Case Notes

Appeal based on "extraordinary hardship" (see for historical purposes, decisions based on interim rules of the Pinelands Commission). In re Pinnacle International Corp., 3 N.J.A.R. 9 (1980); Brenner v. Pinelands Commission, 1 N.J.A.R. 273 (1979).

7:50-1.13 through 7:50-1.20 (Reserved)

PART III—DUTIES AND POWERS OF THE EXECUTIVE DIRECTOR

7:50-1.21 Duties and powers

(a) The Executive Director shall be the chief administrative officer of the Commission and, subject to the approval of his actions by the Commission as provided herein, shall be charged with the administration and enforcement of this Plan. He shall supervise, manage and be responsible for the affairs and activities of the Commission staff, including, but not limited to, the exercise of the following duties and powers:

1. Rules and Regulations: The Executive Director shall, consistent with the express standards, purposes and intent of this Plan, establish administrative procedures and forms as are in his opinion necessary to the effective administration and enforcement of the provisions of this Plan and the rules and regulations of the Commission.

2. Records: The Executive Director shall maintain:

i. Permanent and current records of this Plan including all maps, amendments, development approvals and denials, interpretations and decisions rendered by the Commission or by the Executive Director together with relevant background files and materials.

ii. A current file of all certificates and approvals issued pursuant to this Plan for such time as necessary to ensure continuous compliance with the provisions of this Plan and such certificates and approvals.

iii. A current file of all letters of interpretation issued pursuant to N.J.A.C. 7:50-4 of this Plan.

iv. Permanent and current records of all meetings, hearings and proceedings, and the minutes and transcripts taken therein, held by the Commission or the Executive Director pursuant to this Plan.

SUBCHAPTER 2. INTERPRETATIONS AND DEFINITIONS

PART I—INTERPRETATION

7:50-2.1 Provisions are minimum requirements

In their interpretation and application, the provisions of this Plan shall be held to be the minimum standards for the preservation of the Pinelands, as set forth in the provisions of this element. Where the provisions of this Plan are more restrictive than those of any other statute, ordinance or regulation, the provisions of this Plan shall control.

Case Notes

Certification and approval of master plan which designated forest area as municipal reserve area was improper where municipal reserve area created was immediately adjacent to forest area. In Re: Certification of Master Plan and Land Use Ordinances of Berkeley Twp., 214 N.J.Super. 390, 519 A.2d 901 (App.Div.1986).

Pinelands regulations set forth the minimum standards for protection of the Pinelands; municipality may adopt and enforce more restrictive standards; compliance with local ordinances required unless in conflict with regulations; proposed development approved by Pinelands Commission must be submitted to local planning board for review not inconsistent with regulations. Fine v. Galloway Twp. Committee, 190 N.J.Super. 432, 463 A.2d 990 (Law Div.1983).

7:50-2.2 Construction

This Plan, being necessary for the protection and preservation of the resources of the Pinelands, shall be construed liberally to effect the purposes of the Federal Act and the Pinelands Protection Act.

7:50-2.3 Word usage

(a) In the interpretation of this Plan, the provisions and rules of this section shall be observed and applied, except where the context clearly requires otherwise:

1. Words used or defined in one tense or form shall include other tenses and derivative forms.

2. Words in the singular shall include plural and words in the plural shall include the singular.

3. The masculine gender shall include the feminine and the feminine gender shall include the masculine.

4. The word "shall" is mandatory.

5. The word "may" is permissive.

6. In case of any difference of meaning or implication between the text of this Plan and any caption, the text shall control.

7:50-2.4 through 7:50-2.10 (Reserved)

PART II—DEFINITIONS

7:50-2.11 Definitions

When used in this Plan, the following terms shall have the meanings ascribed to them.

"Abandonment" means the voluntary cessation or discontinuation of a use, not including temporary or short-term interruptions to a use during periods of remodeling, maintaining or otherwise improving or rearranging a facility, or during normal periods of vacation or seasonal closure. Cessation or discontinuation of a use for two or more years shall constitute prima facie evidence of abandonment. An applicant may rebut this presumption of abandonment by demonstrating, by a preponderance of the evidence, objective proof of intent to continue a use such that a reasonable person would believe there was no intent to abandon said use. Factors to be considered by the Commission in evaluating such intent may include, but are not limited to:

1. The length of time of cessation or discontinuation of the use;

2. Whether the owner of the use has allowed it to fall into disrepair;

3. Bills of lading, delivery records, phone records or utility bills affirmatively documenting continuation of the use; and

4. Any other record, bill or correspondence affirmatively documenting continuation of the use.

"Accessory structure or use" means a structure or use which:

1. Is subordinate to and serves a principal building or a principal use, including but not limited to the production, harvesting, and storage as well as washing, grading and packaging of unprocessed produce grown on-site; and

2. Is subordinate in area, extent and purpose to the principal structure or principal building or a principal use served; and

3. Contributes primarily to the comfort, convenience or necessity of the occupants, business or industry of the principal structure or principal use served; and

4. Is located on the same parcel as the principal structure or principal use served, except as otherwise expressly authorized by the provisions of this Plan.

"Agricultural commercial establishment" means a retail sales establishment primarily intended to sell agricultural

products produced in the Pinelands. An agricultural commercial establishment may be seasonal or year round and may or may not be associated directly with a farm; however it does not include supermarkets, convenience stores, restaurants and other establishments which coincidentally sell agricultural products, nor does it include agricultural production facilities such as a farm itself, nor facilities which are solely processing facilities.

"Agricultural employee housing" means residential dwellings, for the seasonal use of employees of an agricultural or horticultural use, which because of their character or location are not to be used for permanent housekeeping units and which are otherwise accessory to a principal use of the parcel for agriculture.

"Agricultural or horticultural purpose or use" means any production of plants or animals useful to man, including, but not limited to: forages or sod crops; grains and feed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, and including the breeding and grazing of any or all such animals; bees and apiary products; fur animals; aquatic organisms as part of aquaculture; trees and forest products; fruits of all kinds, including grapes, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products; or any land devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agency of the Federal Government.

"Agricultural products processing facility" means a facility designed, constructed, and operated for the express purpose of processing agricultural products grown in the Pinelands, including washing, grading, and packaging of those products.

"Alternate design pilot program treatment system" means an individual or community on site waste water treatment system that has the capability of providing a high level of treatment including a significant reduction in the level of total nitrogen in the wastewater and is one of the following systems, as described in the report prepared by Anish R. Jantrania, Ph.D., P.E., M.B.A. entitled "Performance Expectations for Selected On-site Wastewater Treatment Systems," dated December, 2000, incorporated herein by reference, and available at the principal office of the Commission, that have been authorized for use for residential development by the pilot program established in N.J.A.C. 7:50-10, Part IV:

1. FAST;
2. Cromaglass;
3. Bioclere; or
4. Amphidrome.

"Amendment" is a means for making changes in this Plan as expressly authorized by the provisions of N.J.A.C. 7:50-7 or any change to a certified local master plan or land use ordinance.

"Ancillary" means a structure or use which:

1. Is located on the same parcel but is not necessarily related to a principal structure or use; and

2. Is subordinate in area, extent and purpose to the principal structure or principal building.

"Animals, threatened or endangered". See: N.J.A.C. 7:50-6.32.

"Application for development" means any application, filed with any permitting agency, for any approval, authorization or permit which is a prerequisite to initiating development in the Pinelands Area, except as provided in N.J.A.C. 7:50-4.1(a).

"Approval, final" means any approval to develop issued by a local permitting agency which represents the final action to be taken on the application for development by that agency, including but not limited to final approval of major subdivisions and site plans, approval of minor subdivisions, and the issuance of zoning or construction permits.

"Approval, preliminary" means any approval to develop issued by a local permitting agency which is a prerequisite to the issuance of a final approval by that agency, including but not limited to preliminary approvals of major subdivisions and site plans.

"Aquaculture" means the propagation, rearing and subsequent harvesting of aquatic organisms in controlled or selected environments, and their subsequent processing, packaging and marketing, including, but not limited to, activities to intervene in the rearing process to increase production such as stocking, feeding, transplanting and providing for protection from predators.

"Aquatic organisms" means and includes, but is not limited to, finfish, mollusks, crustaceans and aquatic plants which are the property of a person engaged in aquaculture.

"Artificial regeneration" means the establishment of tree cover through direct or supplemental seeding or planting.

"Assisted living facility" means a facility licensed by the New Jersey Department of Health and Senior Services pursuant to N.J.A.C. 8:36 which is designed and operated to provide apartment style housing and congregate dining while assuring that a coordinated array of supportive personal and health services are available, as needed, to four or more adult persons unrelated to the proprietor. Each unit in an assisted living facility shall offer, at minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance. For purposes of this Plan, assisted living facility shall include assisted living residences and assisted living programs as defined at N.J.A.C. 8:36-1.3.

"Bedding" means a silvicultural practice involving the preparation of land before planting in the form of small mounds so

iii. A herbaceous or shrub dominated wetland type found in naturally occurring circular or nearly circular depressions within upland or wetland complexes;

iv. Located within 300 feet of a lake, pond, river or permanent stream; or

v. A wetlands supporting plant species which are designated as endangered pursuant to N.J.S.A. 13:1B-15.151 et seq. or a supporting plant or wildlife species designated as threatened or endangered pursuant to N.J.A.C. 7:50-6.27 and N.J.A.C. 7:50-6.33.

"Wetlands management" means the establishment of a characteristic wetland or the removal of exotic species or Phragmites from a wetland in accordance with the standards of N.J.A.C. 7:50-6.10. For purposes of this definition, exotic species are those that are not indigenous to North America.

"Wetland soils" means those soils designated as very poorly drained or poorly drained by the Soil Conservation Service of the United States Department of Agriculture, including but not limited to Atsion, Bayboro, Berryland, Colemantown, Elkton, Keansbury, Leon, Muck, Othello, Pocomoke, St. Johns and Freshwater Marsh and Tidal Marsh soil types.

Emergency Amendment R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).
See: 17 N.J.R. 1918(a).
"Certificate of Compliance" added. "Certificate of Conformity" deleted.
Amended by R.1985 d.494, effective September 12, 1985.
See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).
Amended by R.1987 d.436, effective November 2, 1987.
See: 18 N.J.R. 2239(a), 19 N.J.R. 2010(a).
Substantially amended.
Amended by R.1988 d.405, effective September 19, 1988.
See: 20 N.J.R. 716(a), 20 N.J.R. 2384(a).
Substantially amended.
Amended by R.1990 d.170, effective March 19, 1990.
See: 21 N.J.R. 3381(a), 22 N.J.R. 948(a).
Corrected errors in "Parcel" and "Subdivision".
Amended by R.1992 d.91, effective March 2, 1992.
See: 23 N.J.R. 2458(b), 24 N.J.R. 832(b).
Amended "Contiguous lands"; added "fair market value" and "wetland, impaired".
Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).
Amended by R.1995 d.449, effective August 21, 1995.
See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).
Amended "Agricultural employee housing", "Certified county master plan or ordinance", and "Uncertified municipality or county"; added "Local communications facility"; and deleted "Local review officer" and "Notice of filing".
Amended by R.1996 d.225, effective May 20, 1996.
See: 27 N.J.R. 3878(a), 28 N.J.R. 2596(a).
Added "Collection facility", "Domestic treatment works", "Domestic wastewater", "Hazardous or toxic substances", "Hazardous waste", "Household hazardous waste", "Incinerator", "Lawful use", "Record tree", "Recyclable material", "Recycling center", "Regulated medical waste", "Remediation", "Sewage sludge", "Suitable sewage sludge", "Transfer station or facility", "Vegetative waste", "Waste", "Waste derived material", and "Waste management facility"; deleted "Solid waste transfer station" and "Specimen tree"; and amended "Forestry", "Landfill" and "Wetlands, impaired".
Amended by R.2000 d.272, effective July 3, 2000.
See: 32 N.J.R. 145(a), 32 N.J.R. 2435(a).
Inserted "Assisted living facility" and "Continuing care retirement community"; in "Dwelling unit", added a second sentence; and in "Institutional use", deleted a reference to supervised residential institutions, and added a second sentence.
Amended by R.2001 d.103, effective April 2, 2001.
See: 32 N.J.R. 4037(a), 33 N.J.R. 1095(a).
In "Agricultural or horticultural purpose or use", inserted "aquatic organisms as part of aquaculture;" following "fur animals;"; added "Aquaculture" and "Aquatic organisms".
Amended by R.2001 d.454, effective December 3, 2001.
See: 33 N.J.R. 2005(a), 33 N.J.R. 4133(a).
Rewrote "Parcel"; in "Resource extraction" insert "on the same parcel" following "material"; added "Resource extraction, agricultural".
Amended by R.2002 d.247, effective August 5, 2002.
See: 34 N.J.R. 722(a), 34 N.J.R. 2804(b).
Added "Alternate design pilot program treatment system".
Amended by R.2005 d.171, effective June 6, 2005.
See: 36 N.J.R. 4401(a), 37 N.J.R. 172(a), 37 N.J.R. 2013(b).
Added "Consumer electronics".
Amended by R.2007 d.372, effective December 3, 2007.
See: 39 N.J.R. 1970(a), 39 N.J.R. 5077(b).
Added definitions "Abandonment" and "Nonconforming use"; and in definition "Alternate design pilot program treatment system", deleted paragraph 1 and recodified paragraphs 2 through 5 as paragraphs 1 through 4.
Amended by R.2009 d.108, effective April 6, 2009.
See: 40 N.J.R. 4874(a), 41 N.J.R. 1405(a).
Rewrote definition "Impermeable surface"; and added definitions "Impervious surface", "Permeability" and "Resource management system plan".
Amended by R.2009 d.385, effective December 21, 2009.
See: 41 N.J.R. 2398(a), 41 N.J.R. 4786(a).
Added definition "Wetlands management".
Amended by R.2010 d.029, effective March 1, 2010.
See: 41 N.J.R. 2402(a), 42 N.J.R. 629(a).
Added definitions "Artificial regeneration", "Bedding", "Broadcast scarification", "Clearcutting", "Coppicing", "Disking", "Drum chopping", "Group selection", "Individual selection", "Natural regeneration", "Root raking", "Seed tree cut", "Shelterwood cut" and "Thinning"; in the introductory paragraph of definition "Forestry", inserted ", or for forest health" and ", including, but not limited to, artificial regeneration, bedding, broadcast scarification, clearcutting, coppicing, disking, drum chopping, group selection, individual selection, natural regeneration, root raking, seed tree cut, shelterwood cut and thinning"; in definition "Forestry management plan", updated the N.J.A.C. reference; and in definition "Forest stand", inserted "composition," and "and similar forest structure", and deleted "and" preceding "age".
Amended by R.2010 d.079, effective June 7, 2010.
See: 41 N.J.R. 2392(a), 42 N.J.R. 1044(a).
Added definitions "Individual onsite subsurface sewage disposal system", "Non-individual onsite subsurface sewage disposal system", "Pinelands alternate design wastewater treatment system", "Qualified service technician" and "Traditional onsite subsurface sewage disposal system".

Case Notes

New Jersey Pinelands Commission was entitled to a preliminary injunction preventing construction of a solid waste transfer facility in the Pinelands National Reserve based on failure by a railroad and the purported owners and operators of the facility site to obtain regulatory approvals under the National Parks and Recreation Act of 1978, 16 U.S.C.S. § 471i et seq., the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq., and the Commission's Comprehensive Management Plan, N.J.A.C. 7:50-1.1 et seq.; the Commission was likely to succeed on its claim that regulation of the facility was not within the exclusive jurisdiction of the Surface Transportation Board pursuant to 49 U.S.C.S. § 10501(b). J.P. Rail, Inc. v. New Jersey Pinelands Comm'n, 404 F.Supp.2d 636, 2005 U.S. Dist. LEXIS 36411 (D.N.J. 2005).

Municipality without plan or ordinance has standing to challenge Commission's developmental approvals. In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App.Div.1985), certiorari vacated as moot 103 N.J. 689, certification granted 102 N.J. 380, 508 A.2d 243, certification vacated 103 N.J. 689, 512 A.2d 490 (1986).

Plotted but unbuilt street did not render non-contiguous commonly owned adjoining parcels of land; no hardship waiver from wetlands requirement. Bisignano v. Pinelands Commission, 92 N.J.A.R.2d (EPC) 36.

SUBCHAPTER 3. CERTIFICATION OF COUNTY, MUNICIPAL AND FEDERAL INSTALLATION PLANS

PART I—PURPOSE

7:50-3.1 Purpose

(a) The Pinelands Protection Act is a legislative determination that management and protection of the essential character and ecological values of the Pinelands require a regional perspective in the formulation and implementation of land use policies and regulations. The Act also recognizes, as does this Plan, that local government participation in the management process is fundamental to achieving the goals and objectives of the Act. The Act and this Plan contemplate that local governments will be the principal management entities implementing the Plan, with the Pinelands Commission providing technical assistance to local authorities, monitoring development review and updating the Plan.

(b) The Act also contemplates that the Commission will achieve local participation in the implementation program and oversee implementation of the Plan. The Act provides for certification of local master plans and land use ordinances by the Commission, after which the certified plans and ordinances act as the governing regulations for the municipalities. However, if a local government should choose not to participate in the implementation program, then the Act requires that the Commission adopt and enforce such rules and regulations as are necessary to implement the minimum standards of this Plan.

(c) This Plan is intended, therefore, to serve two functions: as a general guide for local authorities in preparing master plans and land use ordinances for certification by the Commission, and as a planning and regulatory mechanism that can be adopted and enforced by the Commission if a county or municipality fails to secure certification.

7:50-6.82 Water quality management program required

In order to be certified under the provisions of N.J.A.C. 7:50-3, a municipal master plan and land use ordinance must provide for the protection of surface and ground water quality in the Pinelands. It is not necessary that the municipal program incorporate the literal terms of the program set out in this Part; rather, a municipality may adopt alternative and additional techniques which will achieve the equivalent protection of surface and ground water quality as would be achieved under the provisions of this Part.

7:50-6.83 Minimum standards necessary to protect and preserve water quality

(a) All development permitted under this Plan, or under a certified county or municipal master plan or land use ordinance, shall be designed and carried out so that the quality of surface and ground water will be protected and maintained. For the purpose of this Part, agricultural use shall not be considered development.

(b) Except as specifically authorized in this Part, no development which degrades surface or ground water quality or which establishes new point sources of pollution shall be permitted.

(c) No development shall be permitted which does not meet the minimum water quality and potable water standards of the State of New Jersey or the United States.

7:50-6.84 Minimum standards for point and non-point source discharges

(a) The following point and non-point sources may be permitted in the Pinelands:

1. Development of new or the expansion of existing commercial, industrial, and waste water treatment facilities, or the development of new or the expansion of existing non-point sources otherwise permitted in N.J.A.C. 7:50-5, except those specifically regulated in (a)2 through 6 below, provided that:

i. There will be no direct discharge into any surface water body;

ii. All discharges from the facility or use are of a quality and quantity such that ground water exiting from the parcel of land or entering a surface body of water will not exceed two parts per million nitrate/nitrogen;

iii. All public waste water treatment facilities are designed to accept and treat septage; and

iv. All storage facilities, including ponds or lagoons, are lined to prevent leakage into ground water.

2. Development of new waste water treatment or collection facilities which are designed to improve the level of nitrate/nitrogen attenuation of more than one existing on-site waste water treatment system where a public health problem has been identified may be exempted from the standards of (a)1ii above provided that:

i. There will be no direct discharge into any surface water body;

ii. The facility is designed only to accommodate waste water from existing residential, commercial, and industrial development;

iii. Adherence to (a)1ii above cannot be achieved due to limiting site conditions or that the costs to comply with the standard will result in excessive user fees; and

iv. The design level of nitrate/nitrogen attenuation is the maximum possible within the cost limitations imposed by such user fee guidelines but in no case shall ground water exiting from the parcel or entering a surface body of water exceed five parts per million nitrate/nitrogen.

3. Improvements to existing commercial, industrial, and waste water treatment facilities which discharge directly into surface waters provided that:

i. There is no practical alternative available that would adhere to the standards of N.J.A.C. 7:50-6.84(a)1i.

ii. There is no increase in the existing approved capacity of the facility; and

iii. All discharges from the facility into surface waters are such that the nitrate/nitrogen levels of the surface waters at the discharge point do not exceed two parts per million. In the event that nitrate/nitrogen levels in the surface waters immediately upstream of the discharge point exceed two parts per million, the discharge shall not exceed two parts per million nitrate/nitrogen.

4. Individual on-site septic waste water treatment systems which are not intended to reduce the level of nitrate/nitrogen in the waste water, provided that the following standards are met:

i. The proposed development to be served by the system is otherwise permitted pursuant to N.J.A.C. 7:50-4 and 5;

ii. The design of the system and its discharge point, and the size of the entire contiguous parcel on which the system or systems is located will ensure that ground water exiting from the entire contiguous parcel or entering a surface body of water will not exceed two parts per million nitrate/nitrogen calculated pursuant to the Pinelands dilution model dated December, 1993, as amended, incorporated herein by reference as subchapter Appendix A, subject to the provisions of (a)4iii below. For purposes of this section, the entire contiguous parcel may include any contiguous lands to be dedicated as open space as part of the proposed development but may

not include previously dedicated road rights-of-way or any contiguous lands that have been deed restricted pursuant to N.J.A.C. 7:50-5.30 or 5.47;

iii. Only contiguous land located within the same municipal zoning district and Pinelands management area as the proposed septic waste water treatment system or systems may be utilized for septic dilution purposes, except for the development of an individual single family dwelling on a lot existing as of January 14, 1981, non-residential development on a lot of five acres or less existing as of January 14, 1981, or cluster development as permitted by N.J.A.C. 7:50-5.19;

iv. The depth to seasonal high water table is at least five feet;

v. Any potable water well will be drilled and cased to a depth of at least 100 feet, unless the well penetrates an impermeable clay aquiclude, in which case the well shall be cased to at least 50 feet;

vi. The system will be maintained and inspected in accordance with the requirements of N.J.A.C. 7:50-6.85;

vii. The technology has been approved for use by the New Jersey Department of Environmental Protection; and

viii. Flow values for non-residential development shall be determined based on the values contained in N.J.A.C. 7:9A-7.4, as amended, except that number of employees may not be utilized in calculating flow values for office uses. In the event that N.J.A.C. 7:9A-7.4 does not provide flow values for a specific use, but a flow value is assigned for that use in 7:14A-23.3(a), the flow value specified in N.J.A.C. 7:14A-23.3(a) shall be used in calculating flow.

5. Individual on-site septic waste water treatment systems which are intended to reduce the level of nitrate/nitrogen in the waste water, provided that the following standards are met:

i. The technology has been approved for use by the New Jersey Department of Environmental Protection;

ii. The proposed development to be served by the system is otherwise permitted pursuant to N.J.A.C. 7:50-4 and 5;

iii. The proposed development is either residential or, if non-residential, is located in a Regional Growth Area, a Pinelands Village, a Pinelands Town or in an area within the Preservation Area District designated pursuant to N.J.A.C. 7:50-5.22(b)7;

iv. The design of the system and its discharge point, and the size of the entire contiguous parcel on which the system or systems is located, will ensure that ground water exiting from the entire contiguous parcel or entering a surface body of water will not exceed two parts per million nitrate/nitrogen calculated pursuant to the Pinelands dilution model dated December, 1993, as amended, (Appendix A) subject to the provisions of (a)5v below and based on the following assumptions and requirements. For purposes of this section, the entire contiguous parcel may include any contiguous lands to be dedicated as open space as part of the proposed development but may not include previously dedicated road rights-of-way or any contiguous lands that have been deed restricted pursuant to N.J.A.C. 7:50-5.30 or 5.47:

(1) For RUCK septic systems:

(A) For residential development, the system will reduce total nitrogen concentration in the waste water entering the disposal field to 20 parts per million;

(B) For non-residential development, no reduction in total nitrogen concentration will be assumed, except that a reduction in total nitrogen concentration in the waste water entering the disposal field to 20 parts per million will be assumed if either:

(I) The use is comparable to a single family residential use and it can be demonstrated that the waste water quality is similar to residential waste water; or

(II) The applicant demonstrates that the nitrate/nitrogen concentration of the waste water flow is similar to that of a residential use and the ratio of greywater to blackwater is similar to that of a residential use;

(C) The patent holder or his agent shall certify to the Commission and the local board of health that installation of each system has been properly completed;

(D) The patent holder or his agent shall provide to each owner a complete operation and maintenance manual that has been approved by the Executive Director;

(E) Each system shall be covered by a five-year warranty that has been approved by the Executive Director and a minimum five-year maintenance contract that has been approved by the Executive Director, that cannot be cancelled and is renewable and which includes a provision requiring that the patent holder or his agent inspect the system at least once a year and undertake any maintenance or repairs determined to be necessary during any such inspection; and

(F) The property owner shall record with the deed to the property a notice that identifies that a RUCK system is being utilized for wastewater disposal on the parcel, acknowledges the owner's

responsibility to operate and maintain it in accordance with the manual required in (a)5iv(1)(D) above, and grants access, with reasonable notice, to the local board of health, the Commission and its agents for inspection and monitoring purposes. The recorded deed shall run with the property and shall ensure that the maintenance requirements are binding on any owner of the property during the life of the system; and

(2) For pressure dosed septic systems:

(A) A complete application for the proposed residential development was received by the Commission pursuant to N.J.A.C. 7:50-4.2 or by a municipality pursuant to an alternate permitting program certified by the Commission in accordance with N.J.A.C. 7:50-3.81 through 3.85 prior to August 5, 2002, the proposed lot size and density are consistent with the provisions of this Plan and the municipal land use ordinances that have been certified by the Commission pursuant to the provisions of N.J.A.C. 7:50-3, the proposed pressure dosed septic system receives approval from a local board of health by August 5, 2003 and the system is installed within one year of the issuance of its approval by the local board of health; and

(B) For residential development, either the system will be located on a lot of at least one acre for each individual single family residential dwelling unit or the system or systems for multi-family developments will be located on a parcel with an overall density equal to or greater than one residential dwelling unit per acre of land.

(3) Other on-site septic waste water treatment systems shall only be credited with reducing total nitrogen concentration to the extent authorized by an experimental monitoring program approved by the Pinelands Commission. Such an experimental monitoring program shall only be approved if:

(A) The specific theoretical basis for the nitrogen removal process to be utilized is sound and has been satisfactorily documented in the scientific literature;

(B) The nitrogen removal efficiency of operating systems using the design concept to service one or more types of development has been satisfactorily demonstrated and adequately documented in the scientific literature;

(C) The proposed application of the treatment process could be expected to meet the two parts per million nitrate/nitrogen ground water quality standard in the Pinelands Area and the ability to meet this requirement can be continuously achieved on a long-term basis;

(D) Systems utilizing the design concept can be expected not to require any maintenance beyond that required of conventional septic systems or, if additional maintenance is required, sufficient measures can feasibly be taken to insure that the system will be properly maintained and operated;

(E) A comprehensive monitoring program is feasible to fully evaluate the nitrogen removal efficiency of the application of the proposed design concept;

(F) The system meets all the requirements in N.J.A.C. 7:50-10.22(a) 6i through x; and

(G) The design concept can be expected to meet those requirements of the New Jersey Department of Environmental Protection necessary to receive a Treatment Works Approval.

v. Only contiguous land located within the same municipal zoning district and Pinelands management area as the proposed septic waste water treatment system or systems may be utilized for septic dilution purposes, except for the development of an individual single family dwelling on a lot existing as of January 14, 1981, non-residential development on a lot of five acres or less existing as of January 14, 1981, or cluster development as permitted by N.J.A.C. 7:50-5.19;

vi. The depth to seasonal high water table is at least five feet;

vii. Any potable water well will be drilled and cased to a depth of at least 100 feet, unless the well penetrates an impermeable clay aquiclude, in which case the well shall be cased to at least 50 feet;

viii. The system will be maintained and inspected in accordance with the requirements of N.J.A.C. 7:50-6.85;

ix. Flow values for non-residential development shall be determined based on the values contained in N.J.A.C. 7:9A-7.4, as amended, except that number of employees may not be utilized in calculating flow values for office uses. In the event that N.J.A.C. 7:9A-7.4 does not provide flow values for a specific use, but a flow value is assigned for that use in 7:14A-23.3(a), the flow value specified in N.J.A.C. 7:14A-23.3(a) shall be used in calculating flow.

6. Surface water runoff in accordance with N.J.A.C. 7:8-5 and 6, as amended, except as modified and supplemented pursuant to the following:

i. Runoff rate and volume, runoff quality and groundwater recharge methodologies:

(1) Runoff rates and volumes shall be calculated in accordance with the USDA Natural Resources Conservation Service (NRCS) Runoff Equation, Runoff Curve Numbers, and Dimensionless Unit

Hydrograph, as described in the NRCS National Engineering Handbook Part 630 – Hydrology and Title 210 - Engineering, 210-3-1 Small Watershed Hydrology (WINTR-55) Version 1.0, incorporated herein by reference, as amended and supplemented. Information regarding these methodologies is available from the Natural Resources Conservation Service website at http://www.wsi.nrcs.usda.gov/products/W2Q/H&H/Tools_Models/WinTr55.html or at Natural Resources Conservation Service, 220 Davidson Avenue, Somerset, New Jersey 08873; (732) 537-6040. Alternative methods of calculation may be utilized, provided such alternative methods are at least as protective as the NRCS methodology when considered on a regional stormwater management area basis;

(2) Stormwater runoff shall be calculated using NRCS methodology by separately calculating and then combining the runoff volumes from pervious and directly connected impervious surfaces within each drainage area within the parcel;

(3) Calculations of stormwater runoff from unconnected impervious surfaces shall be based, as applicable, upon the Two-Step Method described in the New Jersey Stormwater Best Management Practices Manual developed by the New Jersey Department of Environmental Protection, dated February 2004, incorporated herein by reference, as amended and supplemented and available at http://www.njstormwater.org/bmp-manual2.htm, or the NRCS methodology; and

(4) In calculating stormwater runoff using the NRCS methodology, the appropriate 24-hour rainfall depths as developed for the parcel by the National Oceanic and Atmospheric Administration shall be utilized. Information regarding these rainfall data is available from the National Oceanic and Atmospheric Administration (NOAA) at http://www.hdsc.nws.noaa.gov/hdsc/pfds/index.html or DOC/NOAA/National Weather Service, Office of Hydrologic Development, Hydrometeorological Design Studies Center, Bldg. SSMC2 W/OHD13, 1325 East-West Highway, Silver Spring, Maryland 20910-3283; (301) 713-1669 extension 154.

ii. Runoff shall meet the requirements in (a)6ii(4) and (5) below and one of (a)6ii(1), (2) or (3) below:

(1) The post-development stormwater runoff hydrographs generated from the parcel by a two-year, 10-year and 100-year storm, each of a 24-hour duration, shall not exceed, at any point in time, the parcel's pre-development runoff hydrographs for the same storms; or

(2) Under post-development site conditions:

(A) There shall be no increase in pre-development stormwater runoff rates from the parcel for the two-year, 10-year and 100-year storm; and

(B) Any increased stormwater runoff volume or change in stormwater runoff timing for the two-year, 10-year and 100-year storms shall not increase flood damage at or downstream of the parcel. When performing this analysis for the pre-development site conditions, all off-site development levels shall reflect existing conditions. When performing this analysis for post-development site conditions, all off-site development levels shall reflect full development potential in accordance with those municipal land use ordinances certified by the Commission pursuant to N.J.A.C. 7:50-3; or

(3) The peak post-development stormwater runoff rates for the parcel for the two-year, 10-year and 100-year storms shall be 50, 75 and 80 percent, respectively, of the parcel's peak pre-development stormwater rates for the same storms. Peak outflow rates from onsite stormwater measures for these storms shall be adjusted where necessary to account for the discharge of increased stormwater runoff rates and/or volumes from areas of the parcel not controlled by onsite measures. These percentages need not be applied to those portions of the parcel that are not proposed for development at the time an application is submitted to the Commission pursuant to N.J.A.C. 7:50-4, provided that:

(A) Such areas have been permanently protected from future development by conservation easement, deed restriction, or other acceptable legal measures; or

(B) A deed notice has been filed stating that such areas will be subject to the standards of this section at the point in time they are proposed for development in the future;

(4) There shall be no direct discharge of stormwater runoff from any point or nonpoint source to any wetland, wetlands transition area or surface waterbody. In addition, stormwater runoff shall not be directed in such a way as to increase the volume and rate of discharge into any surface water body from that which existed prior to development of the parcel; and

(5) To the maximum extent practical, there shall be no direct discharge of stormwater runoff onto farm fields so as to protect farm crops from damage due to flooding, erosion, and long term saturation of cultivated crops and cropland.

iii. Recharge standards:

(1) For all major developments, the total runoff volume generated from the net increase in impervious

surfaces by a 10-year, 24-hour storm shall be retained and infiltrated onsite;

(2) In high pollutant loading areas (HPLA) and areas where stormwater runoff is exposed to source material, as defined at N.J.A.C. 7:8-5.4(a)2iii(1) and (2), the following additional water quality standards shall apply:

(A) The areal extent and amount of precipitation falling directly on or flowing over HPLAs and areas where stormwater is exposed to source material shall be minimized through the use of roof covers, canopies, curbing or other physical means to the maximum extent practical in order to minimize the quantity of stormwater generated from HPLA areas;

(B) The stormwater runoff originating from HPLAs and areas where stormwater runoff is exposed to source material shall be segregated and prohibited from co-mingling with stormwater runoff originating from the remainder of the parcel;

(C) The stormwater runoff from HPLAs and areas where stormwater runoff is exposed to source material shall be subject to pretreatment to achieve 90 percent removal of total suspended solids from the water quality design storm established in N.J.A.C. 7:8-5.5(a) prior to infiltration, using one or more of the following measures, designed in accordance with the New Jersey Stormwater Best Management Practices Manual developed by the New Jersey Department of Environmental Protection, dated February 2004, incorporated herein by reference, as amended and supplemented:

(I) Bioretention system;

(II) Sand filter;

(III) Wet ponds, which shall be hydraulically disconnected by a minimum of two feet of vertical separation from the seasonal high water table and shall be designed to achieve a minimum 80 percent removal of total suspended solids;

(IV) Constructed stormwater wetland; and

(V) Other measures certified by the Department of Environmental Protection, including a Media Filtration System manufactured treatment device with a minimum 80 percent removal of total suspended solids as verified by the New Jersey Corporation for Advanced Technology; and

(D) If the potential for contamination of stormwater runoff by petroleum products exists onsite, prior to being conveyed to the pretreatment facility required in (a)6iii(2)(C) above, the stormwater runoff from the HPLAs and areas where stormwater runoff is exposed to source material shall be conveyed through an oil/grease separator or other equivalent manufactured filtering device providing for the removal of petroleum hydrocarbons.

iv. Infiltration basin design, siting and construction standards:

(1) Stormwater infiltration facilities shall be designed, constructed and maintained to provide a minimum separation of at least two feet between the elevation of the lowest point of the bottom of the infiltration facility and the seasonal high water table;

(2) Stormwater infiltration facilities shall be sited in suitable soils verified by field testing to have permeability rates between one and 20 inches per hour. A factor of safety of two shall be applied to the soil's field-tested permeability rate in determining the infiltration facility's design permeability rate. If such soils do not exist on the parcel proposed for development or if it is demonstrated that it is not practical for engineering, environmental or safety reasons to site the stormwater infiltration basin(s) in such soils, the stormwater infiltration basin(s) may be sited in soils verified by field testing to have permeability rates in excess of 20 inches per hour, provided that stormwater is routed through a bioretention system prior to infiltration. Said bioretention system shall be designed, installed and maintained in accordance with the New Jersey Stormwater Best Management Practices Manual developed by the New Jersey Department of Environmental Protection, dated February 2004, incorporated herein by reference, as amended and supplemented;

(3) Groundwater mounding analysis shall be required for purposes of assessing the hydraulic impacts of mounding of the water table resulting from infiltration of stormwater runoff from the maximum storm designed for infiltration. The mounding analysis shall provide details and supporting documentation on the methodology used. Groundwater mounds shall not cause stormwater or groundwater to breakout to the land surface or cause adverse impacts to adjacent water bodies, wetlands or subsurface structures, including, but not limited to basements and septic systems. Where the mounding analysis identifies adverse impacts, the infiltration facility shall be redesigned or relocated, as appropriate;

(4) To the maximum extent practical, stormwater management measures on a parcel shall be designed to limit site disturbance, maximize stormwater management efficiencies, maintain or improve aesthetic conditions and incorporate pretreatment as a means of extending the functional life and increasing the pollutant removal capability of structural stormwater management facilities. The use of stormwater man-

agement measures that are smaller in size and distributed spatially throughout a parcel, rather than the use of a single larger structural stormwater management measure, shall be required to the maximum extent practical;

(5) To avoid sedimentation that may result in clogging and reduction of infiltration capability and to maintain maximum soil infiltration capacity, the construction of stormwater infiltration basins shall be managed in accordance with the following standards:

(A) No stormwater infiltration basin shall be placed into operation until its drainage area has been completely stabilized. Instead, upstream runoff shall be diverted around the basin and into separate, temporary stormwater management facilities and sediment basins. Such temporary facilities and basins shall be installed and utilized for stormwater management and sediment control until stabilization is achieved in accordance with N.J.A.C. 2:90, Standards for Soil Erosion and Sediment Control in New Jersey;

(B) If, for engineering, environmental or safety reasons, temporary stormwater management facilities and sediment basins cannot be constructed on the parcel in accordance with (a)6iv(5)(A) above, the stormwater infiltration basin may be placed into operation prior to the complete stabilization of its drainage area provided that the basin's bottom during this period is constructed at a depth at least two feet higher than its final design elevation. When the drainage area has been completely stabilized, all accumulated sediment shall be removed from the infiltration basin, which shall then be excavated to its final design elevation; and

(C) To avoid compacting an infiltration basin's subgrade soils, no heavy equipment such as backhoes, dump trucks or bulldozers shall be permitted to operate within the footprint of the stormwater infiltration basin. All excavation required to construct a stormwater infiltration basin shall be performed by equipment placed outside the basin. If this is not possible, the soils within the excavated area shall be renovated and tilled after construction is completed. Earthwork associated with stormwater infiltration basin construction, including excavation, grading, cutting or filling, shall not be performed when soil moisture content is above the lower plastic limit.

v. As-built requirements:

(1) After all construction activities have been completed on the parcel and finished grade has been established in the infiltration basin, replicate post-development field permeability tests shall be conducted to determine if as-built soil permeability rates are consistent with design permeability rates. The results of such tests shall be submitted to the municipal engineer. If the results of the post-development field permeability tests fail to achieve the minimum required design permeability rate, utilizing a factor of safety of two, the infiltration basin shall be renovated and re-tested until such minimum required permeability rates are achieved; and

(2) After all construction activities and required field testing have been completed on the parcel, as-built plans, including as-built elevations of all stormwater management measures shall be submitted to the municipal engineer. Based upon the municipal engineer's review of the as-built plans, all corrections or remedial actions deemed by the municipal engineer to be necessary due to the failure to comply with design standards and/or for any reason concerning public health or safety, shall be completed by the applicant. In lieu of review by the municipal engineer, the municipality may engage a licensed professional engineer to review the as-built plans and charge the applicant for all costs associated with such review.

vi. Exceptions:

(1) The standards set forth in (a)6i through v above shall not apply to minor residential development, provided such development does not involve the construction of any new roads, or to minor non-residential development, provided such development does not involve the grading, clearing or disturbance of an area in excess of 5,000 square feet within any five-year period;

(2) The use of nonstructural strategies in accordance with N.J.A.C. 7:8-5.3 shall not be required for development which would create less than one acre of disturbance;

(3) Provided an applicant for major development pursuant to N.J.A.C. 7:50-4.31 through 4.50 is able to demonstrate that the standards set forth in (a)6i through v above cannot be met on the parcel proposed for development or that stormwater management would more effectively be achieved through alternative measures, strict compliance with said standards may be waived at the discretion of the municipality in which the proposed development is located, provided the municipal stormwater management plan certified by the Commission pursuant to N.J.A.C. 7:50-3 specifies the circumstances under which such alternative measures would be appropriate and identifies those parcels or projects elsewhere in the Pinelands Area where any off-site mitigation would be permitted to occur;

(4) Provided an applicant for major public development pursuant to N.J.A.C. 7:50-4.51 through 4.60 is able to demonstrate that the standards set forth

in (a)6i through v above cannot be met on the parcel proposed for development or that stormwater management would more effectively be achieved through alternative measures, an exception may be granted at the discretion of the Commission, provided any such measures occur within the Pinelands Area and within the same drainage area as the parcel proposed for development and are sufficient to offset the granting of the exception. The proposed alternative measures must be consistent with the stormwater management plan certified by the Commission pursuant to N.J.A.C. 7:50-3 for the municipality in which the proposed development is located, unless said stormwater plan does not provide for appropriate mitigation for the particular exception being granted or identify appropriate parcels or projects where off-site mitigation may occur; and

(5) Unless specifically included in (a)6vi(1) through (4) above, the exemptions, exceptions, applicability standards and waivers of strict compliance for stormwater management described in N.J.A.C. 7:8 shall not apply.

vii. Maintenance standards:

(1) Maintenance plans required pursuant to N.J.A.C. 7:8-5.8(a) shall be supplemented so as to include reporting of inspection and repair activities. Said plans shall include accurate and comprehensive drawings of all stormwater management measures on a parcel, including the specific latitude and longitude and block/lot number of each stormwater management measure. Maintenance plans shall specify that an inspection, maintenance and repair report will be updated and submitted annually to the municipality;

(2) Stormwater management measure easements shall be provided by the property owner as necessary for facility inspections and maintenance and preservation of stormwater runoff conveyance, infiltration, and detention areas and facilities. The purpose of the easement shall be specified in the maintenance agreement; and

(3) An adequate means of ensuring permanent financing of the inspection, maintenance, repair and replacement plan shall be implemented and shall be detailed in the maintenance plan. Financing methods shall include, but not be limited to.

(A) The assumption of the inspection and maintenance program by a municipality, county, public utility or homeowners association;

(B) The required payment of fees to a municipal stormwater fund in an amount equivalent to the cost of both ongoing maintenance activities and necessary structural replacements.

viii. Unless specifically mandated pursuant to (a)6i through vii above, the New Jersey Stormwater Best Management Practices Manual developed by the New Jersey Department of Environmental Protection, dated February 2004, as amended, may be utilized as a guide in determining the extent to which stormwater management activities and measures meet the standards of (a)6i through vii above.

Amended by R.1988 d.405, effective September 19, 1988.
See: 20 N.J.R. 716(a), 20 N.J.R. 2384(a).
In (a)2, added "or collection" and "where a public health problem has been identified", and in (a)4ii, deleted "District" and added "Rural Development Area".
Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).
Administrative Correction
See: 27 N.J.R. 1410(a).
Amended by R.1995 d.449, effective August 21, 1995.
See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).
Deleted (a)5.iv.(2)(A)(I) and (a)5.iv.(2)(A)(II).
Amended by R.1996 d.225, effective May 20, 1996.
See: 27 N.J.R. 3878(a), 28 N.J.R. 2596(a).
In (a)4viii and (a)5ix inserted the reference to 7:14A-23.3(a).
Amended by R.2002 d.247, effective August 5, 2002.
See: 34 N.J.R. 722(a), 34 N.J.R. 2804(b).
Rewrote (a)5iv.
Amended by R.2006 d.159, effective May 1, 2006.
See: 37 N.J.R. 4133(a), 38 N.J.R. 1829(b).
Rewrote (a)6.
Amended by R.2009 d.108, effective April 6, 2009.
See: 40 N.J.R. 4874(a), 41 N.J.R. 1405(a).
In (a)6i(1), substituted "Title 210 - Engineering, 210-3-1 Small Watershed Hydrology (WINTR-55) Version 1.0" for "Technical Release 55 – Urban Hydrology for Small Watersheds", "http://www.wsi.nrcs.usda.gov/products/W2Q/H&H/Tools_Models/WinTr55.html" for "http://www.wcc.nrcs.usda.gov/water/quality/common/neh630/4content.hml", and "Davidson" for "Davison"; in (a)6vi(3), inserted "pursuant to N.J.A.C. 7:50-4.31 through 4.50" and deleted "and" from the end; added new (a)6vi(4); recodified former (a)6vi(4) as (a)6vi(5); and in (a)6vi(5), substituted "(4)" for "(3)."

Case Notes

Municipal sewage treatment facility may have waiver from strict compliance with water purity requirements where compliance with environmental and procedural laws is shown. Adamucci v. Pinelands Commission, 96 N.J.A.R.2d (EPC) 1.

No extraordinary hardship existed entitling property owner to waiver of strict compliance with seasonal high water table requirement. Pappas v. Pinelands Commission, 93 N.J.A.R.2d (EPC) 13.

Parcel not have beneficial use; extraordinary hardship existed entitling property owner to waiver of Pinelands Comprehensive Management Plan requirements; conditions imposed. Christensen v. New Jersey Pinelands Commission, 93 N.J.A.R.2d (EPC) 5.

Assumption that 3.5 people would inhabit each of proposed dwellings permissible; calculation as to whether proposed development violated nitrate-nitrogen ground water requirements. Schretzenmair v. Pinelands Commission, 93 N.J.A.R.2d (EPC) 1.

Sale of adjoining lot precluded existence of extraordinary hardship, even though property owner was elderly individual suffering from heart problems and diabetes and sought to sell or develop property in order to help support herself and two handicapped sons residing with her. Stark v. Pinelands Commission, 92 N.J.A.R.2d (EPC) 34.

Extraordinary hardship; waiver of lot size requirement, seasonal high water table requirement, and ground water nitrate-nitrogen requirement. Eni v. Pinelands Commission, 92 N.J.A.R.2d (EPC) 31.

Compelling health need; hardship waiver of nitrate-nitrogen discharge limitations; town permitted to build wastewater treatment facility. Adamucci, et al v. Pinelands Commission and Town of Hammonton, 92 N.J.A.R.2d (EPC) 21.

No extraordinary hardship existed entitling property owner to waiver of strict compliance with density requirements, seasonal high water table requirement, and wetlands protection requirements. Summonte v. Pinelands Commission, 92 N.J.A.R.2d (EPC) 9.

Residents living in former gun club were entitled to waiver of strict compliance from minimum lot size and water quality requirements. Swezeny v. Fulford, 92 N.J.A.R.2d (EPC) 1.

Waiver to subdivide a parcel of land denied by Pinelands Commission; petitioner failed to establish ownership of the land in compliance with N.J.A.C. 7:50-5.32(a)3i. Gerber v. Pinelands Commission, 11 N.J.A.R. 12 (1988).

Petitioner denied waiver of strict compliance with provisions of Comprehensive Management Plan for the Pinelands which establish minimum standards for septic wastewater treatment systems for failure to prove extraordinary hardship. Kruckner v. New Jersey Pinelands Commission, 10 N.J.A.R. 237 (1988).

Development application denied to petitioners for failure to meet minimum standards for seasonal high water table and wetlands buffer; waiver of strict compliance denied for failure to offer information to establish an extraordinary hardship citing N.J.A.C. 1:1-11.2 (recodified as N.J.A.C. 1:11-8.3)—(Final Decision by the Pinelands Commission). Lavecchia v. Pinelands Commission, 10 N.J.A.R. 63 (1987).

Application to resubdivide two existing lots denied for failure to meet minimum standards for seasonal high water table and wetlands buffer; waiver of strict compliance denied for failure to establish extraordinary hardship. (Final Decision by Pinelands Commission). Colon v. Pinelands Commission, 10 N.J.A.R. 14 (1987).

Effluent standard for waterless toilet (2 ppm) cited in determination that denial of waiver of strict compliance with toilet requirement reasonable. Riggins v. Pinelands Commission, 8 N.J.A.R. 441 (1985).

Property for which development approval sought, even if minimum lot size requirement met, does not meet minimum standards for wetlands buffer (N.J.A.C. 7:50-6.14) or seasonal high water table (N.J.A.C. 7:50-6.84); permit application denied. Pfeiffer v. Pinelands Commission, 8 N.J.A.R. 317 (1985).

Development application denied, in part, for failure to meet minimum standards for seasonal high water table. Pfeiffer v. Pinelands Commission, 8 N.J.A.R. 317 (1985).

7:50-6.85 Individual and non-individual onsite subsurface sewage disposal systems and petroleum tank maintenance

(a) The owner of every traditional individual and non-individual onsite subsurface sewage disposal system in the Pinelands shall as soon as suitable septage disposal facility capacity is available, in accordance with the provisions of Chapter 326 of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and Section 201 of the Clean Water Act:

1. Have the system inspected by a technician at least once every three years;

2. Have the system cleaned at least once every three years; and

3. Once every three years submit to the board of health serving the municipality in which the system is located a sworn statement that the system has been inspected, cleaned and is functional, setting forth the name of the person who performed the inspection and cleaning and the date of such inspection.

(b) All Pinelands alternate design wastewater treatment systems in active use shall be equipped with functioning alarm dialing capability and shall be covered under a renewable operation and maintenance agreement for as long as the system is in active use. The operation and maintenance agreement shall, at minimum, provide for at least once annual service calls by a qualified service technician. The operation and maintenance agreement shall also provide for periodic onsite inspection and maintenance service visits which meet the minimum operation and maintenance requirements of the Pinelands alternate design wastewater treatment system manufacturer or vendor.

(c) Every owner or operator of a Pinelands alternate design wastewater treatment system in the Pinelands Area shall:

1. Obtain from the municipality in which the system is located or from another responsible management entity designated by said municipality an initial permit or other authorization to operate said system. Said initial permit or authorization shall be valid for no more than three years; and

2. Prior to the expiration of the initial permit or authorization required in (c)1 above, apply to the municipality in which said system is located or to another responsible management entity designated by said municipality to renew said permit or authorization. The following information shall accompany any such application for permit renewal:

i. Certification by a qualified service technician that the system is covered under a renewable operation and maintenance agreement which meets the requirements of the Pinelands alternate design wastewater treatment system manufacturer or vendor;

ii. Certification by a qualified service technician that all of the components of the Pinelands alternate design wastewater treatment system are in good repair; and

iii. Certification by a qualified service technician that the Pinelands alternate design wastewater treatment system is operating in conformance with the manufacturer's specifications and is functioning properly, meaning that the system is denitrifying, does not show evidence of ponding or breakout of sewage or effluent onto the surface of the ground, sewage or effluent is not seeping into below ground portions of the building served, there is no back-up of sewage into the building and there is no evidence of a direct discharge of sewage or effluent to a surface water body.

(d) The owners of commercial petroleum storage tanks shall comply with the requirements of P.L. 1986, c.102 (N.J.S.A. 58:10A-29).

Amended by R.1994 d.590, effective December 5, 1994.
See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).
Amended by R.2010 d.079, effective June 7, 2010.
See: 41 N.J.R. 2392(a), 42 N.J.R. 1044(a).
Section was "Individual wastewater treatment facility and petroleum tank maintenance". In the introductory paragraph of (a), substituted "traditional individual and non-individual onsite subsurface sewage disposal system" for "on-site septic wastewater treatment facility"; in (a)1 through (a)3, substituted "system" for "facility"; added new (b) and (c); and recodified former (b) as (d).

7:50-6.86 Water management

(a) Interbasin transfer of water between watersheds in the Pinelands should be avoided to the maximum extent practical. In areas served by central sewers, water-saving devices such as water-saving toilets, showers and sink faucets shall be installed in all new development.

(b) Water shall not be exported from the Pinelands except as otherwise provided in N.J.S.A. 58:1A-7.1.

(c) All wells and all increases in diversion from existing wells which require water allocation permits from the New Jersey Department of Environmental Protection shall be designed and located so as to minimize impacts on wetlands and surface waters. Hydrologic analyses shall be conducted in accordance with the New Jersey Department of Environmental Protection Guidelines for Water Allocation Permits, with an Appendix on Aquifer-Test Analysis Procedures, New Jersey Geological Survey Report GSR 29, 1992, incorporated herein by reference, as contained in pages 53 through 91 of the Technical Manual for Water Supply Element, Bureau of Water Allocation, Water Allocation Permits dated May 19, 1993, as amended.

(d) All applications for the development of water supply wells or the expansion of existing water distribution systems shall address measures in place or to be taken to increase water conservation in all areas to be served by the proposed well or system. This shall include efforts by water purveyors and local governments to reduce water demands by users and to reduce losses in the supply and distribution system.

(e) Except for agricultural uses, all new potable and non-potable water supply diversions of more than 100,000 gallons per day that utilize the Kirkwood-Cohansey aquifer as a source of water supply and new increases in existing potable and non-potable water supply diversions of over 100,000 gallons per day that utilize the Kirkwood-Cohansey aquifer may be permitted only if it is demonstrated that:

1. No viable alternative water supply sources are available; or

(2) Subtract from (b)1i(1) above the number of Pinelands Development Credit redemption opportunities to be realistically afforded by the zoning provisions contained in Tabernacle Township's certified land use ordinances for any area being redesignated to a Regional Growth Area; and

(3) Multiply the remainder by two-thirds to calculate the number of Pinelands Development Credit redemption opportunities likely to be lost as a result of the redesignations.

ii. The effect on Pinelands Development Credit allocations is to be calculated as follows:

(1) The number of Pinelands Development Credits eligible for allocation to any area being redesignated to an Agricultural Production Area is to be estimated in accordance with N.J.A.C. 7:50-5, Part IV; and

(2) Subtract from (b)1ii(1) above the estimated number of Pinelands Development Credits extinguished as a result of any redesignation of land from an Agricultural Production Area classification to another management area.

iii. The total number of Pinelands Development Credits to be purchased and redeemed equals the sum of (b)1i and ii above.

New Rule, R.2000 d.232, effective June 5, 2000.
See: 32 N.J.R. 151(a), 32 N.J.R. 2082(a).

7:50-10.16 Pinelands Commission approval and evaluation

(a) In accordance with N.J.A.C. 7:50-3, the Commission approved management area changes and zoning provisions in Tabernacle Township and Pemberton Township through its certification of Tabernacle Township Ordinance 1999-1 and Pemberton Township Ordinance 17-1999 on September 10, 1999. This pilot program shall be evaluated based on the management area changes and zoning provisions implemented by those ordinances and any subsequent amendments or corrections which may be made to them in the future.

(b) The Executive Director shall review this pilot program and report to the Commission on its implementation three years following completion of construction of the public educational facility in Tabernacle Township. The Executive Director shall determine whether the pilot program is successful in accordance with the following criteria:

1. The purchase and redemption of Pinelands Development Credits in accordance with N.J.A.C. 7:50-10.15(b) has resulted in the permanent protection of approximately 1,000 acres of land in the Preservation Area District, Special Agricultural Production Area and/or Agricultural Production Area;

2. Development of the public educational facility has had no significant adverse impact on adjacent agricultural lands within Tabernacle Township's Agricultural Production Area;

3. Development of the public educational facility has not resulted in unanticipated or unintended development on adjacent and surrounding lands in Tabernacle Township's Rural Development Area or Regional Growth Area and has otherwise proven to be compatible with the existing character of the adjacent Pinelands Village;

4. Any lands included in the redesignated area in Tabernacle Township which were not utilized for the public educational facility continue to be put to those uses which existed prior to the redesignation, or, if not, have been converted to uses which are compatible with those of the surrounding area;

5. The redesignated lands in Pemberton Township have been permanently protected through the purchase of easements under the Farmland Preservation Program or other means;

6. Redesignation of the lands in Pemberton Township has contributed to the continued long-term viability of that municipality's Agricultural Production Area and land use conflicts with the remaining Regional Growth Area have not materialized; and

7. The pilot program, when viewed in its entirety, has served to further the purposes and objectives of the Pinelands Protection Act, the Federal Act and this Plan.

(c) If the Executive Director finds that this pilot program has not been implemented or has not been successful based on the criteria set forth in (b) above, the Executive Director shall, if appropriate, initiate the procedures set forth in N.J.A.C. 7:50-3.61 through 3.65 and, if necessary, propose an amendment to this subchapter, in accordance with N.J.A.C. 7:50-7, to repeal the pilot program. If the Pinelands Commission revokes, suspends or modifies the certification of this program, such action shall not affect the certification status of the remaining provisions of the municipal land use ordinances unless the municipalities ignore or refuse to implement such revocation, suspension or modification order.

(d) If the Executive Director finds that this pilot program has been successful based on the criteria set forth in (b) above, the Executive Director may propose an amendment to this Plan in accordance with N.J.A.C. 7:50-7 to broaden its applicability in the Pinelands; provided, however, that no such proposal shall be made until the Executive Director has submitted a report to the Commission which evaluates the potential for use of intermunicipal transfers for specified uses in defined situations throughout the Pinelands, as well as whether or not alternative techniques and processes exist or could be developed which might provide for the development of public educational facilities in a manner which better addresses the goals and objectives of this chapter and the Pinelands Protection Act. The Executive Director's report

shall specifically address the applicability of the changes required by the Secretary of the Interior to the now repealed N.J.A.C. 7:50-5.33 to any proposed amendment to this Plan that is recommended in the report.

New Rule, R.2000 d.232, effective June 5, 2000.
See: 32 N.J.R. 151(a), 32 N.J.R. 2082(a).

7:50-10.17 through 7:50-10.20 (Reserved)

PART IV—ALTERNATE DESIGN TREATMENT SYSTEMS PILOT PROGRAM

7:50-10.21 Purpose

(a) The high quality of surface and ground water resources in the Pinelands is one of the defining characteristics of the region. Both the Federal Act and the Pinelands Protection Act call for the preservation, protection and enhancement of the significant values of the land and water resources of the Pinelands and its unique ecosystem. Water resources in the Pinelands are protected by a combination of land use and water quality programs established in N.J.A.C. 7:50-5 and 6.

(b) The water quality requirements of N.J.A.C. 7:50-6, Part VIII, include provisions which are aimed at controlling the amount of nitrogen that enters the environment both because nitrogen in itself is a significant pollutant, but also because it often serves as an indicator of changes in overall water quality. To that end, N.J.A.C. 7:50-6.84(a) limits the concentration of nitrogen in wastewater to two parts per million at the property line. Based on the Pinelands Septic Dilution Model (found in N.J.A.C. 7:50-6 Appendix A), a standard septic system, to which no nitrogen removal is attributed, requires at least 3.2 acres to dilute the concentration of nitrogen to two parts per million at the property line for a single family dwelling. N.J.A.C. 7:50-5 authorizes residential development utilizing an on-site wastewater system on lots between one and 3.2 acres in certain circumstances. In those circumstances, N.J.A.C. 7:50-6.84(a)5 currently allows lots between 1.5 and 3.2 acres in size to be developed if a RUCK on-site wastewater treatment system is used. However, it has been several years since a RUCK system has been installed in the Pinelands Area. In those circumstances prior to August 5, 2002, pressure dosed septic systems were allowed to be utilized on lots between one and 3.2 acres in size. Studies undertaken by the Commission have found that the pressure dosed septic system being installed in the Pinelands Area has not been effective on lots smaller than 3.2 acres in meeting the water quality standards of N.J.A.C. 7:50-6, Part VIII.

(c) In 2000, the Commission formed a special committee to investigate alternate septic system technologies that would better meet the water quality requirements of N.J.A.C. 7:50-6, Part VIII, for residential development on lots smaller than 3.2 acres where such lots are currently authorized by N.J.A.C. 7:50-5. After conducting extensive research, the Committee identified five technologies that can be expected to meet these water quality requirements for residential development. The Committee recommended that an interim program be developed for the approval, installation and monitoring of the five technologies for use under certain conditions and safeguards. Based on the available information, the Committee recommended that the Ashco RFS III system be allowed on residential lots of at least 1.5 acres and the other four systems be allowed on residential lots of at least one acre. In November 2006, the Commission decided to remove the Ashco RFS III system from the Alternate Design Treatment Systems Pilot Program. The Commission made this decision due to the manufacturer's failure to make systems commercially available in the Pinelands during the initial five-year period of the pilot program or to otherwise demonstrate the ability or intention for future participation in the program. Residential development using any of these systems would still have to conform to the lot size and density requirements contained in the municipal land use ordinances that have been certified by the Commission pursuant to N.J.A.C. 7:50-3.

(d) The Alternate Design Waste Water Treatment Systems Pilot Program is authorized as a means to test whether these systems can be maintained and operated so as to meet the water quality standards contained in N.J.A.C. 7:50-6, Part VIII with maintenance requirements that a homeowner can be reasonably expected to follow. Since these systems do require maintenance beyond that which would be required for a standard septic system in order to optimize treatment efficiencies, municipalities were originally encouraged, but not required, to adopt ordinances incorporating the requirements of N.J.A.C. 7:50-10.22 into their own land use ordinances. The use of the pilot program systems was then allowed only in those municipalities which had adopted such ordinances. Although most municipalities did adopt ordinances, several did not. This led to situations where owners of unsewered parcels under 3.2 acres in size were denied the ability to develop those parcels in an manner consistent with all other municipal land use and environmental standards, due simply to a municipality's failure to adopt an ordinance allowing for the installation of the pilot program systems. This resulted in considerable hardship to landowners, an outcome that was never the intent of the pilot program. The program has therefore been revised to authorize use of the pilot program systems in all municipalities for the duration of the program, whether or not the specific terms of the program are reflected in a municipal ordinance. Municipalities will continue to be encouraged to allow community systems to be installed in larger residential developments where densities between one and 3.2 acres are currently authorized. Since insufficient data is available to determine a particular efficiency of these alternate design pilot program treatment systems for non-residential development, the use of these systems for non-residential development will be evaluated on a case by case basis pursuant to N.J.A.C. 7:50-6.84(a)1 if any such system is proposed to reduce total nitrogen in the effluent for non-residential development.

New Rule, R.2002 d.247, effective August 5, 2002.
See: 34 N.J.R. 722(a), 34 N.J.R. 2804(b).

Amended by R.2007 d.372, effective December 3, 2007.
See: 39 N.J.R. 1970(a), 39 N.J.R. 5077(b).
In (c), inserted the fifth sentence and recodified the final three sentences as (d); and rewrote (d).

7:50-10.22 General standards

(a) Alternate design pilot program treatment systems shall be authorized for residential use in all municipalities provided that the following standards are met:

1. The proposed lot size and density is consistent with the provisions of N.J.A.C. 7:50-5 and the applicable municipal land use ordinance that has been certified by the Commission pursuant to N.J.A.C. 7:50-3.

2. The manufacturer of the alternate design pilot program treatment system has submitted to the Executive Director and the Executive Director has approved:

i. Detailed specifications and an engineering design for the system. Separate specifications and designs may be submitted for systems serving an individual dwelling and for community on-site systems. These specifications and designs may only be approved by the Executive Director if they are determined to be consistent with the description of the relevant technology contained in the report prepared by Anish R. Jantrania, Ph.D., P.E., M.B.A. entitled "Performance Expectations for Selected On-site Wastewater Treatment Systems," dated December, 2000, incorporated herein by reference, and available at the principal office of the Commission. Subsequent to that approval, manufacturers may submit modified specifications or engineering designs for the system which may then be utilized if the Executive Director determines the modifications are consistent with the originally approved specifications and engineering design and the modified system will be at least as effective as the originally approved system;

ii. A description of the automatic dialing system required in (a)6ii below, and a description of how and when that system will function;

iii. A monitoring protocol that ensures that sufficient data will be obtained to enable a determination of whether the technology complies with the two ppm nitrogen requirement and the water quality standards contained in N.J.A.C. 7:50-6, Part VIII. For each system being monitored, the protocol will provide at a minimum that the effluent will be sampled at least quarterly for a period of at least three years and that at least the following parameters will be analyzed: total nitrogen, nitrate-nitrogen, nitrite-nitrogen, ammonia-nitrogen, total kjeldahl nitrogen and chlorides;

iv. An operation and maintenance manual;

v. A sample warranty and maintenance contract; and

vi. A sample deed notice that is consistent with (a)6viii below.

3. Subject to being increased during the pilot program based on the results of a hearing conducted pursuant to (a)5 below, each FAST, Cromaglass, Bioclere or Amphidrome system shall be located on a parcel containing at least one acre for each dwelling unit that will be served by the system.

4. The alternate design pilot program treatment systems identified in (a)3 above are authorized to be installed for a period of eight years from August 5, 2002.

5. The Executive Director shall submit an annual report to the Commission describing installation, maintenance and performance data for each technology. The Executive Director also shall submit an interim report to the Commission if it is determined there is a significant installation, maintenance or performance issue with one or more technologies that needs to be addressed before the issuance of the next annual report. Copies of each annual and interim report shall be provided to each manufacturer and agent of a technology that is discussed in that report. If it is determined in a report either that a manufacturer or its agent is not adhering to any of the requirements of this pilot program or that any one of the technologies, based on maintenance or installation issues or on an evaluation of all the monitoring results for that technology under this pilot program, is not meeting the minimum water quality standards in N.J.A.C. 7:50-6.83 or the two parts per million total nitrogen requirement in (a)6x below on all lots smaller than 3.2 acres or on lots smaller than a particular size because the effluent exiting the system is higher than was anticipated in establishing the lot sizes in (a)3 above, then any subsequent local approvals for a development that is proposing use of said technology shall be determined to raise a substantial issue and shall be reviewed by the Commission pursuant to the provisions set forth in N.J.A.C. 7:50-4.31 through 4.42. Notice of any hearing scheduled pursuant to this paragraph and any subsequent determination on the application made by the Executive Director or the Commission pursuant to N.J.A.C. 7:50-4.31 through 4.42 shall be provided to the manufacturers of said system and any agent designated by said manufacturer. The annual or interim report issued by the Executive Director shall be part of the hearing record in any hearing conducted pursuant to this paragraph.

6. Conditions for use of alternate design pilot program treatment systems are as follows:

i. No more than 10 alternate design pilot program septic systems utilizing the same technology shall be installed in the development of any parcel if those systems are each serving one single family dwelling, except where the Executive Director determines that the use of additional pilot program systems on the parcel would not substantially alter the character of the certified zoning plan of the municipality in which the parcel is located, taking into account existing and planned infrastructure and the role of the parcel in the Pinelands De-

velopment Credit program. Should such a determination be made, the additional lots may be serviced, proportionately, by those alternate design pilot program technologies which have been certified by the Executive Director pursuant to (a)2 above and are commercially available for use in the Pinelands;

ii. Each system shall be equipped with automatic dialing capability to the manufacturer, or its agent, in the event of a mechanical malfunction. The manufacturer or its agent shall report to the Executive Director each such malfunction within five days of its occurrence, describing the nature of the mechanical malfunction, the measures taken to correct the malfunction and the success of those measures. Periodic dialing or some other fail safe mechanism shall be provided to ensure against unauthorized disconnections;

iii. Each system shall be designed and constructed so that samples of effluent leaving the alternate design pilot program septic system can be readily taken to confirm the performance of the technology;

iv. The manufacturer or its agent shall be responsible for providing resources for the collection and analysis of effluent samples in accordance with the protocol approved pursuant to (a)2iii above. The samples shall be taken from each system that is installed unless the manufacturer or agent of a particular technology demonstrates, and the Executive Director concurs, that samples from a specified representative number of systems of that technology will provide sufficient information to enable an evaluation of that technology. Each sample shall be analyzed by a New Jersey certified laboratory and the results of each analysis shall be reported to the Executive Director by the manufacturer or its agent within five days of receipt from the certified laboratory. The manufacturer or its agent shall also submit to the Executive Director a quarterly evaluation of all monitoring conducted prior to that evaluation;

v. The manufacturer or its agent shall certify to the Commission and the local board of health that installation of each system has been properly completed and shall include in the certification the cost of the installation and a description of any problem encountered during the installation;

vi. The manufacturer or its agent shall provide to each owner an operation and maintenance manual approved pursuant to (a)2iv above;

vii. Each system shall be covered by a five-year warranty and a minimum five-year maintenance contract that cannot be cancelled and is renewable and which includes a provision requiring that the manufacturer or its agent inspect the system at least once a year and undertake any maintenance or repairs determined to be necessary during any such inspection or as a result of observations made at any other time, including when effluent monitoring occurs or that is identified based on the results of any effluent monitoring. Said warranty and maintenance contract shall be consistent with the sample warranty and maintenance contract approved pursuant to (a)2v above. In addition to complying with the reporting requirements of N.J.A.C. 7:9A-3.4(b) concerning system malfunctions, the manufacturer or agent shall report to the Executive Director and local board of health on all necessary maintenance and repairs within 10 days and shall report to the Executive Director and local board of health semi-annually as to the inspections conducted during the preceding six months including a description of any maintenance and repairs that were undertaken and the success of those measures and their costs;

viii. The property owner shall record with the deed to the property a notice consistent with the sample deed notice approved pursuant to (a)2vi above that identifies the technology, acknowledges the owner's responsibility to operate and maintain it in accordance with the manual required in (a)6vi above, and grants access, with reasonable notice, to the local board of health, the Commission and its agents for inspection and monitoring purposes. The recorded deed shall run with the property and shall ensure that the maintenance requirements are binding on any owner of the property during the life of the system and that the monitoring requirements are binding on any owner of the property during the time period the monitoring requirements apply pursuant to this pilot program or any subsequent regulations adopted by the Commission that apply to said system;

ix. The manufacturer or its agent shall make available for inspection by the Commission or its agents, upon reasonable notice, all records relating to each system installed in the Pinelands pursuant to this pilot program;

x. By July 5, 2003 and every six months thereafter until the conclusion of the pilot program, each manufacturer or its agent shall submit to the Executive Director a report which includes the number of systems installed during the previous six months and since the beginning of the pilot program, a discussion of any installation problems and what has been done to address those problems, an analysis and evaluation of the monitoring results to date and a discussion of any operational or maintenance issues, including the number of systems requiring maintenance or repairs and the nature and success of such maintenance and repairs, and the number of times the automatic dialing system was set off and the reasons for each such occurrence; and

xi. The system complies with the requirements of N.J.A.C. 7:50-6.84(a) 4i through v.

(b) The property owner shall not be held liable for poor system performance if the system has been properly operated and maintained.

New Rule, R.2002 d.247, effective August 5, 2002.
See: 34 N.J.R. 722(a), 34 N.J.R. 2804(b).
Public Notice: Ashco-A-Corporation, RFS III Wastewater Treatment System.
See: 35 N.J.R. 2750(b).
Public Notice: Amphidrome® Treatment System.
See: 35 N.J.R. 4135(b).
Public Notice: Ascho-A-Corporation, RFS III Gravity Dosing Treatment System.
See: 35 N.J.R. 4136(a).
Public Notice: Approval of Aquapoint, Inc, Bioclere ™ Treatment System.
See: 36 N.J.R. 221(c).
Public Notice: Approval of Cromaglass ® Treatment System.
See: 36 N.J.R. 1238(a).
Petition for Rulemaking.
See: 37 N.J.R. 1237(a), 2707(a), 3074(c).
Amended by R.2006 d.159, effective May 1, 2006.
See: 37 N.J.R. 4133(a), 38 N.J.R. 1829(b).
Rewrote (a)6i.
Amended by R.2007 d.372, effective December 3, 2007.
See: 39 N.J.R. 1970(a), 39 N.J.R. 5077(b).
In the introductory paragraph of (a), substituted "in all municipalities" for "where the proposed lot size and density is consistent with the provisions of N.J.A.C. 7:50-5 and the municipal land use ordinance that has been certified by the Commission pursuant to N.J.A.C. 7:50-3 and"; rewrote (a)1; in (a)3, deleted "each Ashco RFS III system shall be located on a parcel containing at least 1.5 acres for each dwelling unit that will be served by the system and" preceding "each FAST"; and in (a)4, substituted "eight" for "five".

7:50-10.23 Pinelands Commission approval and evaluation

(a) If otherwise appropriate under N.J.A.C. 7:50-3, the Commission shall approve a municipal ordinance authorizing use of alternate design pilot program treatment systems if it finds that the standards of N.J.A.C. 7:50-10.22 are met.

(b) The Executive Director shall review this pilot program seven years after August 5, 2002 and shall report to the Commission within three months of that date on its implementation. The Executive Director shall determine whether the pilot program is successful in accordance with the following criteria:

1. The level of nitrogen in the effluent in each alternate design pilot program treatment system technology based on an evaluation of all monitoring results for that technology under this pilot program;

2. The maintenance required for each alternate design pilot program treatment system technology to meet the efficiency set forth in (b)1 above;

3. The cost of installing and maintaining each alternate design pilot program treatment system technology;

4. The problems associated with the installation, operation and maintenance of each alternate design pilot program treatment system technology and the frequency with which each such problem occurs, the measures taken to eliminate any such problem and the success of those measures;

5. The number of systems of each technology that have been authorized under the pilot program; and

6. Whether the pilot program, when viewed in its entirety, has served to further the purposes and objectives of the Pinelands Protection Act, the Federal Act and this Plan.

(c) If the Executive Director finds that the number of monitoring events for any alternate design pilot program treatment system technology is not adequate to evaluate that technology under this pilot program in accordance with (b) above, the Executive Director shall so inform the Commission and, upon receiving the Commission's approval, initiate a second review to be completed within eight years of August 5, 2002.

(d) If the Executive Director finds that this pilot program has not been implemented or has not been successful for one or more of the alternate design pilot program treatment system technologies based on the criteria set forth in (b) above, the Executive Director shall propose, within three months of the issuance of the report required in (b) above, an amendment to this subchapter, in accordance with N.J.A.C. 7:50-7, to repeal the pilot program as to that technology or technologies.

(e) If the Executive Director finds that this pilot program has not been successfully implemented for one or more of the alternate design pilot program treatment system technologies because insufficient numbers of that technology or technologies have been installed to fully evaluate any such technology but the available information indicates that the technology can significantly reduce the level of nitrogen in the effluent, the Executive Director may propose an amendment to this subchapter, in accordance with N.J.A.C. 7:50-7, to establish a new pilot program as to that technology or technologies.

(f) If the Executive Director finds that this pilot program has been successful for one or more of the alternate design pilot program treatment system technologies based on the criteria set forth in (b) above, the Executive Director shall propose, within three months of the issuance of the report required in (b) above, an amendment to this Plan in accordance with N.J.A.C. 7:50-7 to permit installation of said technology or technologies on a permanent basis. Prior to submitting that proposal, the Executive Director shall specify either in the report required in (b) above or in a separate report to the Commission the institutional and governmental arrangements necessary to ensure adequate maintenance and monitoring of each such technology and the minimum lot size required for each such technology to comply with the water quality standards of N.J.A.C. 7:50-6, Part VIII.

(g) Nothing in this section shall be construed to authorize the installation of an alternate design pilot program treatment system after August 5, 2010 as set forth in N.J.A.C. 7:50-

10.22(a)4, unless a rule has been adopted by the Commission which expressly authorizes such installation pursuant to (e) or (f) above.

New Rule, R.2002 d.247, effective August 5, 2002.
See: 34 N.J.R. 722(a), 34 N.J.R. 2804(b).
Amended by R.2007 d.372, effective December 3, 2007.
See: 39 N.J.R. 1970(a), 39 N.J.R. 5077(b).
In the introductory paragraph of (b), substituted "seven" for "four"; in (c), substituted "eight" for "six" and a period for the semicolon at the end; and in (g), substituted "2010" for "2007".

7:50-10.24 through 7:50-10.27 (Reserved)

PART V—FORT DIX CONSUMER ELECTRONICS RECYCLING CENTER PILOT PROGRAM

7:50-10.28 (Reserved)

New Rule, R.2005 d.171, effective June 6, 2005.
See: 36 N.J.R. 4401(a), 37 N.J.R. 172(a), 37 N.J.R. 2013(b).
Repealed by R.2010 d.194, effective September 7, 2010.
See: 42 N.J.R. 663(a), 42 N.J.R. 2125(a).
Section was "Purpose".

7:50-10.29 (Reserved)

New Rule, R.2005 d.171, effective June 6, 2005.
See: 36 N.J.R. 4401(a), 37 N.J.R. 172(a), 37 N.J.R. 2013(b).
Repealed by R.2010 d.194, effective September 7, 2010.
See: 42 N.J.R. 663(a), 42 N.J.R. 2125(a).
Section was "General".

7:50-10.30 (Reserved)

New Rule, R.2005 d.171, effective June 6, 2005.
See: 36 N.J.R. 4401(a), 37 N.J.R. 172(a), 37 N.J.R. 2013(b).
Repealed by R.2010 d.194, effective September 7, 2010.
See: 42 N.J.R. 663(a), 42 N.J.R. 2125(a).
Section was "Pinelands Commission approval and evaluation".

PART VI—ELECTRIC TRANSMISSION RIGHT-OF-WAY MAINTENANCE

7:50-10.31 Purpose

(a) The purpose of this pilot program is to implement and evaluate the New Jersey Pinelands Electric Transmission Right-of-Way Maintenance Plan (ROW Plan), which is hereby adopted by the Pinelands Commission. The ROW Plan identifies detailed vegetation management prescriptions for approximately 233 miles of existing electric transmission rights-of-way managed by Public Service Enterprise Group, Jersey Central Power and Light and Atlantic City Electric, a subsidiary of Pepco Holdings, Inc.

(b) The ROW Plan has two primary objectives:

1. To create and maintain relatively stable and sustainable early successional habitats that are characteristic of the Pinelands and which provide habitat for native Pinelands plants and animals, including threatened and endangered species; and

2. To ensure the reliability and safety of the electric transmission system in the Pinelands by creating and maintaining low growth vegetation communities.

New Rule, R.2009 d.386, effective December 21, 2009.
See: 41 N.J.R. 2412(a), 41 N.J.R. 4788(a).

7:50-10.32 General standards

(a) Electric transmission right-of-way vegetation management activities shall be authorized in the Pinelands Area in accordance with the provisions of the New Jersey Pinelands Electric Transmission Right-of-Way Plan, dated February 2009, as amended and supplemented and available at the principal office of the Commission or at www.nj.gov/pinelands until December 31, 2019, or as extended pursuant to N.J.A.C. 7:50-10.35(c).

(b) The utility companies and their successors or assigns are authorized to proceed with conforming vegetation management prescriptions without prior notice to and review by the Pinelands Commission pursuant to N.J.A.C. 7:50-4, provided that:

1. Each utility company shall submit an annual report to the Executive Director, in such form as he or she shall prescribe, that identifies the specific right-of-way spans in which prescribed vegetation management activities have been performed. This report shall be due on January 31 of each year and shall cover the preceding calendar year; and

2. In lieu of any application fees required by N.J.A.C. 7:50-1.6, each utility company shall remit to the Executive Director the following amounts on January 31 of each year to help finance the Commission's inspection and monitoring obligations specified in (c) and (d) below. The first payment shall be due on January 31, 2010 and the last payment shall be due on January 31, 2018.

i. Public Service Enterprise Group - $22,500;

ii. Jersey Central Power and Light - $8,900; and

iii. Atlantic City Electric - $27,800.

(c) The Executive Director shall establish and implement an annual inspection program to verify that the vegetation management activities undertaken by the utility companies are consistent with the ROW Plan.

(d) The Executive Director shall establish and implement a scientifically based monitoring program to assess the outcomes of the vegetation management activities and whether they are accomplishing the objectives of the ROW Plan.

New Rule, R.2009 d.386, effective December 21, 2009.
See: 41 N.J.R. 2412(a), 41 N.J.R. 4788(a).

7:50-10.33 Progress reports and conformance

(a) The Executive Director shall submit a biennial progress report to the Commission, each of the utility companies and the Board of Public Utilities which describes the type and

extent of vegetation management activities undertaken to date, any significant problems or issues encountered during the period and the need for any amendments to the ROW Plan. The first such report shall be due March 30, 2012.

(b) The Executive Director shall submit such other interim reports to the Commission as may be necessary to inform the Commission of any significant issues with respect to the utility companies' conformance with the terms of the ROW Plan. Copies of such reports shall be provided to each of the utility companies and the Board of Public Utilities.

(c) If the Executive Director identifies a significant and recurring conformance issue in a progress or interim report, the applicable utility company or companies shall thereafter be required to submit individual development applications pursuant to the requirements of N.J.A.C. 7:50-4 until such time as the Executive Director notifies the Commission, the utility company or companies and the Board of Public Utilities that the conformance issues have been satisfactorily resolved. Such development applications shall be subject to the fee requirements of N.J.A.C. 7:50-1.6. Any annual payment required pursuant to N.J.A.C. 7:50-10.32(b)2 shall be adjusted to account for the period during which individual development applications are submitted.

New Rule, R.2009 d.386, effective December 21, 2009.
See: 41 N.J.R. 2412(a), 41 N.J.R. 4788(a).

7:50-10.34 Amendments

(a) Although the ROW Plan provides that minor adjustments to the vegetation management prescriptions may be made with the Executive Director's prior approval, a need may periodically arise for substantive amendments to the ROW Plan. Such an amendment proposal may be made by the Executive Director, one or more of the utility companies or the Board of Public Utilities.

(b) Upon receipt of a complete amendment proposal, the Executive Director shall give notice of and set the date, time and place for a public hearing. The public hearing shall be held by the Executive Director within 60 days following receipt of the amendment proposal.

(c) Within 90 days of the receipt of the amendment proposal, the Executive Director shall submit a report to the Pinelands Commission setting forth proposed findings and a recommended order as to whether the amendment should be approved, approved with conditions or disapproved.

(d) Upon receipt of the Executive Director's report, the Commission shall review the findings, conclusions and recommendations of the Executive Director and shall, within 120 days following receipt of the amendment, approve, approve with conditions or disapprove the amendment.

New Rule, R.2009 d.386, effective December 21, 2009.
See: 41 N.J.R. 2412(a), 41 N.J.R. 4788(a).