

PINELANDS COMMISSION

**Pinelands Comprehensive Management Plan
Wetlands management**

**Adopted Amendments: N.J.A.C. 7:50-2.11, 7:50-5.1, 7:50-5.22, 7:50-5.23,
7:50-5.24, 7:50-5.25 and 7:50-5.47**

Adopted Repeal and New Rule: N.J.A.C. 7:50-6.10

Proposed: June 15, 2009 at 41 N.J.R. 2398(a)

Adopted: October 9, 2009 by the New Jersey Pinelands Commission,
John C. Stokes, Executive Director

Filed: November 25, 2009 **without change.**

Authorized by: New Jersey Pinelands Commission

Authority: N.J.S.A. 13:18A-6j.

Effective Date: December 21, 2009

Expiration Date: Exempt.

The New Jersey Pinelands Commission (Commission) is adopting amendments to Subchapters 2, Interpretations and Definitions; 5, Minimum Standards for Land Uses and Intensities; and 6, Management Programs and Minimum Standards, of the Pinelands Comprehensive Management Plan (CMP). The amendments and new rule were proposed on June 15, 2009 at 41 N.J.R. 2398(a). The adopted amendments and new rule relate to wetlands management activities.

In association with publication of the proposed amendments and new rule in the June 15, 2009 issue of the New Jersey Register, the Pinelands Commission transmitted the proposal to each Pinelands municipality and county, as well as to

other interested parties, for review and comment. Additionally, the Pinelands Commission:

- Sent notice of the public hearing to all persons and organizations which subscribe to the Commission's public hearing registry;
- Placed advertisements of the public hearing in the four official newspapers of the Commission, as well as on the Commission's own web page;
- Submitted the proposed amendments to the Pinelands Municipal Council pursuant to N.J.S.A. 13:18A-7f;
- Distributed the proposed amendments to the news media maintaining a press office in the State House Complex;
- Published a copy of the proposed amendments on its web page at www.nj.gov/pinelands; and
- Distributed press releases concerning the proposed amendments to the news media

Summary of Hearing Officer Recommendations and Agency Response:

A formal public hearing was held before the Commission staff on July 22, 2009. Approximately 25 people attended the hearing; oral testimony on the rule proposal was provided by 1 individual. The hearing officer's recommendations are in accordance with the public comment and agency responses below.

Oral comments were recorded on magnetic tape which is on file at the Commission's office at 15 Springfield Road, New Lisbon, New Jersey. The record of this rulemaking is available for inspection in accordance with applicable law by contacting:

Betsy Piner
Pinelands Commission
P.O. Box 7
New Lisbon, NJ 08064

Summary of Public Comments and Agency Responses:

The Commission accepted oral comments on the June 15, 2009 proposal at the above-discussed July 22, 2009 public hearing and written comments by regular mail, facsimile or e-mail through August 14, 2009.

The following individuals and organizations submitted comments:

1. Elizabeth Ciuzio, Stewardship Project Director, NJ Audubon Society
2. Donald M. McCloskey, Director Environmental Strategy and Policy,
PSEG
3. Carleton Montgomery, Executive Director, Pinelands Preservation
Alliance

The Commission's response to the comments is set forth below. The numbers in parentheses after each comment correspond to the list of commenters above.

COMMENT: One commenter expressed support for the wetlands management amendments but suggested that the provisions of the amendments should be modified to be consistent with the provisions for General permit 16 – Habitat creation and enhancement activities, under the New Jersey Freshwater Wetlands Protection Act (N.J.A.C. 7:7A-5.16). (1)

RESPONSE: The Pinelands Comprehensive Management Plan's wetlands protection program is set forth at N.J.A.C. 7:50-6, Part I. Pursuant to N.J.A.C. 7:50-6.6, development is generally prohibited in all wetlands within the Pinelands. Furthermore, in accordance with the provisions of N.J.A.C. 7:50-6.7, any modification of a wetland that would have an irreversible effect on that wetland's ecological integrity, including any alteration of hydrology or change in species composition, among other factors, is strictly prohibited. In the absence of suitable controls, broadly defined wetlands "restoration" can result in unwarranted impacts on natural wetlands systems such as the conversion of one natural wetland to another type of wetland. Consequently, the Commission believes that vegetation management activities in wetlands should only be authorized in select circumstances and with appropriate safeguards to ensure that damage to existing Pinelands wetlands plants and animals does not occur. In view of the need for these precautions, the adopted amendments and new rule authorize vegetation management activities in wetlands only under limited circumstances: to remove exotic (non-indigenous to North America) species or Phragmites; to establish a characteristic wetland on inactive farmland (whether or not said farmland was previously a wetland); to prevent the loss of a rare wetland community through succession; expand a rare type of wetland community; or create more favorable conditions for the viability of rare plant or animal populations. As these limitations suggest, the wetlands management amendments and new rule are solely and specifically intended to maintain and/or restore characteristic Pinelands wetlands in order to sustain and perpetuate the Pinelands environment. By

contrast, the provisions governing issuance of a General permit 16 enable a broad spectrum of wetlands manipulation, allowing not only wetlands restoration, but habitat enhancement and creation. As such, general permit 16 provisions would considerably exceed the Commission's current intent for wetlands restoration activities in the Pinelands. The suggestion made by the commenter is therefore not appropriate at this time.

COMMENT: One commenter offered comments neither in opposition nor in support of the amendments. This commenter referred to the Commission's proposed Pilot Program for Electric Transmission Right-of-Way Maintenance and requested confirmation that maintenance activities conducted in conjunction with the pilot program, within existing utility transmission rights-of-way, are exempt from the provisions of the wetlands management amendments. (2)

RESPONSE: The Pilot Program for Electric Transmission Right-of-Way Maintenance was proposed by the Commission as an amendment to the CMP in June of 2009 (see 41 N.J.R. 2412(a)). This pilot program authorizes three utility companies to undertake specific vegetative maintenance activities within electric transmission rights-of-way. Some of these activities will involve vegetative maintenance within wetlands. However, such maintenance activities will not be subject to the standards for wetlands management now being adopted at N.J.A.C. 7:50-6.10 as they do not involve the establishment of a characteristic wetland or removal of exotic species or Phragmites from a wetland. Should any of the utility companies elect to undertake wetlands management, as defined at N.J.A.C. 7:50-

2.11, that would occur outside the pilot program and the standards of N.J.A.C. 7:50-6.10 would apply.

COMMENT: One commenter expressed support for the amendments, indicating that the provisions will provide a clear, workable and scientifically sound set of standards to evaluate restoration and stewardship. The commenter expressed further support for the requirements at N.J.A.C. 7:50-6.10(a)7 and (b)9 to monitor wetlands management activities undertaken in conjunction with the proposed amendments as these requirements will provide the opportunity to document and learn from proposed restoration activities. (3)

RESPONSE: The Pinelands Commission agrees with and appreciates these comments of support.

Federal Standards Statement

Section 502 of the National Parks and Recreation Act of 1978 (16 U.S.C. §471i) called upon the State of New Jersey to develop a comprehensive management plan for the Pinelands National Reserve. The original plan adopted in 1980 was subject to the approval of the United States Secretary of the Interior, as are all amendments to the plan.

The Federal Pinelands legislation sets forth rigorous goals which the plan must meet, including the protection, preservation and enhancement of the land and water resources of the Pinelands. The proposed amendments, repeal and new rule are designed to meet those goals by promoting, in limited circumstances, the

restoration, protection and expansion of critical wetlands resources that are characteristic of the Pinelands environment.

Section 404 of the Clean Water Act (CWA) (33 U.S.C. section 1344) establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands. The CWA also establishes how wetlands are defined and identified. The CWA permits wetlands restoration and EPA promotes and encourages restoration and reestablishment of pre-disturbance aquatic functions and related physical, chemical and biological characteristics of wetlands. To the extent that the proposed amendments would enable vegetation management activities to restore characteristic Pinelands wetlands, they are consistent with the CWA.

There are no other Federal requirements that apply to the subject matter of these amendments.