

August 1, 2000

**MEMORANDUM OF AGREEMENT
BETWEEN THE
NEW JERSEY DEPARTMENT OF TRANSPORTATION
AND THE
NEW JERSEY PINELANDS COMMISSION**

I. Purpose

This Memorandum of Agreement (MOA) between the New Jersey Department of Transportation (hereinafter "NJDOT") and the New Jersey Pinelands Commission (hereinafter "Commission") is intended to establish the procedures for the review of the application of herbicides within the paved portion of rights-of-way administered by the NJDOT in the Pinelands Area designated pursuant to N.J.S.A. 13:18A-11. The Pinelands Comprehensive Management Plan, specifically N.J.A.C. 7:50-4.52(c)2, provides that the Commission "may enter into intergovernmental memoranda of agreement with any agency of the Federal, State or local government which authorize such agency to carry out specified development activities that may not be fully consistent with the provisions of N.J.A.C. 7:50-5 and, provided such agency demonstrates and the Commission finds that variation from the standards of this Plan is accompanied by measures that will, at a minimum, afford an equivalent level of protection of the resources of the Pinelands than would be provided through a strict application of the standards" of the Pinelands Comprehensive Management Plan.

II. Mutual Agreements

A. The NJDOT and the Commission agree that:

1. This MOA shall apply to the rights-of-way administered by the NJDOT within the Pinelands Area.
2. The application of herbicides within the rights-of-way administered by the NJDOT is not consistent with the Pinelands Comprehensive Management Plan (CMP). Specifically N.J.A.C. 7:50-6.87(c) prohibits the application of herbicides to any road or public utility right-of-way within the Pinelands unless it is necessary to protect an adjacent agricultural activity.
3. The purpose of this MOA is to allow for the use of herbicides within the paved portion of rights-of-way administered by the NJDOT and at the same time enhance the protection of local populations of threatened or endangered wildlife and plants located within the rights-of-way administered by the

NJDOT in the Pinelands Area. The measures outlined in this MOA to ensure the protection and continuation of threatened or endangered wildlife and plants would not be required under the CMP unless the NJDOT submitted an application to the Commission for development within a right-of-way which it administers.

- B. The Commission and the NJDOT agree that the NJDOT will implement an Integrated Pest Management (IPM) Program to prevent and to control the growth of unwanted vegetation within the paved portion of rights-of-way administered by the NJDOT in the Pinelands Area. The purpose of the program will be to maintain the integrity of the roadway surface and to improve the visibility of guiderails, bullnoses and curbs in order to prevent hazardous roadway conditions. The IPM program shall be conducted in the following manner:
1. Prevent the growth of unwanted vegetation which contributes to hazardous roadway conditions, to the maximum extent practicable, using one or more of the following methods:
 - a. Remove sediment within the paved portion of the right-of-way to eliminate the medium which could sustain weed growth.
 - b. Repair or seal cracks in pavement.
 - c. Install pervious material, such as woven Geotextiles, around guiderails located outside of the paved portion of the right-of-way to act as a barrier for weeds.
 - d. Encourage low growing grasses around guiderails located outside of the paved portion of the right-of-way which do not contribute to hazardous roadway conditions and which can, by their presence, help prevent weeds which require removal.
 - e. Place mulch around guiderails located outside of the paved portion of the right-of-way in the spring, prior to the germination of annual weed species.
 - f. Utilize native Pinelands vegetation to the maximum extent practicable.
 2. Remove weeds using manual or mechanical methods.
 3. Apply herbicides only for post-emergent weed growth when the methods indicated in II.B.1-2 have been unsuccessful or when they can not be

employed without creating hazardous roadway conditions for passing motorists and NJDOT personnel. The use of this method must be in conformance with the following provisions:

- a. Unless it is determined by the Commission that another herbicide is less toxic or persistent and will still achieve the desired results, the only substances to be used will be Roundup or Rodeo Aquatic Herbicide or equivalent glyphosate products at rates that do not exceed product labeling specifications approved by the United States Environmental Protection Agency and applied in a manner consistent with those labeling specifications and with the New Jersey Pesticide Control Regulations (N.J.A.C. 7:30-1.1 et seq.).
- b. No herbicides shall be applied to wetlands.
- c. Only Rodeo Aquatic Herbicide or an equivalent glyphosate product shall be applied within 300 feet of freshwater wetlands.
- d. No herbicides shall be applied within 50 feet of any surface water body. This restriction shall not pertain to the application of Rodeo Aquatic Herbicide or an equivalent glyphosate product using hand held devices to spot treat vegetation within the paved portion of the rights-of-way administered by the NJDOT.
- e. No herbicides shall be applied within 300 feet of any local population of threatened or endangered plant species designated in the CMP (N.J.A.C. 7:50-6.24). No herbicides shall be applied within 300 feet of any habitats that are critical to the survival of any local populations of threatened or endangered wildlife species designated pursuant to the CMP (N.J.A.C. 7:50-6.33). These restrictions shall not apply when the NJDOT uses hand held devices to spot treat vegetation within the paved portion of rights-of-way administered by the NJDOT.
- f. All precautions regarding the application of herbicides indicated on the product labeling specifications approved by the United States Environmental Protection Agency shall be taken in order to avoid drift from the area to be sprayed and to avoid runoff of the herbicide from the plant surface. This shall include but not be limited to the directions for use associated with prevailing wind conditions and the possibility of precipitation following the application of the herbicide.
- g. Prior to any spraying occurring, appropriate markers shall be placed

within the right-of-way to designate the areas where no herbicides are to be utilized.

- C. The Commission and the NJDOT agree that the following procedures will be followed before the application of herbicides within the paved portion of rights-of-way administered by the NJDOT:
1. The NJDOT will identify those areas where vegetation has emerged that would pose a threat to the structure of the roadway or that would hinder the visibility of guiderails, bullnoses and curbs and that would create an unsafe roadway condition.
 2. The NJDOT shall provide the following information thirty days in advance of the application of an herbicide to a paved portion of a right-of-way:
 - a. The location of the area to which the herbicide is to be applied defined by the nearest milepost marker;
 - b. The type of vegetation slated for removal and the stage of its development;
 - c. A demonstration that all other forms of integrated pest management identified in Section II.B. have been unsuccessful or that they can not be employed without creating hazardous roadway conditions for passing motorists and NJDOT personnel due to their location;
 - d. The herbicide to be utilized and the surfactant to be utilized if Rodeo aquatic herbicide or an equivalent glyphosate product is to be applied to the paved portion of the right-of-way.
 3. Within 30 days of receipt of the information described in II.C.2, the Commission staff shall notify the NJDOT if the proposed herbicide application is consistent with Section II. B. If the Commission staff fails to notify the NJDOT of its determination within the prescribed time frame, the NJDOT may proceed with the proposed herbicide application provided the NJDOT meets the conditions set forth in Section II.B.3.a-g.
 4. If any proposed herbicide application is found to be inconsistent with Section II.B., the NJDOT agrees that the proposal will be modified until the Commission staff determines it is consistent with Section II.B.
 5. The NJDOT understands that it may apply to the Commission staff if it receives notice that any specific herbicide application is not consistent with

Section II.B.

6. No later than December 31 of each year in which this agreement is effective, the NJDOT shall provide the Commission staff with the following information regarding the use of herbicides within the paved portion of rights-of-way it administers in the Pinelands Area:
 - a. The dates on which the herbicide was utilized and the corresponding weather conditions for each day;
 - b. The location where the herbicide was applied;
 - c. The rate at which the herbicides were applied;
 - d. The type of vegetation and the stage of growth at which the herbicide was applied;
 - e. An indication of whether the vegetation reemerged after treatment and the length of time before it reemerged;
 - f. The name and total volume of any herbicides utilized in the preceding year.

- D. The Commission and the NJDOT agree that the IPM Program implemented by the NJDOT will be evaluated on an annual basis to determine if additional measures can be employed to reduce the amount of herbicides utilized within the paved portion of rights-of-way administered by the NJDOT in the Pinelands Area.

- E. The Commission and the NJDOT agree that the following measures will be taken in order to enhance the resources of the Pinelands:
 1. Prior to each specific herbicide application, the NJDOT will provide the Commission staff with a list of all threatened/endangered species whose presence on or in the vicinity of the location of the proposed herbicide application has been documented by the New Jersey Department of Environmental Protection as indicated by the Department's Office of Natural Lands Management Natural Heritage database.
 2. Within 30 days of the receipt of the list referred to in II.E.1., the Commission staff shall notify the NJDOT whether a survey should be performed to determine if any threatened/endangered species of the Pinelands is present on or in the immediate vicinity of the location of the proposed herbicide application.
 3. Prior to the application of an herbicide within an area identified as a potential location of threatened/endangered species by the New Jersey Department of Environmental Protection Office of Natural Lands Management Natural Heritage database, the NJDOT shall submit a report to the Commission staff

which provides the results of the survey undertaken in conformance with II.E.2. The report shall indicate the areas that were investigated, the species for which they were searching in these locations, the species found in these locations, if any, and the time of year at which these areas were inspected. The report shall also contain the measures proposed by the NJDOT to ensure the protection and continuation of local populations of threatened/endangered species identified as a result of the survey.

4. Within thirty days of receipt of the report described in II.E.3., the Commission staff shall notify the NJDOT if the measures proposed in the report will ensure the protection and continuation of local populations of threatened/endangered species. The NJDOT agrees to revise the report if the Commission staff determines that the proposed measures will not encourage the protection and continuation of these species.
 5. Pending completion and review of the report submitted in accordance with Section II.E.3, the NJDOT will not apply any herbicides within those areas identified as potential locations of threatened/endangered species by the New Jersey Department of Environmental Protection Office of Natural Lands Management Natural Heritage database.
- F. The Commission and the NJDOT agree to meet annually to discuss the effectiveness of the methodology utilized by the NJDOT to control unwanted vegetation within the paved portion of rights-of-way administered by the NJDOT in the Pinelands Area, the status of the reduction of the use of herbicides and the effectiveness of the methods enlisted to encourage the protection and continuation of the threatened/endangered species identified as a result of the survey required in Section II.E.

III. Effective Date and Duration

- A. This Memorandum of Agreement shall take effect upon approval by the authorized representative of both parties and subsequent to the Governor's review for a period of ten (10) days
- B. This agreement shall remain in effect until otherwise amended or terminated by either party upon sixty (60) days written notice.

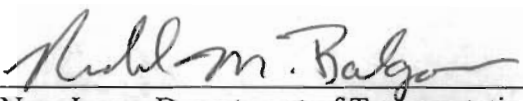
V. Signatures



Annette Barbaccia, Executive Director
NJ Pinelands Commission

9/13/00

Date



New Jersey Department of Transportation

08/28/00

Date

Approved as to form by:



Deputy Attorney General
State of New Jersey

9/11/00

Date

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