

Pinelands Commission

Pinelands Comprehensive Management Plan

Waste Management

Proposed Amendments: N.J.A.C. 7:50-5.29, 6.73, 6.74 and 6.76

Proposed Repeal: N.J.A.C. 7:50-10.28 through 10.30

Authorized By:

_____/____/____
New Jersey Pinelands Commission
John C. Stokes, 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:

Wednesday, April 28, 2010 at 7:00 P.M.
Richard J. Sullivan Center
15C Springfield Road
New Lisbon, New Jersey

Submit written comments by regular mail, facsimile or email by May 14, 2010 to:

Susan R. Grogan, P.P., AICP
Chief Planner
Pinelands Commission
P.O. Box 359
New Lisbon, NJ 08064

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The commenter's name and mailing address must be submitted with all public comments.

The agency proposal follows:

Summary

The New Jersey Pinelands Commission proposes to repeal the Fort Dix Consumer Electronics Recycling Center Pilot Program set forth at N.J.A.C. 7:50-10.28-10.30 and amend the waste management standards set forth at N.J.A.C. 7:50-6.73, 6.74 and 6.76 in recognition of the successful implementation of the pilot program and to permit the continued operation of the recycling center on a permanent basis. Minor revisions are also proposed at N.J.A.C. 7:50-5.29(b)3 to clarify that the prohibition on hazardous waste facilities in Pinelands Military and Federal Installation Areas does not apply to the existing Fort Dix consumer electronics recycling facility.

The Fort Dix Consumer Electronics Recycling Center had been established under the auspices of a program developed by the New Jersey Department of Environmental Protection following the Department's reclassification of certain hazardous wastes, including those defined as consumer electronics, as "Class D Recyclables." The intent of this reclassification was to allow for the reclamation of certain electronic components, specifically those that incorporate circuitry, and their removal from the waste stream in favor of reuse in new or renovated consumer products.

However, the provisions of the Pinelands Comprehensive Management Plan that were in effect when the center began operating prohibited the recycling of hazardous materials anywhere

within the Pinelands Area (N.J.A.C 7:50-6.73(b)) and the materials being processed at the center, while determined to be recyclable by the Department, were still classified as hazardous waste, both by the Department (N.J.A.C. 7:26A-7.1(e)6) and by the Commission (N.J.A.C. 7:50-2.11). Nevertheless, the Commission was sympathetic to the Department's efforts to reduce the volume of the waste stream in New Jersey by instituting an innovative recycling pilot program and to return hazardous electronic components to a useful life. Consequently, in 2005, the Commission adopted a parallel program permitting continued operation of the Fort Dix consumer electronics recycling center until June 6, 2010, provided that functions at the recycling center are otherwise consistent with the standards of N.J.A.C 7:50-5 and 6 and meet other specific benchmarks as well. This program, the Fort Dix Consumer Electronics Recycling Pilot Program, was codified at N.J.A.C. 7:50-10, Part V and took effect on June 6, 2005 (see 36 N.J.R. 4401(a), 37 N.J.R. 172(a), 37 N.J.R. 2013(b)). Standards for operation of the recycling facility were set forth at N.J.A.C. 7:50-10.29(a), with reporting requirements at N.J.A.C. 7:50-10.29(b). A requirement for review of the pilot program within three years following the Commission's approval of the consumer electronics recycling facility was included at N.J.A.C. 7:50-10.30(b), with specific criteria to be evaluated in determining the success of the pilot program.

The Commission has monitored and evaluated the performance of the recycling center since the initiation of the pilot program in 2005 and has determined that it satisfies the criteria of N.J.A.C. 7:50-10.30(b), which were established to assess its overall consistency with the goals and objectives of the Pinelands Comprehensive Management Plan. Consequently, the amendments proposed herein are intended to memorialize the provisional approval of the recycling center and allow the center to operate permanently.

N.J.A.C. 7:50-5.29(b), which sets forth permitted uses in Military and Federal Installation Areas, is being amended at (b)3 to clarify that the prohibition on hazardous waste facilities in this Pinelands management area does not apply to the Fort Dix Consumer Electronics recycling center.

N.J.A.C. 7:50-6.73(c) is being expanded to include a new subsection (c)4 which indicates that cathode ray tubes and consumer electronics being recycled at the Fort Dix consumer electronics recycling center are not subject to the waste importation limitations which normally apply in the Pinelands.

N.J.A.C. 7:50-6.74(a)3 is being amended to make clear that the storage of cathode ray tubes and consumer electronics materials at the Fort Dix recycling center must comply with the limitations now being proposed at N.J.A.C. 7:50-6.76(e)5. The general 12-month standard for storage of recyclables and other materials in the Pinelands does not apply.

A new N.J.A.C. 7:50-6.76(e) is being added to authorize the recycling of cathode ray tubes and consumer electronics at the Fort Dix consumer electronics recycling center. This is the only facility of its kind which will be authorized in the Pinelands. The future development of this waste management initiative can best be accomplished by the Department of Environmental Protection through expansion of its parallel program to locations nearer more heavily populated areas where most of this type of waste is generated. At present, eight privately operated, consumer electronics recycling facilities have been approved by the Department and are currently in operation and four of them are located in southern New Jersey (Fort Dix, Camden, Lakewood and Deptford). Therefore, given the number of regional facilities presently operating and the opportunities for expansion elsewhere in the State, there is no need to broaden the program's applicability in the Pinelands at this time.

The standards applicable to the recycling center are largely drawn from those which were incorporated in the pilot program:

- Proposed N.J.A.C. 7:50-6.76(e)1 limits the materials that will be accepted for recycling to solid components of electronic devices and specifically continues the prohibition against the import of all other hazardous wastes;
- Proposed N.J.A.C. 7:50-6.76(e)2 ensures that operation of the recycling center will conform to the provisions of the Burlington County Solid Waste Management Plan, as amended on January 22, 2003;
- Proposed N.J.A.C. 7:50-6.76(e)3 requires that the haulers and the means of transport of the electronic waste to and from the recycling center be in conformance with the provisions of N.J.A.C. 7:26A-7.6;
- Proposed N.J.A.C. 7:50-6.76(e)4 limits the aggregate amount of electronic waste accepted at the recycling center to 50 tons a day. This amount is less than that which was specified in the pilot program, but is more in line with the actual tonnage that has regularly been accepted at the facility over the past four years and with its current capacity;
- Proposed N.J.A.C. 7:50-6.76(e)5 requires the prompt processing of electronic wastes accepted at the recycling center by limiting both the period of time it can be stored at the facility to three months and the total amount of waste stored there at any one time to 500 tons. Again this figure is considerably less than that provided for in the pilot program, but more in line with actual operations at the site;

- Proposed N.J.A.C. 7:50-6.76(e)6 prevents expansion of the recycling center or modifications to it without notification to the Commission and submission of a development application, if required by the CMP;
- Finally, proposed N.J.A.C. 7:50-6.76(e)7 provides for proper storage of electronic waste in secure, weather-tight buildings or containers and that operation of recycling center shall conform to the relevant standards of N.J.A.C. 7:26A-4.1.

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

The proposed amendments change the status of the operation of a specific consumer electronics recycling center from a pilot program to a permitted use at Fort Dix. This existing recycling center is located within a tightly controlled and socially unorthodox environment of a prison compound that is completely surrounded by a military installation. As such, the continued operation of the facility will have no discernible impact upon the conventional socio-cultural patterns and practices of the communities in the general vicinity. Furthermore, allowing for the continued operation of the facility on a permanent basis will contribute positively to regional planning for solid waste management. As such, the amendments are expected to have a positive social impact.

Economic Impact

The operations at the Fort Dix consumer electronics recycling center are performed by prisoners at the federal detention facility on the base, who are overseen by a small professional staff. The proposed amendments authorize this recycling center to continue operations on a permanent basis

and eliminate the need for the facility to submit annual reports to the Commission. Consequently, the amendments may have a positive, albeit minor, economic impact.

Environmental Impact

The provisions of the CMP which were in effect at the time the recycling center entered into operation were expressly intended to prevent the dispersal of hazardous waste into the sensitive Pinelands environment, essentially by prohibiting their import. However, the recycling center was approved by the New Jersey Department of Environmental Protection because the Department had decided that emerging markets for used electronic components and innovative techniques for their dismantling and processing allowed for their reuse in a manner both safe and consistent with the Commission's environmental standards. The Commission's and the Department's joint monitoring of the center's operations over the past four years has confirmed this conclusion. Moreover, the fact that only solid components are being recycled and that these components are not being melted down, dissolved or otherwise reduced to their primary materials lessens the likelihood that toxic elements would be released to the Pinelands environment. For these reasons, no adverse environmental impacts are anticipated as a consequence of this regulatory revision.

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 propose amendments are designed to meet these standards by reducing the amount of potentially hazardous materials entering the waste stream and by recycling these materials instead through environmentally responsible practices.

Jobs Impact

The Fort Dix recycling center uses prisoner labor for the most part, but employs a small number of professional staff. By virtue of the nature of its operation, the facility creates the need for positions in the transportation industry to haul the consumer electronics to and from the facility. By authorizing the facility to continue operating on a permanent basis at Fort Dix, the proposed amendments facilitate retention of these jobs. No negative impacts on the retention or creation of jobs are anticipated as a result of the proposed amendments.

Agricultural Industry Impact

Because the proposed amendments address the standards for a facility whose sole purpose is to recycle consumer electronics, they will have no impact on the agriculture industry in the Pinelands.

Regulatory Flexibility Analysis

The proposed amendments are intended to make temporary provisions relating to the operations of an existing recycling center ongoing and permanent. The annual reporting requirements imposed by the previous pilot program on the Fort Dix Consumer Electronics Recycling Center are being eliminated. Although it is unknown whether the current operators of the facility constitute a

small business as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the proposed amendments do relieve the business of an administrative burden. The amendments are not expected to have any additional impacts upon small businesses.

Smart Growth Impacts

The proposed amendments permit the operation of an existing consumer electronics recycling center on a permanent basis. This facility, located in a Pinelands Military and Federal Installation Area, is situated within the fenced compound of a federal prison on the grounds of a long-established military base (Fort Dix). Its operation is entirely consistent with a prison labor program and has no impact on the larger planning initiatives of municipalities, counties or the State, other than to contribute positively, albeit in a minor way, to regional planning for solid waste management. The proposed amendments will have little to no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impacts

The proposed amendments deal exclusively with the continued operation of an electronics recycling center and will not occasion a change in the average costs associated with housing.

Smart Growth Development Impacts

The proposed amendments addressing the operations and operational standards of an electronics recycling facility will not cause a change in housing production in Planning Areas 1 or 2, or within the designated centers, under the State Development and Redevelopment Plan.

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

7:50-5.29 Minimum standards governing the distribution and intensity of development and land use in Military and Federal Installation Areas

- (a) (No change.)
- (b) Any other public purpose use undertaken by or on behalf of another level of government may be permitted in a Military and Federal Installation Area, provided that:
 - 1.-2. (No change.)
 - 3. No hazardous waste facility, landfill or incinerator shall be permitted except as expressly authorized in N.J.A.C. 7:50-6.75, **6.76(e)** or 6.78; and
 - 4. (No change.)

7:50-6.73 General prohibitions

- (a)-(b) (No change.)
- (c) No waste shall be accepted for disposal, stored, collected, processed, transferred, separated, recycled, reclaimed, recovered or reused in the Pinelands unless it originates from one or more Pinelands municipalities or from one or more non-Pinelands municipalities located within Atlantic, Burlington, Cape May or Ocean counties. The following shall be exempt from this importation limitation:
 - 1. (No change.)
 - 2. Suitable sewage sludge and sludge products derived from suitable sewage sludge; [and]

3. Regulated medical waste, in accordance with the limitations prescribed in N.J.A.C. 7:50-6.78[.]; **and**

4. **Cathode ray tubes and consumer electronics, in accordance with the limitations prescribed in N.J.A.C. 7:50-6.76(e).**

(d) (No change.)

7:50-6.74 Recyclables and other special materials

(a) In addition to the standards set forth in N.J.A.C. 7:50-6.76 through 6.78, waste management facilities and industrial facilities which accept suitable sewage sludge, sludge products derived from suitable sewage sludge or any recyclable material other than source-separated, non-putrescible metal, glass, paper, plastic containers, corrugated and other cardboard or vegetative waste shall meet the following standards:

1.-2. (No change.)

3. Any waste or recyclable material that is accepted at the facility shall be stored for no more than 12 months, **except that cathode ray tubes and consumer electronics accepted at the Fort Dix consumer electronic recycling center shall abide by the requirements of N.J.A.C. 7:50-6.76(e)5;** and

4. (No change.)

(b) (No change.)

7:50-6.76 Transfer stations, collection facilities and recycling centers

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

(e) The consumer electronics recycling center located within the boundaries of Fort Dix may recycle cathode ray tubes and consumer electronics and accept these materials from outside the Pinelands, provided that:

- 1. Only those materials which are solid components of cathode ray tubes or consumer electronics shall be accepted for repair and/or recycling. No other hazardous wastes of any kind, and in particular no liquid wastes, shall be accepted for transfer, storage disposal, or recycling or for any other purpose;**
- 2. The recycling center shall at all times be maintained and operated in conformance with the January 22, 2003 amendment to the Burlington County District Solid Waste Management Plan, certified by the Commissioner of the New Jersey Department of Environmental Protection and dated June 25, 2003;**
- 3. Transportation of cathode ray tubes and consumer electronics to and from the recycling center and disposition of the processed product shall be accomplished in accordance with N.J.A.C. 7:26A-7.6, except that a transporter may not store the materials in the Pinelands;**
- 4. The total amount of consumer electronic materials accepted for recycling shall not exceed 50 tons per day;**
- 5. No materials intended for recycling or repair shall be stored at the center for more than three months and the total amount of recyclable materials on site shall not exceed 500 tons;**
- 6. The recycling center shall not be expanded or modified in any way, except as necessary to facilitate the recycling function prescribed herein and only after written notice has been provided to the Commission and an application for**

development, if required by N.J.A.C. 7:50-4, has been approved by the Commission; and

- 7. Recyclable materials shall be stored in secure, enclosed, weather-tight buildings or containers and the design and operation of the recycling center shall be in accordance with the appropriate standards of N.J.A.C. 7:26A-4.1 through 4.6.**

(f) [(e)] Nothing in this Part shall be construed to prohibit the use of containers or the development of facilities which are intended solely for the collection and storage of waste generated from the lawful use of the parcel on which the containers or facilities are located. Wastes shall not be stored for more than six months.

7:50-10.24 through [10.27] **10.30** (Reserved)

[7:50-10.28 Purpose

- (a) N.J.A.C. 7:50-6, Part VII, contains standards and requirements for waste management which apply throughout the Pinelands. These standards were last revised by the Pinelands Commission in 1996, in part to ensure that hazardous wastes, which were considered not to be recyclable because of the dangers they posed through contamination of the surrounding environment, not be stored, transferred, processed, discharged, disposed or otherwise used in the Pinelands. The Commission elected to adopt a definition of "hazardous waste" which included all hazardous wastes defined as such by the New Jersey Department of Environmental Protection and the Environmental Protection Agency as of May 20, 1996 and any other wastes defined as hazardous by that Department and Agency subsequent to May 20, 1996. The Commission further chose to

write its definition in such a way that if the State were to remove a waste from its list of hazardous wastes subsequent to May 20, 1996, such removal would not automatically affect the list of wastes which this Plan defines as hazardous in the Pinelands. In so doing, the Commission reserved for itself the ability to individually evaluate whether or not the State's decision to remove a waste from the list was appropriate for the Pinelands.

- (b) Subsequent to the Commission's adoption of its revised waste management rules, the New Jersey Department of Environmental Protection began to reexamine its own approach to the handling of hazardous wastes. The Department came to the conclusion that advances in technology relating to the processing of certain types of hazardous wastes allowed for their safe and effective recycling, provided it was done according to a specific, controlled regime. Consequently, the Department adopted a series of rule changes between 1996 and 2003 that identified classes of hazardous wastes that could now be recycled and the procedures for doing so. The latest of these rules went into effect as recently as December, 2002 and added "consumer electronics" to the category of "Class D Recyclables." Consumer electronics are household and business appliances that incorporate circuitry; they include, among other things, computers, printers, stereos, VCRs, televisions and telecommunication devices. Their reclassification by the Department was intended to permit a simpler and more economical means of processing their reusable components. At the same time, the Department devised a pilot program to test the overall efficiency of recycling such wastes and began issuing temporary "Research, Demonstration and Development Certificates" as part of the evaluation process. These certificates authorized the recycling of specific hazardous waste materials at newly established facilities.

(c) Pursuant to its pilot program, the Department of Environmental Protection granted a certificate allowing a consumer electronics recycling center to operate at the federal prison at Fort Dix in 1999. The recycling center in question, as well as all of Fort Dix, is located within the Pinelands Area and included in a Military and Federal Installation Area on the Land Capability Map adopted as part of the Comprehensive Management Plan at N.J.A.C. 7:50-5.3(a)24. Consumer electronics continue to be defined in this Plan as a hazardous waste; therefore, their recycling is not permitted in any portion of the Pinelands pursuant to N.J.A.C. 7:50-6.73(b). In recognition of the Department's actions, however, the Commission determined that it would be appropriate to allow for the continued operation of the existing recycling center in order to determine whether the State's decision to reclassify consumer electronics as recyclable hazardous waste is appropriate for the Pinelands. The Fort Dix Consumer Electronics Recycling Center Pilot Program is therefore authorized as a means to test whether continued operation of the center, if effectively regulated and monitored, would reduce the waste stream to landfills and enhance protection of the natural resources of the Pinelands and its unique ecosystem.

7:50-10.29 General standards

(a) The consumer electronics recycling center currently in operation and located within the boundaries of Fort Dix in New Hanover Township is authorized to continue the recycling of cathode ray tubes and consumer electronics until June 6, 2010, provided its operation is otherwise consistent with the standards of N.J.A.C. 7:50-5 and 6 and subject to the following conditions:

1. The recycling center shall accept for repair and/or recycling only materials which are solid components of cathode ray tubes or consumer electronics. No other hazardous wastes of any kind, and in particular no liquid wastes, shall be accepted for transfer, storage, disposal or recycling or for any other purpose;
2. The recycling center shall at all times be maintained and operated in conformance with the January 22, 2003 amendment to the Burlington County District Solid Waste Management Plan, certified by the Commissioner of the New Jersey Department of Environmental Protection and dated June 25, 2003;
3. Transportation of cathode ray tubes and consumer electronics to and from the recycling center and disposition of the processed product shall be accomplished in accordance with N.J.A.C. 7:26A-7.6, except that a transporter may not store the materials in the Pinelands;
4. The waste importation limitations prescribed in N.J.A.C. 7:50-6.73(c) shall not apply;
5. The total amount of consumer electronics materials accepted for recycling shall not exceed 200 tons per day;
6. No materials intended for recycling or repair shall be stored at the center for more than three months and the total amount of recyclable materials on site at any time shall not exceed 1,000 tons;
7. The recycling center shall not be expanded or modified in any way, except as necessary to facilitate the recycling function prescribed herein and only after written notice has been provided to the Commission and an application for development, if required pursuant to N.J.A.C. 7:50-4, has been approved by the Commission;

8. Recyclable materials shall be stored in secure, enclosed, weather-tight buildings or containers and the design and operation of the recycling center shall be in accordance with the appropriate standards of N.J.A.C. 7:26A-4.1 through 4.6; and
 9. The New Jersey Department of Environmental Protection and the Commission shall conduct annual joint inspections of the operations of the recycling center, as permitted by N.J.A.C. 7:26A-4.3, during the period the Fort Dix Consumer Electronics Recycling Center Pilot Program is in effect.
- (b) The operators of the Fort Dix consumer electronics recycling center shall, on an annual basis, provide to the Commission the following information:
1. The tonnage of consumer electronics received at the facility for recycling; and
 2. The tonnage of consumer electronics sent from the facility for disposal in a landfill.

7:50-10.30 Pinelands Commission approval and evaluation

- (a) If otherwise appropriate under N.J.A.C. 7:50-4, the Pinelands Commission shall approve the development application for the Fort Dix consumer electronics recycling center if it finds that the standards of N.J.A.C. 7:50-10.29 are met.
- (b) The Executive Director shall review this pilot program three years following the Commission's approval pursuant to (a) above and shall report to the Commission on its implementation. The Executive Director shall determine whether the pilot program is successful in accordance with the following criteria:
1. The facility has operated in a manner entirely and uniformly consistent with the standards of N.J.A.C. 7:50-10.29;

2. There have been no incidents at the Fort Dix computer electronics recycling facility or any other Class D consumer electronics recycling facility in New Jersey which would cause any of the provisions of the contingency plan required by N.J.A.C. 7:26A-4.6(c) to go into effect;
 3. The amount of solid waste returned to the waste stream for disposal in a landfill has been significantly reduced; and
 4. The net effect of the pilot program, when viewed in its entirety, is that the resources of the Pinelands have been afforded the same or greater level of protection than would be provided by the standards and requirements set forth in N.J.A.C. 7:50-5 and 6.
- (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 propose an amendment to this subchapter, in accordance with N.J.A.C. 7:50-7, to repeal the pilot program.
- (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 which would allow for the continued operation of the Fort Dix computer electronics recycling facility and broaden the applicability of this pilot program in the Pinelands.]