.

**Are there any special considerations for farms preserved with federal funding?**

If your farm was preserved with federal funding from the Farm and Ranch Lands Protection Program, the USDA's Natural Resources Conservation Service (NRCS) will not permit you to generate more energy than your farm operation needs. Additional federal restrictions may also apply to the generation of energy for farm-use only and will be considered by the NRCS on a case-by-case basis.

**When will I be able to apply to the SADC to install an energy system on my preserved farm?**

SADC approval is needed under the new law for the installation of systems to generate energy for the farm use. At this time, the SADC will accept and consider those applications for solar or wind energy facilities that are placed on existing buildings or other existing structures, are designed to meet the energy needs of the farm and do not exceed 2 MW of power. The SADC cannot accept applications for other energy generation systems on preserved farms until it has proposed and adopted rules for such systems.

**What is the process for applying to install energy systems on existing buildings or structures?**

The application for this type of project will be available on the SADC's website, or by contacting the SADC at (609) 984-2504. Until rules are adopted, the SADC will process these applications in the following manner: Upon receiving an application, the SADC will determine within 30 days that the application is complete. It then will provide a copy of the original application to the owner of the development easement. The owner of the development easement will have 30 days to provide comments to the SADC. The SADC will act on the application within 90 days of receipt of those comments.

**What about Right-to-Farm protection for my energy project?**

The SADC and county agriculture development boards will provide Right-to-Farm protection to on-farm energy generation projects – which are consistent with Right to Farm Act requirements, including farmland assessment provisions – upon the SADC's recommendation of agricultural management practices (AMPs) and adoption of the AMPs by regulation pursuant to the Administrative Procedure Act. The SADC is actively working to develop the AMPs to make right-to-farm protection available as soon as possible, and anticipates proposing AMPs this fall.

**Is there a municipal process available for solar, wind or biomass energy generation projects on farms?**

Yes. Municipalities may entertain requests to approve solar or wind projects on *non-preserved* farmland under the normal provisions of the Municipal Land Use Law

(“MLUL”; 40:55D et seq.) without involvement of the SADC or county agriculture development board. Note that the recently enacted amendment to the MLUL changed the definition of “Inherently Beneficial Use” to include “wind, solar or photovoltaic energy facility or structure.”

For preserved farms, the SADC must grant approval to solar, wind or biomass energy projects prior to installation to ensure they comply with the criteria set forth in the law and with farmland preservation deed restrictions. This process, however, does not eliminate the need for landowners to obtain any local government approvals that also may be required.

Biomass projects on both preserved and non-preserved farmland require approval of the N.J. Department of Agriculture in addition to municipal and other required approvals.