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MEMORANDUM OF AGREEMENT

BETWEEN

THE NEW JERSEY DEPARTMENT OF

ENVIRONMENTAL PROTECTION AND ENERGY

AND THE

NEW JERSEY PINELANDS COMMISSION

CONCERNING THE REGULATION OF WATERS OF THE UNITED STATES

WITHIN THE PINELANDS AREA

I. PURPOSE

This Memorandum of Agreement between the New Jersey Department of Environmental Protection and Energy (hereinafter referred to as "Department") and the New Jersey Pinelands Commission (hereinafter "Commission") is established to enable the Department to fulfill the requirements of 40 C.F.R. Part 233 (1988) in order to assume the Section 404 program of the Federal Clean Water Act (hereafter referred to as the CWA) and to establish a framework for the continued protection of wetlands within the "Pinelands Area," the boundaries of which are defined at N.J.S.A. 13:16A-11, as required by the Pinelands Comprehensive Management Plan (CMP), N.J.A.C. 7:50-1.1 et seq.

This agreement does not create any substantive standards under which wetlands and waters will be regulated in the Pinelands Area or impose any legal obligations on the public. It is solely intended to describe and allocate pre-existing areas of regulatory responsibility to avoid unnecessary duplication between the Commission and Department.

The Pinelands Commission which was mandated by the National Parks and Recreation Act of 1978 Public Law 95-625 and which was created by the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq., was required to develop and implement a comprehensive management plan to protect, preserve and enhance the land and water resources of the Pinelands Area.

The Commission is the entity authorized to exercise all

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powers and duties to effectuate the purposes and provisions of the Pinelands Protection Act of 1979, N.J.S.A. 13:18A-1 et seq. In accordance with N.J.S.A. 13:18A-6, the Commission is permitted to enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient, or desirable for the purposes of the Commission or to carry out any power expressly given in the Pinelands Protection Act. The Department is authorized to enter into this agreement pursuant to N.J.S.A. 13:9B-1 et seq, and to 13:1D-9.

II. MUTUAL AGREEMENTS

A. The Department and the Commission agree to the following definitions for the purposes of implementing this MOA:

"Person" means an individual, corporation, partnership, association, the Federal government, the State, municipality, commission or political subdivision of the State, or any interstate body.

"State Program" means the State program which has been approved by EPA under Section 404 of the Clean Water Act.

"Waters of the United States" means all waters and wetlands including wetlands, wetlands soils, submerged lands, and inland and coastal wetlands as defined at N.J.A.C. 7:50-2.11, N.J.A.C. 7:50-6.3, N.J.A.C. 7:50-6.4 and N.J.A.C. 7:50-6.5. These definitions are inclusive of all areas defined as "waters of the United States" as defined by the Department at N.J.A.C. 7:7A-1.4.

B. REGULATORY SCOPE All waters of the United States within the Pinelands Area are covered by this agreement with the exception of those waters over which the Army Corps of Engineers retains jurisdiction.

C. REGULATED ACTIVITIES

In accordance with State and Federal law, the discharge of dredged or fill material pursuant to 33 CFR Part 323 and 40 CFR Part 232 shall not occur in waters of the United States without the issuance of a State Program permit unless determined by the Department to be exempt from the CWA, Sections 404(f)1(A), (C) and (E) and the Freshwater Wetlands Protection Act pursuant to N.J.S.A. 13:9B-4a and 4e (ongoing farming, ranching, and silvicultural operations). Pursuant to State and Federal law, the State Program permit is required in addition to any application and approval required pursuant to the provisions of the Pinelands Comprehensive Management Plan, and any other State or Federal approval.

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III. ESTABLISHMENT OF BOUNDARIES OF WATERS OF THE UNITED STATES

A. The Commission shall be the lead agency within the Pinelands area to verify the extent of Waters of the United States in accordance with the procedural requirements at N.J.A.C. 7:50-4.71 and the notice requirements at N.J.A.C. 7:7A-8. This process enables a person to obtain a Letter of Interpretation verifying the limits of waters of the United States which occur within a parcel of land or right of way, or within proximity to a public development project.

B. If at any time in the future there is a change to the methodology for verifying the extent of Waters of the United States which results in differences between the extent of Waters of the United States as defined at N.J.A.C. 7:7A-1.4, and the extent of wetlands as defined at N.J.A.C. 7:50-2.11, 6.3, 6.4, and 6.5, the Letter of Interpretation will state these differences.

C. The delineation and verification of the extent of waters of the United States established in the Letter of Interpretation issued by the Commission shall be accepted by the Department for a five year period after the Letter of Interpretation takes effect.

D. If there is disagreement or an unusual circumstance concerning a jurisdictional determination, the parties to this agreement retain authority to independently or jointly establish jurisdictional boundaries.

IV. PERMITS FOR DEVELOPMENT REQUIRING AN APPLICATION TO THE PINELANDS COMMISSION

A. The Commission, on behalf of the Department, shall administer a process which may authorize regulated activities in waters of the United States in accordance with the Statewide General Permit program at N.J.A.C. 7:7A-9. The Commission on behalf of the Department may authorize these regulated activities within the Pinelands Area, in accordance with the requirements of the Pinelands Protection Act, Pinelands Comprehensive Management Plan and the rules adopted pursuant to the Freshwater Wetlands Protection Act.

1. The Department will provide the Pinelands Commission with standard forms to be used when authorizing or denying a regulated activity under the Statewide General Permit program.

2. The Pinelands Commission will provide the Department with a monthly report describing all permit activity. In addition, the Pinelands Commission will provide copies of denials of permit authorizations to the Department upon issuance of the denial.

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3. An applicant or other affected party may request reconsideration by the Commissioner of the Department, pursuant to N.J.A.C. 7:7A-12.7 of the Freshwater Wetlands Protection Act (FWPA) rules, on any decision to issue or deny an authorization made by the Pinelands Commission staff, provided that the request is limited solely to issues that arise under the FWPA rules. In accordance with N.J.S.A. 13:18A-10c and the CMP, no approval shall be granted or other action taken as a result of any such appeal to authorize any regulated activity which would be inconsistent with the CMP, and any challenge to any decision to issue or deny an authorization made by the Pinelands Commission staff which is based on the consistency of the proposed development with the CMP shall be made in accordance with the provisions of the CMP.

B. According to State law, a person seeking to engage in regulated activities in waters of the United States which cannot be accomplished in accordance with the requirements noted at N.J.A.C. 7:7A-9 is required to obtain an Individual State Program permit from the Department prior to the commencement of any construction activities. The Department shall administer the application process for any Individual State Program permit within the Pinelands. In accordance with N.J.A.C. 7:50-1 et seq., the Department shall not consider as administratively complete any permit application which involves the development of any waters of the United States within the Pinelands Area unless the applicant has obtained a Certificate of Filing, Certificate of Compliance, Public Development Approval or other document from the Commission which indicates that an application has been completed with the Pinelands Commission. The Commission shall transmit to the Department a copy of any Certificate of Filing, Certificate of Compliance, Public Development Approval or other document issued for a project which would require an Individual State Program permit as outlined in this section. In accordance with N.J.S.A. 13:18A-10c and the CMP, the Department shall not grant any approval, issue any certificate, or take any other action to authorize any regulated activity which would be inconsistent with the CMP.

V. PERMITS FOR DEVELOPMENT NOT REQUIRING AN APPLICATION TO THE PINELANDS COMMISSION

According to State and Federal law, persons seeking to conduct activities for which an application to the Commission is not required but which are regulated by the State Program within the Pinelands Area, i.e. dredged or fill material into Waters of the United States pursuant to 33 CFR Part 323 and 40 CFR Part 232, shall obtain a State Program permit and the associated Water Quality Certificate from the Department prior to the commencement of any regulated activities. The Commission shall notify all

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counties and municipalities within the Pinelands Area of this requirement and shall provide assistance to local review agencies and the public in making determinations as to the types of development which are subject to this provision.

VI. EMERGENCY ISSUANCE OF PERMITS

Persons seeking emergency authorization to conduct regulated activities in waters of the United States to prevent or reduce immediate threats to life, severe loss of property, or severe environmental degradation shall contact the Department to request verbal authorization according to N.J.A.C. 7:7A-5. For an activity requiring an application to the Commission, no work may commence unless it has been approved pursuant to the provisions of the Pinelands Comprehensive Management Plan.

VII. VIOLATIONS OF THE STATE PROGRAM WITHIN THE PINELANDS AREA, PINELANDS COMMISSION LEAD IN ENFORCEMENT ACTIONS

According to State and Federal law, no person or other entity shall engage in an activity regulated pursuant to the State Program, as enumerated in II C above, without a permit. Any person or other entity which conducts a regulated activity without the benefit of a permit, or in a manner that is not in accordance with permit terms and conditions, is in violation of the State Program and is subject to the provisions of the program as noted at N.J.A.C. 7:7A-15 and N.J.A.C. 7:7A-17. Except for development activities that do not require an application to the Commission pursuant to N.J.A.C. 7:50-4.1, the Commission shall be primarily responsible for the initial investigation of any alleged violation of the State Program within the Pinelands Area. For those activities which require an application to the Department only, the Department shall be primarily responsible for the investigation. Upon receiving the necessary information from the Commission regarding a potential violation, the Department shall be responsible for issuing all Notices of Violation and for the assessment of civil administrative penalties, the filing of an action for civil penalties, and the petitioning of the Attorney General to bring a criminal action pursuant to N.J.S.A. 13:9B-21, N.J.A.C. 7:7A-15, N.J.A.C. 7:7A-17, and N.J.A.C. 7:14-8.

VIII. REIMBURSEMENT OF THE PINELANDS COMMISSION

The Department shall reimburse the Commission from the fees received by the Department for the administration of Letters of Interpretation and the Statewide General Permit program by the Commission in the Pinelands Area in accordance with the Budget and Appropriations Act.

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RESOURCE DATA AND PERMIT REPORTING

The Department and Commission agree to jointly develop a process to record, track, and quantify information about regulated activities authorized by the Commission, violations of the State Program, and any other information deemed necessary by the U.S.E.P.A in order for the Department to assume Section 404 of the CWA.

X SEVERABILITY

If any section or clause of this agreement, or application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgement shall be confined in its operation to the section, clause or application directly involved in the controversy in which such judgement shall have been rendered, and it shall not affect or impair the remainder of this agreement or the application thereof to other persons.

REVISIONS

Revisions and amendments to this MOA may be made when deemed necessary by the Department or Commission. Any such revisions or amendments to this document shall become effective upon the mutual agreement of the Commissioner of the Department or his designee and the Commission.

EFFECTIVE DATE AND DURATION

A. This Memorandum of Agreement shall become effective upon the approval of the State Program by the Administrator of the EPA and subsequent to approval by the authorized representatives of both parties and after the conclusion of the Governor's review period of the Commission's minutes.

B. This agreement shall remain in effect until otherwise amended or terminated by either party upon sixty (60) days written notice.

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XIII. SIGNATURES

Date: 1/14/93 By: _____

Scott A. Weiner, Commissioner
State of New Jersey
Department of Environmental Protection
and Energy

Approved as to form By: Rachel Horowitz 1/14/93

Deputy Attorney General

Date: 2/5/93 By: _____

Terrence D. Moore, Executive Director
Pinelands Commission

Approved as to form By: _____

Deputy Attorney General

Date: 2/17/93

(1/7/93)

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