

CMP POLICY & IMPLEMENTATION COMMITTEE MEETING

This meeting was conducted remotely

All participants were present via Zoom conference

The public could view/comment through Pinelands Commission YouTube link:

<https://www.youtube.com/channel/UCBgpC8sbR3Acrjo7ppxs3Uw>

Meeting ID: 815 8070 9301.

November 19, 2021 - 9:30 a.m.

MINUTES

MEMBERS IN ATTENDANCE: Chairman Richard Prickett, Alan Avery, Jerome H. Irick, Ed Lloyd and Mark Lohbauer

MEMBERS ABSENT: None

STAFF PRESENT: Susan R. Grogan, Stacey P. Roth, Charles Horner, Jessica Lynch, Brad Lanute, Kim Laidig, Ernest Deman, Brian Szura, Paul Leakan, and Dawn Holgersen. Also present was Rudy Rodas, with the Governor's Authorities Unit.

1. Call to Order

Chairman Prickett called the Comprehensive Management Plan (CMP) Policy and Implementation (P&I) Committee meeting to order at 9:31 a.m. and Ms. Grogan identified all staff attending/participating in the meeting.

2. Adoption of minutes from the October 29, 2021 CMP Policy and Implementation Committee meeting

Commissioner Lohbauer moved the adoption of the minutes of the October 29, 2021 Committee meeting. Commissioner Lloyd seconded the motion. All voted in favor.

3. Stormwater management CMP amendments

Ms. Grogan said that there was nothing new to report. She said that Commission staff met with representatives from the New Jersey Department of Transportation (NJDOT) last week to discuss their concerns.

She said that some minor clarifications were made and there were no substantial changes to the amendment language. She said that it is being finalized and we are awaiting a response from the Governor's Office.

Ms. Grogan said that a resolution may be presented at the December Commission Meeting and that NJDOT issues seem to be resolved.

4. Electric Transmission Right-of-Way Maintenance Pilot Program

Ms. Grogan said that Commission staff are in the process of drafting the rule language. She said that it will be prepared to present at the next meeting.

5. Priorities and schedules for CMP amendments

Ms. Grogan gave a presentation on the priorities and schedules for CMP amendments (*attached to these minutes and on the Commission's website at:*

<https://www.nj.gov/pinelands/home/presentations/P%20%20I%2011.19.21%20CMP%20Amendments.2.pdf>).

She said that all Commissioners and staff were asked to provide their top five priorities. She said that it gave some perspective.

Ms. Grogan mentioned that the only Commissioners to respond to the request were those on the P&I Committee.

She outlined the top five Commissioner priorities: stormwater management, right-of-way maintenance, water supply, the Pinelands Development Credit (PDC) program, and solar facilities.

Ms. Grogan said that, among the Commissioners, there were other items that were highly ranked by two Commissioners but they lacked a consensus or support.

She said that cluster development is high on the Commission staff priority list. She mentioned that the rules have not been revised in ten years. She said that a comprehensive review has been completed and necessary clarifications have been identified, along with a number of more substantive changes.

Ms. Grogan said that expiration of protection from zoning changes is another high priority for Commission staff. She said that the lack of expiration dates has become a time consuming and difficult issue when dealing with application that have old approvals.

Ms. Grogan indicated that because only five Commissioners responded to the request, it was hard to draw any definitive conclusions on the long list of potential amendments.

In response to a question from Commissioner Lloyd, Ms. Grogan said that responses were received from five to ten staff members.

Ms. Grogan said that there are large policy amendments drafted. She said that internal policy correction amendments were largely recommended by Commission staff.

She said that it takes a considerable effort to study and write amendments. She mentioned that it took about three years to develop, draft and propose the stormwater amendments. She said that there are also stakeholder considerations that need to be accommodated in the process.

Ms. Grogan said that when CMP amendments are passed by the Commission, Pinelands municipalities must adopt ordinances to add these amendments. She said that municipalities have one year to adopt such ordinances.

Chairman Prickett remarked that ordinances for most of the municipalities are written by Commission staff. Ms. Grogan said that it is easier now that towns have codified their ordinances. She said that it is still time consuming.

Ms. Grogan said that when the Commission sends the model ordinances, about half of the municipalities will adopt them without edits, some will have feedback, and some are reluctant.

In response to Commissioner Lloyd's question about Commission input for New Jersey Department of Environmental Protection (NJDEP) rules, Ms. Grogan said that the Commission is sometimes given the opportunity to comment prior to formal proposals. She said that Mr. Ed Wengrowski, the Commission's Environmental Technologies Coordinator, has been involved with numerous NJDEP stakeholder groups. She also said that the Commission did submit formal comment on the NJDEP's stormwater rules.

Ms. Grogan indicated that there are direct Commission actions in the chart that are needed to respond to NJDEP amendments.

She said that there are smaller amendments that are not complex and will take less time to review. She gave examples of fee amendments, waiver expirations, and clustering modifications.

Ms. Grogan said that some of the amendments on the list were part of formal proposals made in 2017. The then Governor's office removed certain amendments from the proposals so they did not proceed.

Ms. Grogan said that there are large amendments that the Commissioners are focused on and there are procedural issues that take up a considerable amount of staff time.

Commissioner Lohbauer said that having the scoring by staff would be helpful to identify issues. He said that it might influence the Commissioner's priorities. He said that he would like to save staff time.

Commissioner Lloyd echoed Commissioner Lohbauer's comment on staff scoring. He mentioned that the fee amendments and approval expirations were both presented and subsequently declined by the Governor's office.

Ms. Grogan replied that the declined proposals were from the previous administration. She said that the amendments have not been discussed with the current administration.

Chairman Prickett suggested that staff see if the Governor's office would be supportive of the amendments. He mentioned the increased fees for applications involving violations.

Commissioner Lloyd recommended that a list be made of amendments struck by the former Governor and given to Mr. Rodas for input from the current administration.

Ms. Grogan said there is a long list of important issues to be addressed. She said that with so few Commissioners actively participating, there was not much consensus. The lack of staff is also a major constraint. She said that there will be new staff starting near the end of the year to the beginning of next year. She also said that there is potential for new Commissioners and the need to hire a permanent Executive Director.

She said that there is no disagreement with the Commissioners input. She also said that she agrees with the staff ranking. She also said that staff appreciated the list of priorities from the Commissioners.

She said that staff will revisit the priorities but for now will work on the current rulemaking efforts. She said that she suggests continued discussion of the amendment priorities in the spring.

Commissioner Lloyd said that the information was very helpful. He mentioned having five- and ten-year plans and suggested creating a calendar for fiscal year 2022 with a plan for priorities.

Ms. Grogan said that, in the past, a workplan was created for the fiscal year budget. She suggested development of a realistic plan on what amendments can be done in a year, to coincide with preparation of the budget. The staff would then provide updates quarterly.

Commissioner Lohbauer agreed with Commissioner Lloyd. He said that he does not want to burden staff. He remarked that it was good to see the scope of the priorities. He said he would like to be more sensitive to what helps the staff. He also said that a timeline is reasonable and that it gives perspective.

Ms. Grogan said that the staff is excited about the amendment discussion and progress made to date. She said the staff was pleased the Commissioners wanted their input.

Chairman Prickett said that the Commission is aware of changes that are needed. He said that the P&I Committee can discuss the priorities. He said that more material is needed to present to the full Commission. He asked for more participation from the Commissioners. He also said he would like to send a memo with updates to the Commission and to ask for input.

Commissioner Lloyd said there is more work to be done. He said that a one-year plan needs to be created before presenting the information to the Commission.

Chairman Prickett replied that he would like to send a preliminary letter. He suggested to continue the subject to the next meeting.

Ms. Grogan informed Chairman Prickett that the January 2022 meeting has a full agenda. She recommended to move the subject to the March or April meeting. She said that would give time to reevaluate our abilities with the anticipated addition to the staff.

She said that staff will continue to work with the three amendments that are currently under review.

Commissioner Lohbauer suggested that priorities be set for the next fiscal year. He said the Climate Committee is working on amendments to present next month. He said that more reporting is needed to give priority to climate-related amendments.

Commissioner Irick commended the staff for their list of priorities. He said that the amendments that are ready should be moved forward. He mentioned contacting the Governor's Office to seek support for the prepared drafts.

Chairman Prickett, Commissioners Lohbauer and Lloyd expressed their agreement with Commissioner Irick's comment.

Commissioner Avery commented that the staff priorities were interesting. He said that he is not familiar with issues in the clustering rules. He asked about the status of the amendments.

Ms. Grogan replied that the amendments are not completely written. She said that analysis has been completed and stakeholder input has been collected.

Commissioner Avery remarked that it is a lot of work for municipalities to pass ordinances. He suggested to bundle some of the amendments for their ordinances. He said that clustering would need an ordinance.

He said that solar facilities on landfills needs amendments and an ordinance. He suggested to bundle those amendments with the stormwater amendments. He mentioned the increased interest in solar.

Ms. Grogan replied that bundling the ordinances is important. She said that small amendments are not worth the time and effort to do on their own. She said that for the stormwater rules, model ordinances will be drafted in early 2022. She indicated that the stormwater ordinances need to be separate as they are not typical land use ordinances.

Commissioner Avery expressed appreciation to staff for their work. He commented that getting eight votes for something is not easy with only eleven Commissioners.

Chairman Prickett said that he hopes for universal support for the stormwater amendments. He remarked that it would be great if small amendments could be put in. He also said that if that is not possible, then it will be revisited in the spring.

Ms. Grogan indicated that more information was sent out on the subject of environmental justice.

Mr. Lanute gave a presentation on overburdened communities (*attached to these minutes and on the Commission's website at: <https://nj.gov/pinelands/home/presentations/2021.11.19%20-%20PI%20-%20Pinelands%20OBCs.pdf>*).

Mr. Lanute said that during the last meeting Ms. Grogan mentioned the need for staff to work with NJDEP to identify the effect the environmental justice measures may have on the Pinelands Area.

Mr. Lanute explained the Executive Order and New Jersey Environmental Justice Law. He said that NJDEP is in the rulemaking process to implement the law.

Mr. Lanute said that a map was created to show how the information relates to the Pinelands Area. He explained the criteria that designate an area as overburdened (low-income, minority, English language proficiency). He said that if an area met any one of the criteria, it received the designation.

He explained the eight types of facilities affected by the law. He mentioned that there is a low likelihood of any such new facilities being approved in the Pinelands Area because of existing CMP rules. He said that existing facilities may need to address the new law during the permit renewal process.

Mr. Lanute said that the first map was created by NJDEP and the second map was created by Commission staff. He indicated that NJDEP GIS data was used for the map. He said that the second map highlights sections in the Pinelands Area and Pinelands National Reserve.

He notified the Committee that the census blocks are larger in rural areas due to spatial measurement. He also said that it is not updated with 2020 census data. He also noted that the legend for the second map has less criteria. He said that there were no census blocks in the Pinelands Area with limited English proficiency.

Mr. Lanute outlined the number of acres designated as overburdened in each Pinelands Management Area. He said that there is a large number of acres in the Forest Area because of how the census blocks are delineated. He said that it is not reflective of the size (population) of the community.

Commissioner Lloyd asked if a list of existing facilities in the Pinelands Area could be generated. He commented that census tracts skew info.

Ms. Grogan said that generating such a list should be relatively easy for most of the facilities on the list. She said, for example, there is only one operating landfill in the Pinelands Area.

In response to Commissioner Avery's question, Ms. Grogan indicated that the Fort Dix landfill is closed and has a solar facility on it.

Commissioner Lohbauer remarked that a closed landfill facility should also be recognized because it may still create a burden for a community.

Ms. Grogan said that there are many existing, closed landfills in the Pinelands. She mentioned that there is no intention to re-open those sites and the CMP would not allow it. She said that some are having impacts on surrounding areas. She said that she is unsure if the law addresses the closed facilities.

Ms. Roth said that the law provides an opportunity for overburdened communities to be involved in the siting and expansion of those facilities.

Chairman Prickett mentioned the Pinelands Infrastructure Trust Fund (PITF) infrastructure grants. He indicated that Pemberton Township is one of the areas highlighted in green as an overburdened community. He said that the Commission awarded a PITF grant for a water system. He suggested that the overburdened community criteria should be added to the list of priorities when evaluating future PITF grant requests.

Ms. Grogan said that the project ranking criteria have been based on new development potential and the use of PDCs. She mentioned the possibility of adding criteria. She said the focus is to encourage new development in the Regional Growth Area.

Chairman Prickett mentioned that there is a closed landfill within a mile from the water system project in Pemberton Township.

Ms. Grogan said that in regard to rulemaking such as for environmental justice, when there are orders and laws that affect the NJDEP permitting process, they embark on an extensive stakeholder process. She said that is an effort that the Commission has not been involved in to date, nor have they been invited to participate.

She said that while this may not result in rulemaking for the Commission, it would be good if the Commission was involved in NJDEP's efforts. She offered to invite NJDEP to make a presentation if the Commissioners would like more information on their environmental justice rulemaking.

Chairman Prickett remarked about the Commission being invited to participate for climate change rulemaking.

Commissioner Lloyd asked if NJDEP has a docket for their rulemaking. Ms. Grogan replied that there is a notification system by email for rule proposals. She said that those notifications are sent out closer to when NJDEP is ready to publish the rule, and that limits the Commission's ability to provide comment.

Commissioner Avery said that the environmental justice law is important. He said an effort should be made to put something in the CMP to address the law. He said it doesn't need to be extensive as the burden is on the NJDEP to implement the law.

Ms. Grogan said that, for example, there are no rules in the CMP for affordable housing. She said that staff developed standard language to be included in various Commission documents reminding applicants of the Council On Affordable Housing's regulations and other statutory requirements. She also said that for public development applications, there is a standard condition that applicants must obtain all other necessary state and local permits. She said language could also be created for applications involving the types of facilities that relate to the environmental justice law.

Mr. Horner arrived at 10:50 a.m.

Commissioner Avery commented that there should still be some sort of reference in the CMP.

6. Public Comment

Andrew Gold from the Pinelands Preservation Alliance (PPA) thanked the Committee and Commission staff for prioritizing the amendments and for their diligence. He expressed disappointment in the lack of Commissioner feedback. He urged the Committee to consider the Kirkwood-Cohansey aquifer rules as a priority. He thanked Mr. Lanute for the presentation on environmental justice. He encouraged the Committee to think creatively and beyond what the environmental justice law addressed, which is mostly industrial and that it may look different in the Pinelands. He also said that PPA recommended NJDEP include consideration of open space in its rulemaking effort, particularly the impacts the loss of open space may have on overburdened communities. He suggested the Commission do the same.

Fred Akers from the Great Egg Harbor Watershed Committee thanked the Commission staff for the environmental justice presentation. He said that he downloaded the NJDEP info for the Egg Harbor watershed. He said that a lot seems to be based on air pollution. He mentioned that he saw a traffic safety presentation in regard to funding improvements for pedestrians. He also said he attended a Water Fund Coalition meeting that will target open space monies for environmental justice causes. He recalled that the Commission's plan review was every five years. He said that with amendment priorities now being identified every year and on an ongoing basis, that takes more time and effort.

Agnes Marsala thanked the Commission and staff for their work. She said it is not easy. She said that she agrees with the staff priority on clustering development and expiration of approvals. She said that developers are giving large sums of money to municipalities to develop land that is protected. She said that even one approved facility could lead to more lost acres. She said that the terms environmental justice and overburdened communities do not include rural areas so much. She said that because there are few people, they have little to no voice in the political

process. She said that the Southern Reliability Link (SRL) should be looked at for environmental justice. She urged the Commission to act on behalf of people in rural areas when it comes to environmental justice. She also urged the Commission to promote infrastructure that works with the natural world and takes climate change into account. She also said the Commission should act before the NJDEP to enact aquifer rules. She recommends more regulation or a ban on horizontal directional drilling in the Pinelands. She mentioned the spills from the construction of the SRL. She said that an inadvertent return rate of 50% seems to be an accepted cost of doing business. She said the cost is too high for such a sensitive area.

Georgina Shanley said that she agreed with Ms. Marsala. She expressed her gratitude to the Commission for its efforts to protect the Pinelands. She said she is disappointed in the amount of Commissioner response for the rulemaking priorities. She said it shows a lack of interest and makes it more important to fill the vacant Commissioner seats. She asked that if a letter is sent to the Governor that it should request the vacancies to be filled and to have a representative from the Department of the Interior. She said that things cannot move forward until there is a full Commission. She said the amendments could take until 2025 and with the climate crisis and with the world burning, it seems like a long time before anything significant can be done. She reiterated Ms. Marsala's sentiment on the spills from the construction of the SRL. She asked if any laws could be fast-tracked to address the climate crisis either through the Governor's power or power of the Commissioner. She reiterated the need for more Commissioners and to fast-track rules. She remarked that it seems that everyone is sitting around waiting for the Pinelands to be finished and barren. She said she is happy to see that environmental justice is becoming a part of it. She said she would like to see the Commission take a leadership role and not wait for NJDEP.

Chairman Prickett closed public comment at 11:05 a.m.

There being no further discussion, Commissioner Lohbauer moved the closing of the meeting. Commissioner Avery seconded the motion. The meeting concluded at 11:06 a.m.

Certified as true and correct

A handwritten signature in black ink, appearing to read 'Dawn Holgersen', with a long horizontal flourish extending to the right.

Dawn Holgersen
Office Assistant
January 20, 2021