

Overview of the NJDEP Model Tree Removal/Replacement Ordinance



**CMP Policy & Implementation
Committee**

5/31/2024

Presentation Overview

- What's the requirement?
- Tier A MS4 Stormwater Permit
- The NJDEP model ordinance
- Related CMP regulations
- Status of Pinelands municipalities
- What staff is looking out for during review

What's the Requirement?

- By May 1, 2024, all municipalities with a Tier A MS4 Stormwater Permit are required to adopt and enforce an ordinance to control tree removal and replacement to reduce stormwater runoff and pollutants, and to promote infiltration of rainwater into the soil
- This requirement was added during the 2022 Tier A MS4 Master Permit renewal
- The NJDEP has prepared a model ordinance

Tier A MS4 Stormwater Permit

- The MS4 permitting program is required by both federal and state regulations to address water quality
- The permit authorizes certain new and existing stormwater and non-stormwater discharges to surface water and ground water from small MS4 Systems

Tier A MS4 Stormwater Permit

- All Pinelands municipalities are classified as Tier A
- As part of the 2022 permit renewal the DEP reclassified all 101 Tier B municipalities to Tier A, including 13 Pinelands Municipalities



Tier A MS4 Stormwater Permit

Some of the Permit Requirements

- Stormwater pollution prevention plan
- Local public education and outreach
- Watershed improvement plan
- Provide minimum standards for (i.e., ordinances):
 - Construction site stormwater runoff
 - Post construction stormwater management in new development and redevelopment
 - Pollution prevention/good housekeeping for municipal operators
 - MS4 Mapping, and Scouring, and Illicit Discharge Detection and elimination

Tier A MS4 Stormwater Permit

Pollution Prevention Ordinances:

- Pet Waste
- Wildlife Feeding
- Litter Control
- Improper Disposal of Waste
- Yard Waste
- Private Storm Drain Inlet Retrofitting
- Privately-Owned Salt Storage
- Tree Removal/Replacement

Former Tier B permittees need to adopt by 5/1/2024

All permittees need to adopt by 5/1/2024

Tree Removal-Replacement Model Ordinance

- At minimum, municipalities must adopt an ordinance that addresses both removal and replacement, and it must apply to all lands of the municipality
- The NJDEP has stressed that the model ordinance is a guidance document and serves as a template that can be used in whole or in part by municipalities
- Municipalities can use existing ordinances if they meet the minimum requirements of the MS4 permit

Tree Removal-Replacement Model Ordinance

Purpose

To reduce soil erosion and pollutant runoff, promote infiltration of rainwater into the soil and protect the environment, public health, safety, and welfare

Ordinance Structure

Definitions

Regulated Activities

- Application Process
- Tree Replacement Requirements
- Replacement Alternatives

Exemptions

Enforcement, Violations, and Penalties

Tree Removal-Replacement Model Ordinance

Regulated tree removal activities

The removal of

- any street tree with a DBH of 2.5" or more
- any non-street tree with DBH of 6" or more

Application Process

The model ordinance provides flexibility to integrate with existing reviews (e.g., site plan approvals, building permit approvals,...etc.) or to establish a separate application process

Municipalities may impose application fees

Tree Removal-Replacement Model Ordinance

Tree Replacement Requirements

Trees removed must be replaced in kind with a tree that has an equal or greater DBH than the tree removed OR meet the criteria below

Tree Removed (DBH)	Tree Replacement Criteria
2.5" (street trees) or 6" (non-street trees) to 12.99"	1 tree w/ min caliper of 1.5" per tree removed
13" to 22.99"	2 trees w/ min calipers of 1.5" per tree removed
23" to 32.99"	3 trees w/ min calipers of 1.5" per tree removed
33" or greater	4 trees w/ min calipers of 1.5" per tree removed

Tree Removal-Replacement Model Ordinance

Tree Replacement Requirements

Replacement trees must be:

- Planted within 1 year of removal of the original tree(s)
- Monitored by the applicant for 2 years and replaced as needed within 1 year

Replacement trees are not permitted to be planted in temporary containers or pots

Tree Removal-Replacement Model Ordinance

Tree Replacement Requirements

Municipalities are required to supplement the model ordinance with either:

- a list of tree species that are acceptable to be planted; or
- a list of tree species that are not acceptable to be planted

Tree Removal-Replacement Model Ordinance

Replacement Alternatives

If the municipality determines that some or all required replacement trees cannot be planted on the property where removal occurred, then the applicant shall either:

- Plant replacement trees in a separate area(s) approved by the municipality.
- Pay a fee of [*amount to be set by municipality*] per tree removed. This fee shall be placed into a fund dedicated to tree planting and continued maintenance of the trees.

Tree Removal-Replacement Model Ordinance

Exemptions

- Hazard trees may be removed with no fee or replacement requirement
- Residents who remove less than four (4) trees per acre with DBH less than 33 inches within a five-year period.

Tree Removal-Replacement Model Ordinance

Exemptions

- Tree farms in active operation, nurseries, fruit orchards, and garden centers
- Properties used for the practice of silviculture under an approved forest stewardship or woodland management plan that is active and on file with the municipality

Tree Removal-Replacement Model Ordinance

Exemptions

- Any trees removed as part of a municipal or state decommissioning plan. This exemption only includes trees planted as part of the construction and predetermined to be removed in the decommissioning plan.
- Any trees removed pursuant to a NJDEP or EPA approved environmental clean-up, or NJDEP approved habitat enhancement plan;
- Approved game management practices, as recommended by the State of New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife;

Relevant CMP Regulations

N.J.A.C. 7:50-6 Part II Vegetation

- All clearing and soil disturbance activities, whether or not an application for development is required, shall be limited to that which is necessary to accommodate an activity, use or structure which is permitted by the CMP
- Where practical, all clearing and soil disturbance activities associated with an activity, use or structure other than agriculture, forestry and resource extraction, shall avoided wooded areas and revegetate or landscape areas temporarily cleared or disturbed during development

Relevant CMP Regulations

N.J.A.C. 7:50-6 Part II Vegetation

Except for forestry and resource extraction, each application for public development or major development shall contain a landscaping or revegetation plan containing:

- Existing vegetation
- Limits of clearing
- Proposed vegetation and landscaping

Relevant CMP Regulations

N.J.A.C. 7:50-6 Part II Vegetation

Landscaping or revegetation plan standards:

- Permanent lawn or turf areas must be limited to those specifically intended for active human use such as play fields, golf courses and lawns associated with a residence or other principal non-residential uses.
- Native shrubs and trees authorized in the CMP shall be used for revegetation and landscaping (with some exceptions for non-natives)

Adoption Status of Pinelands Municipalities

- All Pinelands municipalities have incorporated the CMP minimum vegetation standards
- Some Pinelands municipalities have adopted additional vegetation and tree-specific ordinances beyond what the CMP requires
- Commission staff have reviewed two ordinances responding to the MS4 requirement and found that they raised no substantial issue with respect to CMP standards
- Drafts have been received from three municipalities

What staff is looking out for during ordinance review

- Ensuring that the authorized species list is consistent with those species listed in the CMP or listed on the “Native Pinelands Plants for Landscape” fact sheet posted on the Commission website.
- Ensuring that an appropriate exemption is provided for agriculture
- Consider impacts to the realistic development potential in Regional Growth Areas, particularly where PDC opportunities exist:
 - What alternatives to planting on site are provided
 - Are any payment in lieu of planting fees reasonable