

PINELANDS COMMISSION

Pinelands Comprehensive Management Plan

Definitions; Application Requirements and Procedures; Pinelands Development Credits; Pilot Program for Alternate Design Wastewater Treatment Systems

Proposed Amendments: N.J.A.C. 7:50-2.11, 4.1, 4.2, 4.18, 4.19, 4.25, 4.35, 4.37, 4.52, 4.74, 4.76, 5.43, 6.68, 6.69, and 10.21-10.23

Authorized By: New Jersey Pinelands Commission
Nancy Wittenberg, Executive Director

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement

Proposal Number:

A **public hearing** concerning this proposal will be held on:

March 26, 2014 at 7:00 P.M.
Richard J. Sullivan Center
15C Springfield Road
New Lisbon, New Jersey

Submit written comments by regular mail, facsimile or e-mail by April 19, 2014 to:

Susan R. Grogan, P.P., AICP
Chief Planner
Pinelands Commission
P.O. Box 359
New Lisbon, NJ 08064
Facsimile: (609)894-7330
E-mail: planning@njpines.state.nj.us

The name and mailing address of the commenter must be submitted with all public comments.

The agency proposal follows:

Summary

The New Jersey Pinelands Commission proposes to amend subchapters 2, Interpretations and Definitions, 4, Development Review, 5, Minimum Standards for Land Uses and Intensities, 6, Management Programs and Minimum Standards, and 10, Pilot Programs, of the Pinelands Comprehensive Management Plan (CMP). The Pinelands CMP has been guiding land use and development activities in the Pinelands since it took effect on January 14, 1981. Since that time, the CMP has been amended a number of times, most recently in January of 2012 through a set of amendments relating to solar energy facilities (see 44 N.J.R. 73(a)).

The amendments now being proposed by the Commission relate to application requirements and procedures, the duration of Letters of Interpretation, the allocation of Pinelands Development Credits and the Pilot Program for Alternate Design Wastewater Treatment Systems. They are intended to codify current Commission practice, clarify existing standards and requirements, increase the efficiency of the Commission and its staff, eliminate unnecessary application requirements, correct typographical errors in the regulations, provide an extended time period within which the installation of certain alternate design wastewater treatment systems will be permitted and remove from the Alternate Design Wastewater Treatment Systems Pilot Program a particular technology that has been unable to demonstrated compliance with CMP standards.

The proposed amendments are, in part, an outgrowth of the Commission's fourth comprehensive review of the CMP. The Commission embarked on the plan review process in June of 2012. A Plan Review Committee, composed of five Commission members, was formed at that time and has since met monthly. While all of the Plan Review Committee meetings are open to the public, the Committee also sought public comment at a series of additional public

meetings throughout the summer of 2012. The submission of written comments on the Comprehensive Management Plan and its implementation was also encouraged. Notice of the opportunity to attend the public meetings and/or provide written comments was provided via press releases, posting on the Commission's website and use of the Pinelands News Alert system which involves emails to nearly 600 people. In addition, emails were sent to a wide variety of potentially interested individuals and groups, including all Pinelands Area municipalities, the Pinelands Preservation Alliance and other environmental groups, the New Jersey State League of Municipalities, the New Jersey Farm Bureau, the Chambers of Commerce of all Pinelands counties, the Builders League of South Jersey, the New Jersey Builders Association and the members of the Commission's own Forest Advisory and Agricultural Advisory Committees. In response to these outreach efforts, both oral and written comments were received on a wide range of topics. All written comments received by the Commission have been posted and are available on the Commission's website at www.nj.gov/pinelands. Ultimately, the Commission's goal is to analyze its past actions, consider the public's input and identify ways to strengthen the Comprehensive Management Plan through future amendments and administrative actions.

The amendments now being proposed represent the first step in the CMP review process. Over the next year, the Commission plans to discuss and analyze the more substantive issues raised during the public comment process. That analysis may lead to the proposal of additional CMP amendments. In the meantime, the Commission has determined it would be appropriate and beneficial to move ahead with what are generally being termed "efficiency measures" - amendments largely designed to improve the Commission's procedures, maximize the Commission's staff resources and codify current policies and practices.

The “efficiency measures” reflected in the proposed amendments were discussed and reviewed at public meetings of the Plan Review Committee on November 9, 2012, by the full Commission on January 11, 2013 and by the Commission’s CMP Policy & Implementation Committee on February 22, 2013. On January 28, 2013, staff from the Pinelands Commission also provided a presentation on the efficiency measures at a public meeting of the Pinelands Municipal Council (PMC). The PMC, created by the Pinelands Protection Act (N.J.S.A. 13:18A-1 et. seq), is made up of the mayors of the 53 municipalities in the Pinelands Area or their designees. The Council is empowered to review and comment upon changes proposed by the Pinelands Commission in the New Jersey Pinelands Comprehensive Management Plan and advises the Commission on matters of interest regarding the Pinelands.

A more detailed description of the proposed amendments follows.

Definitions

The definition of “alternate design pilot program treatment system” is being amended to reflect the removal of one technology (Cromaglass) from the pilot program, as is discussed in more detail later in this proposal.

The definition of “immediate family” in N.J.A.C. 7:50-2.11 is being modified so that it refers to “spouses” rather than “husbands and wives” and includes “domestic partners”.

Application Exemptions

N.J.A.C. 7:50-4.1(a) includes a list of activities that do not require application to the Commission. The Commission has identified a number of additional activities that it believes should likewise be “exempted” from the Commission’s review as such applications consume

staff time that would be better devoted to the review of more significant development proposals and, in some cases, are more appropriately handled solely by municipalities. All of the new “exemptions” have been carefully selected and circumscribed to ensure there will be minimal, if any, impacts on the Pinelands environment if applications to the Commission are no longer required. As with all of the activities listed in N.J.A.C. 7:50-4.1(a), although applications to the Commission will no longer be needed for these additional activities, that does not mean they are exempt from municipal application, review and approval procedures, nor does it mean they are exempt from the environmental standards in subchapter 6 of the CMP.

N.J.A.C. 7:50-4.1(a)8 is being amended to address exemptions for accessory uses and additions to nonresidential uses and multifamily residential structures. In cases where the addition or accessory use would be located on or under an impervious surface, the size of the exemption is being increased from 1,000 square feet to 4,999 square feet. This exemption applies where the existing nonresidential use or multifamily residential structure is served by public sewers or, as is clarified in the proposed amendment, where the proposed accessory use or structure will generate no wastewater flows. The 4,999 square foot threshold was selected because, above that size, the CMP’s requirements for stormwater management would be triggered and an exemption from application requirements would no longer be appropriate.

N.J.A.C. 7:50-4.1(a)8 is also being expanded to include a new exemption for accessory uses and additions to nonresidential uses and multifamily residential structures that are **not** located on or under impervious surfaces. Based on the proposed amendment, applications to the Commission would no longer be required for the development of additions or accessory structures up to 1,000 square feet in size, provided the addition or structure will generate no wastewater flows.

N.J.A.C. 7:50-4.1(a)11 is being expanded to include not only the repaving of existing paved roads, but other paved surfaces as well. This would include, for example, sidewalks and parking lots. Such repaving activities will be considered exempt from application requirements, provided no increase in the paved width or area of the paved surfaces will occur.

N.J.A.C. 7:50-4.1(a)12 is being amended to clarify that the clearing of land for either agricultural or horticultural purposes is exempt from the Commission's application requirements. Since 1981, the Commission has interpreted this exemption to include both agricultural and horticultural activities; thus, this amendment represents no change in policy or practice. It is merely a clarification.

N.J.A.C. 7:50-4.1(a)22 is being added to exempt the establishment of certain home occupations from the need to submit an application to the Commission. Home occupations are, according to N.J.A.C. 7:50-2.11, activities for economic gain carried out in a residential dwelling or accessory structure, in which the occupant of the residence and no more than two other individuals are employed. Home occupations must be clearly secondary to the use of the dwelling as a residence. Proposed N.J.A.C. 7:50-4.1(a)22 would relieve applicants seeking to establish home occupations within their homes from the need to submit applications to the Commission, provided no additional development is proposed in association with that home occupation. If a new building were to be constructed to house the home occupation, an application would continue to be required. Likewise, if a new parking lot were proposed, an application would be required. In general, the Commission believes Pinelands municipalities are better equipped to regulate and address issues that arise in association with home occupations as these issues tend to be those of local concern (e.g., traffic, noise), rather than those involving regional environmental standards. The addition of this exemption merely means that certain

home occupations will not need to apply to and receive Certificates of Filing from the Commission. The ability of a Pinelands municipality to regulate home occupations is in no way affected by the proposed amendment.

N.J.A.C. 7:50-4.1(a)23 is being added to exempt certain changes of use from the need to file applications with the Commission. Specifically, the change of one nonresidential use to another nonresidential use would no longer require application, provided the existing and proposed uses are or will be served by public sewers and no additional development is proposed. With few exceptions, the requirement for sewer service effectively limits the exemption to nonresidential uses located in the growth-oriented areas of the Pinelands, Regional Growth Area, Pinelands Towns and Pinelands Villages. It also eliminates any concerns related to water quality (septic dilution requirements) arising from the change of use. Furthermore, restricting the exemption to situations where no additional development is proposed negates any concerns with stormwater management. Therefore, there is little reason for the Commission to continue to require applications for what is typically a change from one commercial use (e.g., a real estate office) to another commercial use (e.g., a hardware store) in a sewerred, developed area. These are matters best left to municipalities to regulate.

By expanding the list of exempt activities, the Commission hopes not only to support local businesses by decreasing costs and processing time, but also to be able to allocate more of its staff resources to the review of applications involving development proposals that have the potential for more significant impacts on the Pinelands environment.

Requirements of Local Approval Agencies; Review of Local Approvals

N.J.A.C. 7:50-4.18(e) and 4.35(e), the notice requirements applicable to final decisions made by local approval agencies, are being amended so that they will be identical to those for preliminary approvals. Minor differences in wording appear in the current regulations when, in fact, the information required by the Commission for review of preliminary and final local approvals is the same.

N.J.A.C. 7:50-4.19(c), 4.25(c) and 4.37(c) are also being amended to clarify that they refer to notification requirements that must be followed by the Commission in cases where a hearing before an Administrative Law Judge has been requested for purposes of reviewing a local approval or denial of a development application.

Letters of Interpretation

Letters of Interpretation (LOI) are issued by the Commission pursuant to N.J.A.C. 7:50-4, Part VI, at the request of an applicant. Although an LOI may be requested for any standard set forth in the CMP, the vast majority of LOI applications received by the Commission involve requests for an allocation of Pinelands Development Credits (PDC) to a particular parcel. From 2007-2012, the Commission issued 216 LOIs, 185 or 86 percent of which were for PDC allocations. The remaining 31 were LOIs related to the extent of wetlands or wetlands buffer areas on specific parcels.

Currently, N.J.A.C. 7:50-4.76(b) provides that LOIs shall not be valid for a period longer than two years from the date of issuance by the Commission. With respect to LOIs involving PDC allocations, this means that a landowner to whom PDCs were allocated has two years to sever those PDCs from his or her property so that they may be sold, transferred or redeemed. After that two year time period, if the landowner wishes to sever the PDCs, he or she must once

again apply to the Commission and “renew” the LOI. Renewals are largely a paperwork exercise, although there have been a few occasions where a change in Pinelands management area designations or the availability of more accurate wetlands mapping has changed the number of PDCs that are allocated in the “new” LOI. On the whole, the Commission believes that requiring renewals every two years is of little benefit and simply generates more work for the Commission and property owners. N.J.A.C. 7:50-4.76(b) is therefore being amended to extend the duration of LOIs from two to five years. This extension will provide property owners with a longer period of time during which they may rely on their LOIs when deciding whether to sever their PDCs or, in the case of wetlands delineations, proceed with their development projects. It will also allow the Commission to focus more of its staff resources on the review of applications for development.

It should be noted that the CMP will continue to require no application fee for a PDC LOI, whether it is for an initial allocation of PDCs or for a renewal of an expired LOI. Applications for amended LOIs, submitted within five years of the date on which the original LOI was issued, will continue to require a small application fee. Also, as is the case under the current regulations, if a landowner changes the conditions associated with a parcel that has received an LOI for PDCs, the Commission will automatically issue an amended LOI. For example, if, after receiving a PDC LOI, a landowner decides to build a home on the parcel and receives approvals to do so, that new home would result in the need to decrease the PDC allocation to which the landowner is entitled, even if it were done within the five year life time of the original LOI. This practice will remain unchanged by the proposed amendment.

N.J.A.C. 7:50-4.74 is also being amended to eliminate the requirement that the Executive Director provide an analysis of all pending requests for LOIs to the Commission prior to

issuance of any new LOIs. Over the years, such an analysis has proven to be unnecessary, given that most LOIs merely involve the allocation of PDCs. The Executive Director will simply continue the long-standing practice of providing copies of all LOIs, following their issuance, to the Commission for its information on a monthly basis.

PDC allocations

Pinelands Development Credits are typically bought and sold in $\frac{1}{4}$ increments because that increment equals one right. Therefore, the Commission established an administrative practice years ago to round allocations (except those that represent a fraction of $\frac{1}{4}$ PDC) to the nearest one-quarter of a Credit. A new N.J.A.C. 7:50-5.43(b)5 is being proposed to specify this practice in the CMP.

It has also been the Commission's longstanding practice to calculate a PDC allocation for all contiguous properties that are currently or were previously held in common ownership. This practice began many years ago in an effort to issue very precise PDC allocations and round fractional allocations (up or down as appropriate) for an entire ownership and not for individual properties. With the passage of time, researching prior ownership has become very time consuming, to the point where the costs of doing so are excessive. Therefore, a new N.J.A.C. 7:50- 5.43(b)4 is being proposed to end this administrative practice and calculate PDC allocations for an entire parcel as it exists at the time of the application for the LOI or, at the request of the applicant, for individual lots.

Corrections

A number of technical corrections are being made, involving the following sections: N.J.A.C. 7:50-4.2(b)6i, 4.52(e)vi, 6.68(a)10, 6.69(a)2 and 10.21(d). These revisions include updated cross-references to other sections of the CMP, as well as corrections of typographical errors.

Pilot Program for Alternate Design Wastewater Treatment Systems

In 2000, the Pinelands Commission formed a special Ad Hoc Septic System Committee to research alternate septic system technologies that might better meet the water quality standards of the CMP (N.J.A.C. 7:50-6, Part VIII) for residential development on lots smaller than 3.2 acres, where such lots were already authorized pursuant to N.J.A.C. 7:50-5. In its research efforts, the Committee consulted wastewater engineering professionals, state and regional on-site technology demonstration projects, alternate treatment system technology manufacturers, Pinelands Area county health departments and other state and local agencies. Based on this research, the Committee identified five technologies that it determined could be expected to meet Pinelands water quality standards for residential development on lots smaller than 3.2 acres in size. The identified technologies were the Amphidrome, Ashco RFS^{III}, Cromaglass, Bioclere and FAST treatment systems. Based upon nitrogen removal expectations and the Pinelands Septic Dilution Model, the Committee concluded the Amphidrome, Cromaglass, Bioclere and FAST systems could be permitted on lots of at least one acre and that the Ashco RFS^{III} system could be allowed on residential lots of at least 1.5 acres. All of the identified systems utilize proven biological nutrient removal processes to reduce nitrogen levels in treated wastewater. The water quality requirements of N.J.A.C. 7:50-6, Part VIII, include provisions that are aimed at controlling the amount of nitrogen that enters the environment

because nitrogen itself is a significant pollutant and because it often serves as an indicator of changes in overall water quality.

The Ad Hoc Septic System Committee unanimously recommended that an interim program be developed for the approval, installation and monitoring of the five identified wastewater treatment technologies and that the interim program include conditions and safeguards to govern their use. To implement these recommendations, the Pinelands Commission adopted a set of amendments to the CMP that authorized the use of the technologies through the establishment of the Alternate Design Treatment Systems Pilot Program (see 34 N.J.R. 2804(b)). These CMP amendments, which took effect on August 5, 2002, are codified at N.J.A.C. 7:50-10, Part IV. The Pilot Program was implemented to provide a means to test whether the five identified technologies could be maintained and operated so as to meet the water quality standards of the CMP in a manner that a homeowner can be reasonably expected to follow. Implementation of the Pilot Program commenced on August 5, 2002, with the first pilot program treatment system installed and brought on line in April of 2004.

N.J.A.C. 7:50-10.23 of the CMP requires that the Executive Director review the Alternate Design Treatment Systems Pilot Program periodically and report the findings of that evaluation to the Pinelands Commission in a program implementation report. The criteria by which the Pilot Program is periodically evaluated are set forth at N.J.A.C. 7:50-10.23(b)1 through 6. The Executive Director has issued three program implementation reports to date. Links to all reports may be found on the Commission's web site at www.nj.gov/pinelands.

The first evaluation of the pilot program was completed in November 2006. In the November 2006 implementation report, the Executive Director determined that one of the technologies (Ashco RFS^{III}) should be removed from the pilot program and that insufficient data

was available to render a determination regarding the four other treatment technologies. The Executive Director recommended that the pilot program be extended by an additional three years to allow for the collection of additional data. The Commission adopted amendments to the CMP to implement this recommendation in 2007 (see 39 N.J.R. 5077(b)).

The second evaluation of the pilot program was completed in November 2009. In the November 2009 implementation report, the Executive Director recommended that the Amphidrome and Bioclere treatment technologies be granted permanent approval status, subject to special administrative controls, that the pilot program be extended for the Cromaglass and FAST treatment technologies by an additional three years (through August 2013) to allow for the collection and analysis of additional data from these technologies, and that the pilot program be expanded to permit additional prescreened technologies to participate in the pilot program through August 2016. The Commission adopted amendments to the CMP to implement these recommendations in 2010 (see 42 NJR 2422(a)).

The third evaluation of the pilot program was completed in November 2012. In the November 2012 implementation report, the Executive Director recommended that the Pilot Program once again be extended for two of the original five pilot program systems, Cromaglass and FAST, in order to provide an opportunity for continued installation of the systems and further evaluation of the systems through an ongoing assessment of monitoring and retrofits.

Subsequently, in August of 2013, the Executive Director recommended that the Cromaglass technology be removed from the Pilot Program entirely, with no further installations permitted. A temporary suspension barring new installations of the Cromaglass technology has been in place since November 15, 2006. This suspension was imposed as a result of the Commission's prior finding that the Cromaglass technology had not met CMP groundwater

quality standards. The Cromaglass technology produced a grand median total nitrogen concentration of 31.5 mg/l, failing to meet the CMP's 14.0 mg/l total nitrogen standard for unsewered residential development on a minimum one acre parcel.

The Alternate Design Treatment Systems Pilot Program requires technology manufacturers to troubleshoot and remediate substandard treatment system performance. At the Commission's direction, Cromaglass undertook studies to determine the cause of inadequate nitrogen attenuation and recommended a number of remedial measures to improve nitrogen attenuation in its existing Pinelands treatment units. After reviewing Cromaglass' findings and recommendations, the Commission issued correspondence in 2011 requiring that Cromaglass implement a two-phase remediation program. Phase I was to include the retrofitting of twenty-eight systems by March 1, 2012. Effluent sampling of the Phase I retrofit systems was to commence within two months of the completion of the Phase I retrofits and was to continue every two months for a total of six samples per system.

Cromaglass completed the Phase I retrofits by the March 1, 2012 deadline but has not complied with the system sampling requirements. The first round samples were collected on May 2, 2012 and produced a grand median total nitrogen value of 18.0 mg/l. The second round samples were collected five months later, included only twenty systems and resulted in a grand median total nitrogen value of 19.2 mg/l. A full ten months have now elapsed since Cromaglass' last sampling event. In summary, Cromaglass has been delinquent in sampling the retrofitted systems and has failed to demonstrate the Cromaglass technology's capability to meet CMP water quality standards.

The Commission has afforded the Cromaglass Corporation multiple opportunities to improve the technology's nitrogen attenuation. However, Cromaglass Corporation's inconsistent

compliance with the pilot program's sampling and reporting requirements remains problematic. Further, the company has failed to fully comply with the Commission's sampling and reporting requirements applicable to retrofitted Cromaglass units. The Commission therefore has no choice but to find that the Cromaglass Corporation's participation in the pilot program has not been in substantial compliance with the sampling and reporting requirements of the CMP. Further the Cromaglass technology has not made satisfactory progress in attaining compliance with CMP water quality standards. As a result, the Executive Director recommended that the Cromaglass technology's continued participation in the pilot program should be discontinued at the end of August, 2013.

The Executive Director's recommendations were discussed at three public meetings of the CMP Policy & Implementation Committee in November 2012, February 2013 and August 2013. All of the input that the Committee received at these public meetings was in support of the Pilot Program, its further extension and the removal of the Cromaglass technology. The Commission thereafter decided to propose amendments to the CMP to implement the Executive Director's recommendations. Specifically, N.J.A.C. 7:50-2.11 is being amended to remove the Cromaglass technology from the definition of "alternate design pilot program treatment system". Similarly, N.J.A.C. 7:50-10.21(c) and 10.22(a)3 are being amended to reflect the removal of the Cromaglass technology from the pilot program. N.J.A.C. 7:50-10.22(a)4 and 10.23(i) are also being amended to remove the Cromaglass technology and provide an opportunity for installation of new FAST systems through August 5, 2018. The same installation deadline is also being established for any USEPA ETV or NSF/ANSI Standard 245 technologies approved by the Commission for participation in the pilot program pursuant to N.J.A.C. 7:50-10.23(b). In recognition of the extended installation deadline, N.J.A.C. 7:50-10.23(c) is being amended to

require a fourth review of the Pilot Program in August of 2017, with a program implementation report submitted to the Commission no later than November 5, 2017. Finally, N.J.A.C. 7:50-10.23(d) and (e) are being amended to provide the Executive Director with the ability to continue the evaluation of the Pilot Program in the event there are insufficient monitoring events for the FAST, USEPA ETV or NSF/ANSI Standard 245 technologies at the time of the required review in November of 2017. Should there be insufficient monitoring events for any of the technologies, an evaluation of the Pilot Program with respect to that technology will now be due to the Commission on August 5, 2019. The criteria by which the pilot program is to be reviewed remain unchanged.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

No adverse social impact is anticipated as a consequence of the adoption of the proposed amendments. Society as a whole benefits from the protection of the Pinelands and the proposed amendments are designed to do just that. Any social impacts that do result are expected to be positive.

Extension of the installation deadline to August of 2018 for the FAST and USEPA ETV or NSF/ANSI Standard 245 technologies approved by the Commission for participation in the Alternate Design Treatment Systems Pilot Program will provide a continued opportunity for residential development in unsewered portions of the Pinelands that have already been planned

and zoned for such development. The amendments do not in any way affect permitted residential densities or minimum lot size requirements in the Pinelands Area. Thus, no significant changes in land use patterns will result from the proposed amendments.

Economic Impact

The proposed amendments to N.J.A.C. 7:50-4.1, expanding the list of development activities that will no longer require application to the Commission, will decrease costs for applicants. As no application to the Commission will be required, no application fee will be necessary, nor will the submission of any other information. Such applicants may simply proceed to apply for and obtain all necessary municipal approvals without involvement by the Commission. While difficult to quantify, this expedited process should decrease the time required to obtain approvals and permits, which may in turn result in further cost savings for the landowner. In many cases, the applicants and landowners who will benefit from the expanded exemptions for home occupations, changes of nonresidential use and expansion of nonresidential structures will be local businesses. Thus, there should be a positive economic impact for these businesses through decreased bureaucracy, as well as a positive impact for the Commission through more efficient utilization of staff resources.

The economic impact of the proposed amendments to the Pilot Program for Alternate Design Wastewater Treatment systems will clearly be positive for those landowners seeking to develop their one to 3.2 acre properties in unsewered portions of the Pinelands Area. Without the proposed amendments, use of the FAST technology is not permitted after August 5, 2013. The proposed amendments extend by five years the period of time during which installation of the FAST system may be installed, and extend by two years the period of time during which USEPA ETV or NSF/ANSI Standard 245 technologies approved by the Commission for participation in

the pilot program may be installed. The continued ability to develop on unsewered lots between 1.0 and 3.2 acres, where permissible, will result in more efficient use of land, consistent with the lot size and density requirements set forth in certified municipal land use ordinances. It is the Commission's hope that by providing an opportunity for five technologies to be installed through August 5, 2018, competition among the system vendors will lead to lower prices for landowners.

Removal of the Cromaglass technology from the pilot program is not expected to have any negative economic impact. Homeowners in the Pinelands Area that currently use a Cromaglass system will not be required to replace it. They will have the option to continue to use their systems in a manner consistent with the operation and maintenance provisions of the CMP or if they so choose, to retrofit the system or otherwise replace it with a conventional septic tank meeting the current requirements of N.J.A.C 7:9A, the New Jersey Department of Environmental Protection's Standards for Individual Subsurface Sewage Disposal Systems.

The proposed amendments do continue to impose a number of maintenance, monitoring and reporting requirements on the manufacturers or their agents of those alternate design wastewater treatment systems authorized for use in the Pinelands Area pursuant to the Commission's Pilot Program. These requirements, spelled out at N.J.A.C. 7:50-10.22(a)6, involve the provision of operation and maintenance manuals and five-year warranties and maintenance contracts, all of which the manufacturers already have on hand. This is not to say that the requirements represent insignificant costs for the manufacturers, particularly for the five-year non-cancellable maintenance contract required by N.J.A.C. 7:50-10.22(a)6vii. In addition, manufacturers will continue to be responsible for the provision of resources for the collection and analysis of effluent sampling. These requirements, which do represent a cost to the system manufacturers, are a critical part of the proposed pilot program and the Commission would not

be able to extend or expand the program without them. In any case, it is likely that the associated costs will be passed on to the homeowner by the manufacturers. These costs represent a relatively small price to pay for the opportunity to develop lots that would otherwise not be developable.

Environmental Impact

The Commission does not anticipate that the proposed amendments will have any negative environmental impact. The proposed amendments do not modify the land use and environmental requirements of the CMP in any way.

The proposed additions to the list of exempt activities at N.J.A.C. 7:50-4.1(a) were carefully considered and limited to those that the Commission feels have little potential for impact on the environment. They include changes of nonresidential use and home occupations with no additional development, repaving with no increase in paved width or area and accessory structures and additions of limited size, where either sewer service is provided or wastewater flows are not involved. Pinelands municipalities will continue to review applications for these types of development, ensuring that an appropriate level of oversight continues to be exercised. The Commission will no longer need to spend its time reviewing these relatively minor activities, thereby freeing up time and resources to devote to the review of larger, more significant projects to ensure they meet all CMP environmental standards.

Extension of the Alternate Design Wastewater Treatment Systems Pilot Program through 2018 for the FAST and USEPA ETV or NSA /ANSI Standard 245 technologies approved by the Commission is expected to provide significant environmental benefit. Extension of the program will provide an additional opportunity for the Commission to collect data and monitor the FAST technologies and will authorize new prescreened advanced wastewater treatment systems to be

installed and monitored. The installation of additional systems will result in more monitoring and testing of effluent and this will ultimately provide the Commission with sufficient data to be evaluated as part of the pilot program. Provided they are maintained properly, these systems provide the potential for improved water quality when compared with conventional septic systems.

Removal of the Cromaglass technology from the Pilot Program recognizes that this technology has proven incapable of meeting CMP water quality standards. No further installations of the Cromaglass technology for residential development on lots less than 3.2 acres in size will be permitted in the Pinelands Area. Instead, one of the other technologies authorized for use under the Pilot Program will need to be used, providing a better opportunity for compliance with CMP water quality standards. This should have a positive environmental impact.

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 that the plan must meet, including the protection, preservation and enhancement of the land and water resources of the Pinelands. The proposed amendments are designed to meet those goals by allowing for the continued installation and monitoring of alternate design wastewater treatment systems for residential development. The other proposed amendments may be categorized as largely procedural in nature.

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

Jobs Impact

The proposed amendments extending the Alternate Design Wastewater Treatment Systems Pilot Program through 2018 provide for the continued opportunity for new home construction in areas that are zoned for such use but are not served by public sewerage infrastructure. The proposed amendments therefore are expected to result in the creation of jobs associated with new home construction. Conversely, non-adoption of the proposed amendments would have a negative impact on job creation.

The remainder of the proposed amendments are not expected to have any impact on the creation or loss of jobs, as they are largely administrative measures being implemented to make implementation of the CMP more effective and efficient.

Agriculture Industry Impact

The proposed amendments are expected to have a small, but positive, impact on the agriculture industry. Two of the PDC program's existing "sending" areas represent the largest and most concentrated centers of farming in the Pinelands. Since farm landowners are eligible for allocations of PDCs, the proposed amendments involving the allocation of PDCs are likely to have a positive impact on the industry. The proposed amendments extend the duration of LOIs from two to five years, giving farmers and other property owners the ability to rely on these allocations for a longer period of time and eliminating the need for frequent renewals. This should reduce paperwork for both farmers and the Commission. The proposed amendments also streamline the process by which PDCs are calculated by eliminating the need to complete

complicated common ownership analyses of contiguous properties. This should result in quicker processing of LOI applications.

Agriculture and activities that are exclusively for agriculture remain exempt from the Commission's application process. The proposed amendments clarify that this exemption applies to horticulture as well.

The proposed amendments related to the continued use of alternate design wastewater treatment systems affect residential development on lots between one and 3.2 acres that have been zoned for such purposes. These amendments will have no impact on the agriculture industry in the Pinelands.

Regulatory Flexibility Analysis

The proposed amendments continue the imposition of reporting, recordkeeping and compliance requirements on the manufacturers or their agents of those alternate design wastewater treatment systems authorized for use in the Pinelands Area pursuant to the Commission's Pilot Program. It is believed that at least some of these manufacturers may be small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In meeting the standards for use of the authorized technologies that would continue to be authorized under the pilot program, these businesses may continue to incur costs relative to ensuring compliance with the maintenance and monitoring requirements of N.J.A.C. 7:50-10.22(a)6. It is unlikely, however, that engaging professional services will be necessary in order to do so. The design of systems for approval by County health departments and other agencies requires the services of a professional engineer under existing State law; that requirement is not changed by the proposed amendments. Furthermore, the requirements at N.J.A.C. 7:50-10.22(a)6 merely involve the provision of certain manuals, maintenance guarantees and other documents that the

manufacturers already have on hand, as well as the provision of resources for the collection and analysis of effluent sampling. This is not to say that the requirements represent insignificant costs for the manufacturers, particularly for the five-year non-cancellable maintenance contract required by N.J.A.C. 7:50-10.22(a)6vii. However, these requirements are a critical part of the proposed pilot program and the Commission would not be able to extend or expand the program without them. In any case, it is likely that the associated costs will be passed on to the homeowner by the manufacturers. These costs represent a relatively small price to pay for the opportunity to develop lots that would otherwise not be developable.

No differing requirements have been established for small businesses under the pilot program. Instead, the same maintenance and monitoring requirements will continue to be imposed relative to the authorized technologies, regardless of business size. This is necessary to balance protection of Pinelands resources with the Commission's desire to provide a continued opportunity for residential development on lots of less than 3.2 acres in size in unsewered areas of the Pinelands. In fact, the Commission has identified proper system maintenance as the primary factor in ensuring that the alternate technologies will function in a manner that is consistent with CMP water quality standards. It is therefore critical that the requirements continue to be imposed on all of the manufacturers or their agents.

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Commission has determined that the proposed amendments to N.J.A.C. 7:50-4.1(a) will also positively impact a number of small businesses as they will no longer be required to submit development applications to the Commission for various activities. The activities in question, listed in amended N.J.A.C. 7:50-4.1(a), include changes of use, home occupations and expansions of existing nonresidential uses, provided certain conditions are met. Small businesses

seeking to undertake these activities in the Pinelands Area will be able to proceed directly to the municipality in which they are located in order to obtain any necessary permits or approvals; they will no longer be subject to the Commission's application requirements. This will simplify and streamline the permitting process for small businesses. Costs will also be reduced as the small businesses will no longer be required to pay an application fee to the Commission.

The proposed amendments will not impose any other reporting, recordkeeping or compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Housing Affordability Impact

In accordance with N.J.S.A. 52:14B-4, as amended effective July 17, 2008 by P.L. 2008, c. 46, the Commission has evaluated the proposed amendments to determine the impact, if any, on the affordability of housing. Because the proposed amendments consist primarily of efficiency measures and do not affect the land use or environmental standards applicable to residential development in the Pinelands Area, it is extremely unlikely the proposed amendments would evoke a change in the average costs associated with housing.

Smart Growth Development Impact

N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, requires that proposed amendments be evaluated to determine their impacts, if any, on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan (State Plan). Planning Areas 1 and 2 do not exist in the Pinelands Area. Likewise, the State Plan does not designate centers within the Pinelands Area. Instead, N.J.S.A. 52:18A-206.a provides that the State Plan shall rely on the Pinelands CMP with respect to the Pinelands. Therefore, the Commission has evaluated the impact of the proposed amendments on

Pinelands management areas that are equivalent to Planning Areas 1 and 2 and designated centers (i.e., Regional Growth Area, Pinelands Villages and Pinelands Towns), as designated by the CMP.

The proposed amendments are not anticipated to have any significant impact on housing production. The amendments relative to the Alternate Design Treatment Systems Pilot Program will allow for the continued installation and monitoring of innovative alternate design wastewater treatment systems in unsewered areas of the Pinelands that are zoned for residential development on lots of less than 3.2 acres in size. With few exceptions, these areas are located in Regional Growth Areas, Pinelands Villages and Pinelands Towns, management areas designated for development by the Comprehensive Management Plan and equivalent to designated centers under the State Plan. Successful testing could have positive results for other non-sewered areas in the State, outside the Pinelands Area.

No other smart growth impacts are anticipated from the proposed amendments.

Full text of the proposal follows (additions indicated in **bold**; deletions indicated in [brackets]):

7:50-2.11 Definitions

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

...

“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 includes the systems listed below, 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 residential development by the pilot program established in N.J.A.C. 7:50-10, Part IV. In addition, alternate design pilot program treatment system shall also include any technology or technologies that have been approved by the Commission for participation in the alternate design wastewater treatment systems pilot program pursuant to N.J.A.C. 7:50-10.23(b). Detailed plans and specifications for each authorized technology are available at the principal office of the Commission.

1. FAST; **or**
2. [Cromaglass; or]
- [3.] Other nitrogen reducing technologies approved by the Commission pursuant to N.J.A.C. 7:50-10.23(b).

...

“Immediate family” means those persons related by blood or legal relationship in the following manner: [husbands and wives,] **spouses, domestic partners**, great-grandparents, grandparents, great-grandchildren, grandchildren, parents, sons, daughters, brothers and sisters, aunts and uncles, nephews, nieces and first cousins.

...

7:50-4.1 Applicability

- (a) For the purposes of this subchapter only, the following shall not be considered development except for development of any historic resource designated by the Pinelands Commission pursuant to N.J.A.C. 7:50-6.154:
 - 1.-7. (No change.)

8. The construction of any addition or accessory structure for any non-residential use or any multi-family residential structure provided **that:**
 - i. [said] **If the** addition or structure will be located on or below an impervious surface, [and] **either** the existing use is served by public sewers **or the addition or structure will generate no wastewater flows,** and said addition or structure will cover an area of no more than [1,000] **4,999** square feet[.]; **and**
 - ii. **If the addition or structure will not be located on or below an impervious surface, said addition or structure will generate no wastewater flows and will cover an area of no more than 1,000 square feet.**
- 9.-10. (No change.)
11. The repaving of existing paved roads **and other paved surfaces**, provided no increase in the paved width **or area** of said roads **and surfaces** will occur;
12. The clearing of land solely for agricultural **or horticultural** purposes;
- 13.- 19. (No change.)
20. The installation of an accessory solar energy facility on any existing structure or impervious surface; [or]
21. The installation of a local communications facilities antenna on an existing communications or other suitable structure, provided such antenna is not inconsistent with any comprehensive plan for local communications facilities approved by the Commission pursuant to N.J.A.C. 7:50-5.4(c)6[.];

- 22. The establishment of a home occupation within an existing dwelling unit or structure accessory thereto, provided that no additional development is proposed; and**
- 23. The change of one nonresidential use to another nonresidential use, provided that the existing and proposed uses are or will be served by public sewers and no additional development is proposed.**

7:50-4.2 Pre-application conference; application requirements

(a) (No change.)

(b) Application requirements.

1.-5. (No change.)

6. Application for resource extraction: Unless the submission requirements are modified or waived pursuant to (b)3 above, an application filed pursuant to N.J.A.C. 7:50-4.13 or 4.33 for resource extraction shall include at least the following information:

i. All information required by (b)4i through vi[.];

ii.-x. (No change.)

7.-9. (No change.)

(c) (No change.)

7:50-4.18 Report requirements of local permitting agency with respect to applications for development

(a)-(d) (No change.)

(e) Notice of final determination. Notice of any final determination approving or denying any application for development shall be given to the Commission by the local agency, by certified mail, within five days following such determination and shall be in such form as the Executive Director shall from time to time specify; but such notice shall contain at least the following information:

1.-2. (No change.)

3. The application number of the Certificate of Completeness issued by the Executive Director and the date on which it was issued; [and]

4. The date on which the final approval or denial was granted;

5. Any written reports or comments received by the local permitting agency on the application for development which have not been previously submitted to the Commission; and

[4]6. A copy of the resolution or other documentation of the local permitting agency approving or denying the [applicant] **application** and, if the application was approved, a copy of any final site or subdivision plan or plat or similar plan which was approved by the local permitting agency.

(f) (No change.)

7:50-4.19 Commission review following preliminary approval

(a)-(b) (No change.)

(c) Notices to interested persons: If the Executive Director determines that a preliminary approval shall be reviewed by the Commission and a hearing has been requested **before an Administrative Law Judge** pursuant to (b) above, he shall notify all persons who

actively participated in the proceedings before the local permitting agency and all persons who submitted information on the application to the Commission, that they may participate in any proceedings held pursuant to this Part.

(d)-(e) (No change.)

7:50-4.25 Commission review following local denial

(a)-(b) (No change.)

(c) Notices to interested persons: If the Executive Director determines that a denial shall be reviewed by the Commission and a hearing **before an Administrative Law Judge** has been requested pursuant to (b) above, he shall notify all persons who actively participated in the proceedings before the local permitting agency and all persons who submitted information on the application to the Commission that they may participate in any proceedings held pursuant to this Part.

7:50-4.35 Report requirements of local permitting agency with respect to applications for development

(a)-(d) (No change.)

(e) Notice of final determination: Notice of any final determination with respect to any application for development shall be given to the Commission, by certified mail, within five days following such determination and shall be in such form as the Executive Director shall from time to time specify; but such notice shall contain at least the following information:

1.-2. (No change.)

3. The application number of the Certificate of Filing or Notice of Filing issued by the Executive Director and the date on which it was issued; [and]
4. **The date on which the final approval was granted;**
5. **Any written reports or comments received by the local permitting agency on the application for development which have not been previously submitted to the Commission; and**

[4.]6. A copy of the resolution or other documentation of the local permitting agency approving or denying the application and, if the application was approved, a copy of any final plan, plot or similar document which was approved by the local permitting agency.

(f) (No change.)

7:50-4.37 Commission review following preliminary approval

(a)-(b) (No change.)

(c) Notices to persons participating in local permitting process; opportunity to comment: If the Executive Director decides to review a preliminary approval **and a hearing before an Administrative Law Judge has been requested pursuant to (b) above**, he shall notify all persons who actively participated in the proceedings before the local permitting agency of such determination and inform them that they may participate in any proceedings held pursuant to this Part.

(d)-(e) (No change.)

7:50-4.52 General requirements

(a)-(d) (No change.)

(e) State agency plans:

1. Any agency of the State of New Jersey may submit to the Commission for review and approval a comprehensive plan of its existing and planned land use, resource management and development activities within the Pinelands. Such plans shall:

i.-v. (No change.)

vi. Be compatible with [surrounded] **surrounding** land uses and certified municipal and county master plans; and

vii. (No change.)

2.-3. (No change.)

7:50-4.74 Interpretation by Executive Director

Except as provided in N.J.A.C. 7:50-4.75, the Executive Director shall, within 45 days following the receipt of a completed request for clarification or interpretation, review the application and all information submitted by the applicant or any other person relating to the application and upon completion of such review issue a letter of clarification or interpretation. [Prior to the issuance of the letter, an analysis of all pending requests for letters of interpretation will be submitted to the Commission for its review at its regular monthly meeting.] A copy of the letter shall be provided to the appropriate municipal or county planning board, environmental commission, if any, interested persons, including all persons who have submitted information concerning the application, as well as all persons who have requested a copy of said determination and any person, organization or agency, which has registered under N.J.A.C. 7:50-4.3(b)2i(2). The letter issued by the Executive Director shall specify the grounds, reasons

and analysis upon which the clarification or interpretation is based. In the event the Executive Director fails to render a letter of clarification or interpretation within 45 days of receipt of a completed application or such longer period of time as may be agreed to by the applicant, the applicant is entitled to request a hearing pursuant to N.J.A.C. 7:50-4.91. Nothing in this section shall be construed to prevent any person from resubmitting a request for clarification or interpretation.

7:50-4.76 Effect of and limitation on favorable interpretation

- (a) (No change.)
- (b) No letter of clarification or interpretation shall be valid for a period longer than [two] **five** years from the date of issuance, unless a final approval pursuant to this Plan has been granted within that period, and development is thereafter diligently pursued to completion, or the use is legally commenced within that period.

7:50-5.43 Pinelands Development Credits established

- (a) (No change.)
- (b) Pinelands Development Credits are hereby established at the following ratios:
 - 1.-3. (No change.)
 - 4. Pinelands Development Credit allocations shall be calculated for an entire parcel as it exists at the time an application for a Letter of Interpretation is submitted to the Commission pursuant to N.J.A.C. 7:50-4.73 or, at the request of the applicant, for individual lots specified in the application.**

- 5. Pinelands Development Credit allocations exceeding one-quarter of a Pinelands Development Credit shall be rounded to the nearest one-quarter of a Credit.**
- [4]6. If the allocations established in (b)1 [and 2] **through 4** above are less than one-quarter of a Pinelands Development Credit, the allocation shall be increased to one-quarter of a Pinelands Development Credit if the owner of record of one-tenth or greater acres of land in the Preservation Area District, Agricultural Production Areas and Special Agricultural Production Areas, as of February 7, 1979 owns a vacant parcel of land that was not in common ownership with any contiguous land on or after February 7, 1979, and the parcel has not been sold or transferred except to a member of the owner's immediate family.
- [5]7. The provisions of [(b)4] **(b)6** above shall also apply to owners of record of less than one-tenth acres of land in the Preservation Area District, Agricultural Production Areas and Special Agricultural Production Areas, as of February 7, 1979, provided that said owners acquire vacant, contiguous lands to which Pinelands Development Credits are allocated pursuant to (a) and (b) above which lands, when combined with the acreage of the parcel owned prior to February 7, 1979, total at least one-tenth of an acre.
- [6]8. The total allocations made pursuant to [(b)4 and 5] **(b)6 and 7** above to any owner of record shall not exceed one-half of a Pinelands Development Credit. At such time as the application of [(b)4 and 5] **(b)6 and 7** above would exceed a total allocation of one-half of a Pinelands Development Credit to an owner, all remaining lands of that owner in excess of that needed to yield the one-half

Pinelands Development Credit allocation shall be entitled to an allocation of Pinelands Development Credits according to the allocation formulas specified in (b)1, 2 and 3 above.

(c) (No change.)

7:50-6.68 Resource extraction standards

(a) Resource extraction operations shall be approved only if the applicant can demonstrate that the proposed resource extraction operation:

1.-9. (No change.)

10. Will involve restoration of disturbed areas at the completion of the resource extraction operation in accordance with the requirements of N.J.A.C. 7:50-[6.67] **6.69**, and the implementation of the restoration plan is secured by a letter of credit, surety bond or other guarantee of performance; and

11. (No change.)

7:50-6.69 Restoration standards

(a) All parcels of land which are used for resource extraction operations shall be restored as follows:

1. (No change.)

2. Restoration shall proceed in the same sequence and time frame set out in the extraction schedule required in N.J.A.C. 7:50-[6.66(a)9]**6.68(a)9**;

3.-10. (No change.)

7:50-10.21 Purpose

(a)-(b) (No change.)

(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 pilot program. Residential development using any of the authorized 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. In 2010, the Commission decided to release two of the original pilot program technologies (Amphidrome and Bioclere) from the pilot program and authorize them for permanent use, subject to the provisions of N.J.A.C 7:50-6.84(a)5iv(3). The Commission

also decided to provide an opportunity for expansion of the pilot program to include certain other residential nutrient reducing onsite wastewater treatment technologies that have attained verification and/or certification through the United States Environmental Protection Agency Environmental Technology Verification (USEPA ETV) Program or the National Sanitation Foundation/ American National Standards Institute (NSF/ANSI) Standard 245 testing program. Information regarding the USEPA ETV Program is available from the United States Environmental Protection Agency website at:

<http://www.epa.gov/etv/vt-wqp.html#dwtt> and

<http://www.epa.gov/etv/pubs/600s07004.pdf>. Information regarding the NSF/ANSI Standard 245 testing program is available from the National Sanitation Foundation website at:

http://www.nsf.org/business/wastewater_certification/standards.asp?program=WastewaterCer#245. **In 2013, the Commission decided to remove the Cromaglass technology from the Alternate Design Treatment Systems Pilot Program. The Commission made this decision based on the Cromaglass technology's inability to meet the water quality standards contained in N.J.A.C. 7:50-6, Part VIII.**

- (d) The Alternate Design Waste Water Treatment Systems Pilot Program is authorized as a means to test whether specifically authorized 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 a 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 which 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]**6.84(a)5** if any such system is proposed to reduce total nitrogen in the effluent for non-residential development.

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.-2. (No change.)

3. Subject to being increased during the pilot program based on the results of a hearing conducted pursuant to (a)5 below, each FAST [or Cromaglass] system shall be located on a parcel containing at least one acre for each dwelling unit that will be served by the system. Each USEPA ETV or NSF/ANSI Standard 245 technology approved by the Commission for participation in the pilot program pursuant to N.J.A.C. 7:50-10.23(b) shall be located on a parcel containing sufficient land area to comply with the two parts per million nitrogen requirement and the water quality standards contained in N.J.A.C. 7:50-6, Part VIII, as calculated using the Pinelands Septic Dilution Model and the expected effluent total nitrogen value for the technology based upon the findings of the USEPA ETV and /or NSF/ANSI Standard 245 test data.
4. The [Cromaglass and] FAST alternate design pilot program treatment system[s] identified in (a)3 above [are authorized to be installed until August 5, 2013] and the USEPA ETV or NSF/ANSI Standard 245 technologies approved by the Commission for participation in the pilot program pursuant to N.J.A.C. 7:50-10.23(b) are authorized to be installed until August 5, [2016] **2018**.

5.-6. (No change.)

(b)-(c) (No change.)

7:50-10.23 Pinelands Commission approval and evaluation

(a)-(b) (No change.)

- (c) The Executive Director shall review this pilot program relative to the FAST [and Cromaglass] treatment technology[ies] **and** [no later than August 5, 2012 and shall report to the Commission within three months of that date on its implementation. The Executive

Director shall review this pilot program relative to] any approved USEPA and NSF/ANSI Standard 245 treatment technologies no later than August 5, [2015]**2017** 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.-6. (No change.)

- (d) If the Executive Director finds that the number of monitoring events for the FAST [and Cromaglass] treatment technology[ies] is not adequate to evaluate that technology under this pilot program in accordance with (c) above, the Executive Director shall so inform the Commission and, upon receiving the Commission's approval, initiate a second review to be completed no later than August 5, [2014] **2019**.
- (e) If the Executive Director finds that the number of monitoring events for any approved USEPA and NSF/ANSI Standard 245 treatment technologies is not adequate to evaluate any of those technologies under this pilot program in accordance with (c) above, the Executive Director shall so inform the Commission and, upon receiving the Commission's approval, initiate a second review to be completed no later than August 5, [2017]**2019**.
- (f)-(h) (No change.)
- (i) Nothing in this section shall be construed to authorize the installation of a FAST [or Cromaglass] alternate design pilot program treatment system [after August 5, 2013 or to authorize the installation of] **or** any USEPA ETV and NSF/ANSI Standard 245 treatment technology approved by the Commission for participation in the pilot program after August 5, [2016]**2018** 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 (g) or (h) above.