

MEMORANDUM OF AGREEMENT BETWEEN THE NEW JERSEY PINELANDS  
COMMISSION  
AND THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

(February 21, 2003)

I. PURPOSE

In 2002, the New Jersey Department of Environmental Protection (NJDEP), Forest Service confirmed the presence of the southern pine beetle [*Dendroctonus frontalis*] in the New Jersey Pinelands. This Memorandum of Agreement (MOA) between the NJDEP and the New Jersey Pinelands Commission (Commission) establishes a streamlined permitting procedure for the NJDEP to remove pine trees from a prescribed number of infested areas in an effort to suppress southern pine beetle populations in the Pinelands Area. The Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-4.52(c)) provides that the Commission may enter into intergovernmental MOAs with any state agency authorizing the agency to carry out specified development activities without securing individual development approval from the Commission under the Pinelands Comprehensive Management Plan (CMP).

II. BACKGROUND

The NJDEP prepared and submitted to the Commission a report (attached as appendix A) dated November 12, 2002, last revised February 7, 2003, entitled "Forest Health Evaluation of Southern Pine Beetle Infestations in Southern New Jersey." The report indicates that in December of 2001, southern pine beetle was discovered and reported for the first known time in New Jersey. The report further indicated that a February 2002 helicopter reconnaissance conducted by NJDEP identified between 10 to 20 pine beetle infestation areas in Cumberland and Cape May Counties. Based on a spring 2002 NJDEP beetle trapping survey, low to declining populations of southern pine beetle were projected by the report for 2002. However, the report found that southern pine beetle infestations expanded very rapidly throughout the summer of 2002. Aerial surveys conducted in late summer of 2002 by NJDEP detected approximately 264 outbreaks ranging from single trees to 250 acres in size. NJDEP has represented that it ground inspected 30 of these aerial survey sites and verified southern pine beetle infestation at all 30 sites.

As of the November 12, 2002 date of the report, infested acreage was estimated to be 1,270 acres in New Jersey. Heaviest infestations are present in Cape May, Cumberland and southern Atlantic Counties. Infestations have been documented as far north in New Jersey as Brendan Byrne State Forest in Burlington County.

According to the submitted report, lowland areas appear to be the most heavily infested with southern pine beetle. The report indicates that this fact is perhaps attributable to severe drought conditions present during the summer of 2002 and the resulting stress to trees. Pine species infested by the beetle are Pitch, Shortleaf, Virginia, Loblolly, Red and White pine.

The NJDEP proposes to suppress the southern pine beetle by cutting pine trees from infested sites. Once cut, infested pine trees will either be chipped and removed from the cutting sites, piled and burned at the cutting sites or piled and covered with a plastic tarp at the cutting sites. As necessary, all pine trees will also be removed from within a 50 to 100 foot buffer strip cut next to, and ahead of, the most recently infested trees. The direction of movement of the pine beetle infestation is evident from the progressive discoloration of pine trees. The direction that the active infestation is moving is referred to as the "active head" or "spreading edge" of the infestation. Many of the infested sites have multiple "active heads" or "spreading edges."

The NJDEP has identified in the submitted report 11 priority sites comprising 398 acres in the Pinelands Area for the suppression of southern pine beetle in 2003. The eleven sites range in size from 0.7 acres to 250 acres. Excluding one 250 acre site, the average site size is approximately 15 acres. Not all pine trees within the 11 designated sites will be cut. Typically, pine trees not in the vicinity of the "spreading edge" or proposed buffer strip and dead pine trees no longer infested by the beetle will not be cut.

The MOA requires that any removal of trees proposed in association with the suppression of the southern pine beetle must be undertaken consistent with all standards of the CMP, including the threatened and endangered species standards.

### III. COMMISSION AND NJDEP MUTUAL AGREEMENTS

A The removal of trees for southern pine beetle suppression activities for the 11 priority sites identified in the report prepared by NJDEP entitled "Forest Health Evaluation of Southern Pine Beetle Infestations in Southern New Jersey" will not require individual development approval from the Commission, but will be subject to a modified Commission application process. The modified application process shall require that the NJDEP submit to the Commission the following information:

1. A copy of a U.S.G.S. quadrangle or comparable map on which the boundary of the site proposed for tree removal has been identified and, as feasible, a delineation of areas within the boundary to be cut.
2. Identification of the municipality and the tax block and lot number(s) of the parcel on which the proposed tree removal activity will be located.

3. A description of the proposed tree cutting at each priority site including any necessary clearing for access or equipment, an estimation of the acreage within each site to be cut, a time schedule for the treatment and the proposed method of treatment of the felled trees.
4. Information from the NJDEP, Office of Natural Lands Management Natural Heritage database indicating whether any Pinelands threatened and endangered species have been reported on or in the immediate vicinity of the proposed tree cutting. In addition, any threatened or endangered species sites identified in Commission records and any other publically available information, including information submitted to but not yet posted on the Natural Heritage database, shall also be considered.

If available information indicates the presence of threatened or endangered species, information shall be submitted to demonstrate that the proposed activity is consistent with the threatened and endangered plant and animal species protection standards of the CMP (N.J.A.C. 7:50-6.27 and N.J.A.C. 7:50-6.33).

5. A cultural resource survey if significant soil disturbance is proposed or the cutting is proposed in the vicinity of an historic structure and the Commission staff determines the need for such a survey.

The tree cutting proposed in association with the suppression of the southern pine beetle is not anticipated to result in significant soil disturbance. Significant soil disturbance means sufficient ground upheaval by a proposed tree removal activity that could potentially disturb cultural resources. Tree cutting is also not anticipated to be proposed in the vicinity of an historic structure. Therefore, it is highly unlikely that a cultural resource survey will be required by the Commission.

If such a survey is required and was not submitted by NJDEP, the Commission staff will advise NJDEP in accordance with III.C below that in the absence of such a survey that it cannot be determined that the proposed tree cutting in association with the suppression of southern pine beetle suppression activity is consistent with the requirements of the CMP.

6. An outline of the report required in IV. E. below to evaluate the effectiveness of the proposed tree cutting for the suppression of southern pine beetle.

- B. Within thirty (30) days of receipt of the information submitted pursuant to III. A, the Commission staff will provide written comments regarding the consistency of the proposed tree cutting in association with the suppression of the southern pine beetle

with the requirements of the CMP.

- C. If any proposed tree cutting associated with the suppression of southern pine beetle submitted pursuant to III. A above is found to be inconsistent with the requirements of the CMP, the NJDEP agrees that the activity will be modified until the Commission staff determines, in writing, that the proposed activity is consistent with the standards of the CMP.
- D. If NJDEP disagrees with a written determination of inconsistency by the Commission staff, it may submit a formal application to the Commission pursuant to paragraph IV. B. below.
- E. Except as otherwise provided for in this MOA in III. H. below, the cutting of trees associated with the suppression of southern pine beetle shall not occur in the Pinelands Area pursuant to this MOA until the Commission staff determines in writing that the activity is consistent with the standards of the CMP.
- F. Any Commission staff written determination of consistency approving the cutting of trees in association with the suppression of southern pine beetle pursuant to this MOA shall be valid until December 31, 2004.
- G. The Pinelands Forestry Advisory Committee shall review the cutting proposed in association with the suppression of the southern pine beetle and shall be consulted on all NJDEP southern pine beetle suppression efforts on public lands in the Pinelands Area. This consultation shall include a review of the annual report required in IV.E. below.
- H. The CMP provides that the clearing of less than 1,500 square feet of land does not require application to the Commission (NJAC 7:50-4.1 (a) 7). For the purpose of spot control of southern pine beetle infestation, the NJDEP may cut, without application to the Commission, up to 15 trees per acre on public lands in the Pinelands Area provided that
  - i. The trees are exhibiting characteristics of southern pine beetle infestation; and,
  - ii. Not more than 3 contiguous acres are subject to this treatment in a calendar year; and
  - iii. Not more than 50 acres of public lands in the Pinelands Area are subject to this treatment in a calendar year; and

- iv. All cutting occurs by hand and no access roads or clearing are necessary to access the concerned trees.
- I. The modified application process provided for in this MOA may be utilized to treat the 398 acres contained within the 11 priority sites identified in the NJDEP report entitled "Forest Health Evaluation of Southern Pine Beetle Infestations in Southern New Jersey" (Appendix A) and 400 additional acres in calendar year 2004. Treatment is defined as that acreage within a site actually subject to tree cutting.
- J. If the actual treated acres for the 11 priority sites scheduled for treatment in calendar year 2003 totals less than 398 acres, applications for additional sites may be submitted for the remaining acreage under the modified application process specified in this MOA provided the additional treated acreage does not exceed 150 acres.
- K. If the actual treated acres for calendar year 2004 is less than 400 acres, the remaining acreage up to 400 acres may be submitted under the modified application process specified in this MOA.
- L. To ensure that the planning and review of the calendar year 2004 sites is completed in a timely manner, applications for sites proposed for treatment in 2004 shall be submitted to the Commission no later than October 31, 2003. To the extent an emergent situation arises after that date, NJDEP is authorized to submit site specific applications after October 31, 2003 provided that the treatment occurs on or before December 31, 2004.

IV. THE NJDEP AGREES THAT:

- A. All tree cutting associated with the suppression of southern pine beetle will be conducted consistent with the standards contained in Subchapters 5 and 6 of the CMP.
- B. Unless the cutting of trees does not otherwise require an application to the Commission in accordance with III H. above or an activity qualifies for a modified Commission application in accordance with III. A, above, a formal application must be submitted to the Commission in accordance with the provisions of the CMP (N.J.A.C. 7:50-4.52(b)) and the proposed cutting of trees in association with the suppression of southern pine beetle may not occur until an application has been completed with and approved by the Commission.
- C. All cutting of trees in association with the suppression of southern pine beetle shall be conducted in accordance with the method described in this MOA and consistent with the approved description and schedule of activities submitted in accordance with III. A. above.

- D. This MOA only pertains to tree cutting in association with the suppression of southern pine beetle undertaken by NJDEP on publicly owned lands in the Pinelands Area.
- E. To evaluate the effectiveness of the proposed tree cutting and subsequent treatment of the felled trees in suppressing the southern pine beetle, the NJDEP will prepare and submit to the Commission a report evaluating the effectiveness of the tree cutting and subsequent treatment of felled trees. At a minimum, NJDEP shall monitor three untreated control sites. The control sites shall be comparable in size, degree of infestation and forest type to the sites proposed for treatment. To the extent feasible, the control sites shall also be spatially located in a similar cluster to the sites proposed for treatment. The control sites shall not be in the vicinity of the sites subject to treatment. Trees shall not be cut from the control sites. The report shall evaluate the effectiveness of the tree cutting and subsequent treatment of felled trees undertaken for the suppression of the southern pine beetle by comparing the treated sites to the untreated control sites.

Beetle trapping information shall be provided for population trend analysis and to assist in determining the effectiveness of the suppression treatments.


The report shall address environmental factors potentially influencing the populations of southern pine beetle, particularly the effect of climate (average weekly/monthly temperatures, extreme temperatures and precipitation).

The report will be submitted to the Commission by October 31, 2003 and October 31, 2004 for each year subject of tree cutting associated with suppression of the southern pine beetle.

#### V. EFFECTIVE DATE AND DURATION

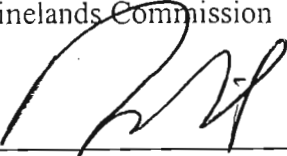
- A. This MOA shall take effect upon approval by the authorized representative of both parties and subsequent to a 10 day Governor's review period.
- B. This MOA shall remain in effect until December 31, 2004 unless otherwise amended or terminated by either party upon 60 days written notice.

VI. SIGNATURES

  
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Annette M. Barbaccia, Executive Director  
NJ Pinelands Commission

3/28/03

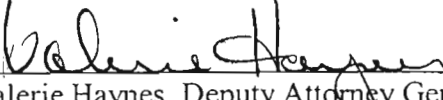
Date

  
\_\_\_\_\_  
Marc A. Matsil, Assistant Commissioner  
New Jersey Department of Environmental Protection

3/31/03

Date

Approved as to form by:

  
\_\_\_\_\_  
Valerie Haynes, Deputy Attorney General  
State of New Jersey

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Date