

**ENVIRONMENTAL PROTECTION
NATURAL AND HISTORIC RESOURCES**

Forestry

Readoption: N.J.A.C. 7:3

Proposed: January 4, 2010 at 42 N.J.R. 14(a).

Adopted: _____, 2010 by Bob Martin, Commissioner, Department of Environmental Protection

Filed: _____ 2010 as R. 2010 d.____, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-15.100 – 102; 13:1B-15.106; 13:1D-9; 13:1L-1 et seq.; 45:1 – 9; 45:15C-1 et seq.; and 54:4-23.1 et seq.

DEP Docket Number: 24-09-12/687

Effective Date: _____, 2010

Expiration Date _____, 2015

The Department of Environmental Protection (Department) is readopting the Forestry rules at N.J.A.C. 7:3. The Forestry rules govern the Department's operation of the New Jersey State Forest Nursery and its forestation programs, including the distribution of tree seed and seedlings (forestation stock) to New Jersey private landowners and schools; establish a list of Approved Foresters and regulate those foresters who qualify for inclusion on the Approved Forester list, to support the implementation of the Farmland Assessment Act, N.J.S.A. 54:4-23.1

et seq.; and regulate Certified Tree Experts (CTEs), including regulation of advertising pertaining to CTEs, ethics, and standards for tree care and safety practices.

The proposal to readopt the Forestry rules without amendment was published in the New Jersey Register on January 4, 2010 at 42 N.J.R. 14(a). No public hearing was requested or held concerning the proposal. The comment period was set to close on March 5, 2010. On January 20, 2010, Governor Christie issued several executive orders. Executive Order No. 1 suspended for 90 days more than 150 then-pending proposals of various New Jersey agencies, among which was the proposal to readopt the Forestry rules and 11 other proposals of the Department. Executive Order No. 1 states that one of the Governor's priorities is to establish, under the direction of a Red Tape Review Group, a "commonsense" approach to the promulgation of rules. The commonsense principles are described in Executive Order No. 2, and the Red Tape Review Group was established under Executive Order No. 3. The purpose of the suspension was to afford the Red Tape Review Group the opportunity to examine the suspended rulemakings and make recommendations as to those proposed rules it determined are "unworkable, overly-proscriptive or ill-advised."

On February 3, 2010, the Department filed for publication in the New Jersey Register a notice of the extension or reopening of the comment period on the proposal to readopt the Forestry rules, and the other 11 suspended Department rulemakings, to March 15, 2010. The notice appeared in the March 1, 2010, New Jersey Register (see 42 N.J.R. 642(a)). The Department posted the notice on its website on February 4, 2010. The Department sought through the notice to focus any additional written comments submitted on the purposes of the

rules review set forth in the executive orders. The Department also announced in the notice that it would be scheduling informal stakeholder meetings on the proposals and that the dates for the meetings would be posted on the Department's website. The schedule of the stakeholder meetings was subsequently posted on the website on February 22, 2010.

The stakeholder meeting for the proposal to readopt the Forestry rules was held on March 8, 2010. At the stakeholder meeting, the Department specifically sought discussion of the economic analysis, federal standards comparison, process improvement, and compliance and enforcement review for the proposal. No one attended the stakeholder meeting.

This adoption document may be viewed or downloaded from the Department's website at <http://www.nj.gov/dep/rules>.

Summary of Public Comments and Agency Responses:

The Department timely received written comments on the proposal from the following person(s) or entities:

1. Klumpp, Hank
2. Len, Christopher, NY/NJ Baykeeper and Hackensack Riverkeeper
3. Sachau, Barbara

A summary of the comments and the Department's responses follows. The number(s) in parentheses after each comment identifies the respective commenter(s) listed above.

1. COMMENT: The notice of proposed readoption without amendment of the Forestry rules published in the New Jersey Register provided a mailing address for the submission of comments, but not an e-mail address. Providing an e-mail address would reflect an effort towards transparent government in New Jersey. (3)

RESPONSE: The Department acknowledges that some commenters may prefer to submit comments electronically, rather than on paper. However, the Department currently does not have systems in place to ensure the proper receipt, management and storage of electronically transmitted comments. As resources allow, the Department anticipates exploring the development of the capacity for accepting comments submitted electronically.

During the extended comment period on this proposal, the Department offered a webform on its website for the public's use in submitting comments, and also established a dedicated email address to which lengthier comments could be submitted as an attachment to an email. The Department's experience with these alternatives will help inform any subsequent initiative to facilitate electronic submittal of public comments for DEP rulemaking generally.

2. COMMENT: It is time to shut down the State Forest Nursery and for the State to do without a tree nursery. It has become excessively expensive for New Jersey taxpayers to maintain so many State government employees on the payroll. The high costs of maintaining the nursery have made it too costly for New Jersey to keep. Having a State-run nursery is an early twentieth century idea, but this is 2010, and another era. People can buy the trees they need from other sources. (3)

RESPONSE: The total annual cost of the State Forest Nursery is approximately \$250,000 and at least half of that amount is reimbursed through Federal grants and through revenues generated by the sale of forestation stock. Over the past decade, the Nursery has become much more efficient and has lowered the cost of its operations through the acquisition of equipment that has allowed the Nursery to mechanize some of its operations and through improved practices, such as the use of pre-emergent herbicides to prevent the growth of weeds. Ten years ago, the Nursery had five full-time employees and up to 40 seasonal employees. Currently, the Nursery employs three full-time employees and five seasonal employees. Even so, the Nursery is producing almost as much forestation stock as it did ten years ago.

Much of the forestation stock currently produced by the Nursery consists of native species. This is important for improving the success rates of reforestation projects conducted on both State and private lands, because native species are adapted to local conditions and therefore more likely to survive. Additionally, because native species co-evolved with other local fauna and flora, the presence of native stock can be essential to the survival of other ecosystem inhabitants and for preservation of local biodiversity. For example, compared to exotic species, native stock is more likely to serve as food sources (nectar, pollen, seeds, leaves, and stems) for native butterflies, insects, birds, and other animals. Native species are also less likely than non-native species to be invasive and to disrupt local ecosystems through dominant colonization.

The seed used by the Nursery staff to propagate seedlings is collected from locally grown, parent stock that is selected for resistance to disease and pests, fast growth rate, and form or size that has more utility and value for producing forest products. Research has documented that genetically superior parent stock tends to produce genetically superior offspring, and

therefore use of such seedlings for reforestation can be expected to result in a more vigorous and productive outcome.

The seedlings grown at the Nursery are used to reforest State-owned park and forest lands and wildlife management areas. They are also available for purchase by New Jersey's private landowners, other State agencies, county and municipal governments, and the Federal government for use on its lands in New Jersey. The availability of forestation stock from the Nursery not only helps preserve the State's natural heritage but also helps to protect forest health. Importation of stock is a common way exotic diseases and pests become introduced to the State. Although some native stock is available from commercial suppliers, only the State Forest Nursery produces native trees and shrubs in sufficient quantity to meet the needs of larger forestation and restoration projects. If sufficient supplies of native stock cannot be obtained, New Jersey land managers will have no choice but to go to out-of-State sources.

The State Forest Nursery also contributes to State efforts to promote proper care of trees and forests through a variety of educational initiatives directed toward fostering successful tree planting. Through its Third Grade Project, the State Forest Nursery each year distributes tree seeds or seedlings, free of charge, to third grade teachers throughout the State, together with planting and care instructions, so that each student may have the experience of planting a tree as part of that student's science curriculum. The Nursery supports the Forest Resource Education Center's programs for schools and scout and civic groups, including hosting "Seeds to Trees" tours, where participants not only visit the nursery but also participate in the proper planting of an acorn. The Nursery also hosts annual interpretive events that are open to the public, such as the Fall Forestry Festival. It also offers internship opportunities to students enrolled in college

biological science and horticultural programs. Nursery staff members are also available to provide answers to many questions from the public on how to select, plant, and care for trees.

3. COMMENT: The State Forest Nursery should not be providing anything at all to "private" buyers. (3)

RESPONSE: About 55 percent of New Jersey's forestlands are held by private landowners. It is important to encourage private landowners to keep forested lands forested, because forests afford many public benefits, including preventing flooding and erosion, maintaining water and air quality, and providing suitable wildlife habitat. Offering quality forestation stock at a moderate price is one way the State can encourage these private landowners to maintain their lands as forestlands.

4. COMMENT: The Farmland Assessment Act of 1964 was what established five-acre estate sites owned by wealthy professionals as "farms" that are eligible for valuation as farms for tax purposes. The Department should reexamine the whole process of determining what land qualifies as a "farm," because the social impact of allowing favorable tax treatment of these estates to continue is negative for most of the nine million people in this State. To be eligible for the tax break, the landowner must generate at least an average income of \$500 each year from the farm, but no one checks. The Department should not be in the business of certifying foresters so they can be involved in a process for which there is apparently little or no oversight. (3)

RESPONSE: The Farmland Assessment program is not established or overseen by the Department, and accordingly, any comments concerning the operation of that program are outside the scope of this rulemaking. Rather, the Division of Taxation within the Department of Treasury promulgates the rules that regulate the Farmland Assessment program. Recommendations for changes to the criteria that should be used for determining which lands can qualify to be considered to be a farm should be directed to the Division of Taxation for its consideration. Under Treasury's current rules, it is the local assessor who verifies whether the owner, through sale of farm products and/or receipt of other qualifying income, generates sufficient income for the farm to qualify for Farmland Assessment. The landowner must furnish any documentation requested by the assessor to prove adequate sales and income or fees from agricultural or horticultural use of the land.

The role of an Approved Forester in the Farmland Assessment process is limited to verifying compliance with woodland management requirements. An owner must have a woodland management plan that has been approved by the State Forester if he or she wants those woodlands (other than those eligible to be claimed as appurtenant woodlands) to be assessed as agricultural lands for tax assessment purposes. As part of the owner's annual tax assessment application, the owner must attest that the woodlands have been managed in accordance with the approved woodland management plan, and the application must also be signed by a forester listed on the Approved Forester List. Subchapter 3 of the Forestry rules (Approved Forester List) establishes the criteria and procedures for adding a forester to or removing a forester from the list and regulates foresters who are listed on the Approved Forester list. By admitting only qualified foresters to the list and by establishing the code of ethics by which an Approved

Forester must work, the Department seeks to ensure that only qualified foresters are permitted to verify compliance with the woodland management plan.

5. COMMENT: The farmland assessment process makes no sense because if a five-acre site is indeed generating \$500 worth of firewood per year, in no time, the trees will be harvested and the landowner will have nothing left to sell to meet the \$500 minimum income requirement. (3)

RESPONSE: The over-harvesting of forestlands to generate income sufficient to qualify for Farmland Assessment is a concern to the Department. An obligation to harvest an average of \$500 or more of wood annually from smaller forest holdings, 20 acres or less, sometimes results in the premature harvest and depletion of forestry stock. To address this concern, the Legislature recently enacted an act concerning forest stewardship, P.L. 2009, N.J.S.A. 13:1L-29-1, et seq., effective January 17, 2010, which creates an alternative mechanism by which owners of forested lands may qualify for favorable treatment under the Farmland Assessment Act. Under this alternative, a forest landowner may qualify for Farmland Assessment by preparing and implementing a Forest Stewardship Plan and progressing toward the stewardship goals (such as regenerating forested wetlands on lands that have been drained and cleared for farming, or creating habitat for a wide range of wildlife species) set forth in the plan, rather than by harvesting and selling wood.

6. COMMENT: It is interesting that forests are lauded in this proposal and yet the Department's Division of Fish and Wildlife is currently harvesting many forests, and burning others with the cooperation of the New Jersey Forest Fire Service. The Division of Fish and Wildlife wants to

cut forests down to make “savannahs” for game birds to support hunting. The Division of Fish and Wildlife should not be cutting down hundreds of acres of forests in Buckshutem Wildlife Management Area (WMA) and other WMAs. (3)

RESPONSE: The unique biodiversity associated with New Jersey's forests evolved within a system of natural processes that included disturbance, primarily fire-related, but that also included wind, insect/disease and beaver damage. In today's landscape, many of these important disturbance processes have been significantly altered, particularly due to the need to control wildfire for public safety. To maintain the State's biodiversity on the lands it manages, the Department attempts to mimic the natural disturbance processes characteristic of the New Jersey's forests, using a variety of silvicultural techniques. These techniques, including tree planting, tree harvesting, controlled burning and other actions, are vetted among the various relevant programs within the Department (Forestry, Forest Fire, Natural Lands Management, Historic Preservation, and Fish and Wildlife) before they are carried out.

At the Buckshutem Wildlife Management Area, the Division of Fish and Wildlife has successfully recreated early successional grassland habitat to restore early successional habitats, through a variety of silvicultural techniques, for the benefit of a wide variety of species, from butterflies and moths to reptiles, birds, mammals and plants. Hunting is not regulated pursuant to the Forestry rules. Accordingly, comments concerning hunting on State lands are beyond the scope of the readoption of the Forestry rules.

8. **COMMENT:** The commenter interpreted an August 24, 2009 letter, signed by the State Forester, as rescinding the State Forester's approval of the woodland management plan for the forestlands on the commenter's farm, and that this meant that his forestlands would no longer be eligible for favorable tax treatment under the Farmland Assessment Act. The commenter is concerned that, without an approved plan, his forestlands would no longer be exempt from the Freshwater Wetlands Protection Act rules and that he would have to have a permit for any forestry activity he conducts within wetlands or their buffers. Additionally, because the commenter's property is located within the Highlands Region, the commenter is concerned that he will have to go through the Highlands permitting process for any forestry activity that he may wish to conduct. It is the commenter's understanding that there are many other woodland owners who find they are in the same situation. (1)

RESPONSE: Although the issues raised by the commenter are outside the scope of this rulemaking, the Department notes that the August 24, 2009 letter referenced by the commenter does not rescind the approval of any plan or affect any landowner's eligibility to have his or her forestlands valued, assessed and taxed under the Farmland Assessment Act. The letter was addressed to forestry consultants, including foresters on the Department's Approved Forester list and other tree care professionals who provide management advice to woodland owners. The intent of the letter was to alert these forestry consultants that having an approved woodland management plan does not ensure that a landowner is compliant with certain other Department rules, specifically the Freshwater Wetlands Protection Act (FWPA) rules at N.J.A.C. 7:7A and the Flood Hazard Area Control Act (FHACA) rules at N.J.A.C. 7:13. Additionally, the letter provided some guidance as to how owners of forestlands regulated under these other rules could

proceed so as to ensure that they are in conformance with the requirements.

On April 22, 2010, the Department sent a letter to the commenter providing him further details and guidance pertinent to his circumstances. Any landowner who has questions about how Department rules apply to his or her forestlands may contact the nearest Regional Office of the New Jersey Forest Service. Information on the locations of these Regional Offices and how to contact them may be found at:

http://www.nj.gov/dep/parksandforests/forest/njfs_regional_offices.html.

9. COMMENT: The Governor's Red Tape Review executive orders have raised potentially troublesome issues for the Department's rulemaking and enforcement process. Considering the economic impacts of environmental regulation is a fraught process. Even the best economists struggle to quantify environmental benefits in dollar terms; their best efforts, with the benefit of hindsight, tend to underappreciate environmental value at the time of quantification tragically and repeatedly. Economists struggle with correctly finding and valuing the external impacts of economic transactions, discount rates and contingent values for natural resources; most ecosystem services are not captured in market transactions and are thus of indeterminate value. There is simply no economically viable way for the Department to say, for example, that 15 shopping malls are of equal value to New Jersey as a self-sustaining osprey population.

Cost benefit analyses of environmental regulation, when attempted, are invariably wrong, invariably non-confirmable and invariably minimize the benefit while maximizing the cost. Including such cost benefit analyses in the regulatory process is an important decision for any statute, and legislatures are well aware of the importance of deciding on whether particular legislation will impel or forbid such a process.

Inappropriately applying cost benefit analyses is a common and fatal mistake many levels of government make; one that often puts them on the wrong end of an environmental lawsuit.

While true benefit analysis is probably not possible, only a highly trained economist can be expected to wade through analysis of contingent valuation, externalities and discount rates. Reasonable analysis, let alone accurate analysis, is not possible for a layperson to produce. The commenter's understanding is that the Department has not used any particular economic theory to generate its benefits analysis, has no methodology to quantify benefits, has not used economists to review the effects of these rules and has only one economist on staff for the entire department. Although it is good that the Department concludes that its rules are justified by their benefits, a qualified economist is likely to find far greater benefit than the Department has. (2)

RESPONSE: Governor Christie's Executive Order No. 2 delineates "common sense principles" for rulemaking that are intended to provide the "opportunity to energize and encourage a competitive economy to benefit business and ordinary citizens." At section 1a, the Executive Order directs all State agencies to solicit the advice and views of knowledgeable persons from outside of New Jersey State government, including the private sector and academia, in advance of any rulemaking. At section 1d, the Executive Order directs State agencies to "employ the use of cost/benefit analyses, as well as scientific and economic research from other jurisdictions, including but not limited to the federal government when conducting an economic impact analysis on a proposed rule."

The Administrative Procedure Act (APA) at N.J.S.A. 52:14B-23 and 24 (P.L. 1995, c.65, effective June 5, 1995, which codified the substance of Governor Whitman's Executive Order No. 27(1994) into the APA) requires State agencies that adopt, readopt or amend State

regulations that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law. The analysis must include a cost-benefit analysis that “supports the agency's decision to impose the standards or requirements and also supports the fact that the State standard or requirement to be imposed is achievable under current technology, notwithstanding the Federal government's determination that lesser standards or requirements are appropriate.” Therefore, since 1994 in accordance with State law the Department has included a cost-benefit analysis in all of its rulemakings where the rules or standards exceed Federal law.

The APA at N.J.A.C. 7:52-14B-4(a)2 requires State agencies to include in each rulemaking a “description of the expected socio-economic impact of the rule.” The Office of Administrative Law’s Rules for Agency Rulemaking implement the APA and require at N.J.A.C. 17:30-5.1(c)3 that a notice of proposal include “an economic impact statement which describes the expected costs, revenues, and other economic impact upon governmental bodies of the State, and particularly any segments of the public proposed to be regulated.” Each of the Department’s rule proposals contains such a statement.

As required by the APA and the Rules for Agency Rulemaking, the Department’s rule proposals also contain statements of social impact, jobs impact, agriculture industry impact, impact on small business (regulatory flexibility analysis); and statements addressing the proposed rules’ impact on smart growth and the cost of housing. The Department in addition includes an environmental impact statement, describing the impact that its proposed rules will have on the environment.

The Department acknowledges that it has not historically provided as much detail in its impact analyses as an economist might. The Department endeavors to employ a practical approach to its determination of the costs and benefits of its rulemakings, and necessarily relies

to a certain extent on information developed by other sources. For instance, the Department may adapt and tailor to the circumstances in New Jersey the economic analysis for a rule performed by another state or the Federal government. In addition, the Department conducts informal and formal outreach to regulated communities, environmental interest groups, the U.S.

Environmental Protection Agency, other Federal and State agencies, agencies of other states, and the general public in the early stages of rulemaking. This is particularly the case for larger, more complex rulemakings. The Department will publish notice on its website or in the New Jersey Register, and/or use mail and electronic mail to known stakeholders, providing a description of the rules anticipated to be changed and the timeframe and means by which input will be gathered, for instance, at informal meetings or by written submissions, or both. Through outreach such as this, the Department obtains information on possible costs and benefits of rules that it is developing, as well as suggestions for the approach the Department should take in pursuing its regulatory goals.

Through the impact statements and Federal standards analyses for its rulemakings the Department attempts to identify the anticipated costs and benefits that will result from the proposed rules, including reasonably foreseeable indirect or secondary costs and benefits. The Department does attempt to identify and describe, even if it cannot always quantify in dollar terms, the proposed rules' costs and benefits in order to provide the public with as complete a picture and/or rationale as possible regarding the positive and negative economic impacts of the rulemaking.

Going forward the Department anticipates looking to the scientific and economic research of other jurisdictions and conducting advance outreach for its rulemakings in order to

obtain enhanced insight into the costs and benefits that will flow from its rules and help accomplish the regulatory balance contemplated by Governor Christie's Executive Orders.

10. COMMENT: The Governor's concern that Department standards may, in some instances, exceed Federal standards is misplaced. The Federal law in most environmental matters acts as a basement, below which states cannot fall, but above which they may build. The Congress and the EPA are aware that they are setting national minimums, just as they are aware that the states are very different. A minimum that makes sense in a relatively unpopulated state such as Montana, will not necessarily make sense in New Jersey, the most densely populated state in the country. A minimum in a relatively virgin state such as Oregon will not necessarily make sense in New Jersey, a state with legacy of toxic industrial pollution. In this context, it is not only appropriate that New Jersey's regulations would exceed Federal standards in a number of instances, it is essentially mandatory. Any state's environmental protection agency that is doing its job will find instances where the peculiarities of the particular state make Federal regulation inadequate.

New Jersey's regulations, because of the State's population density, industrial legacy and proximity to several huge metropolitan areas, should probably exceed Federal standards in many and diverse ways. The Department is uniquely positioned to use Federal standards as a starting point to create regulations that specifically address the unique problems facing New Jersey and its citizens. The Department, therefore, should not hesitate to exceed Federal standards when the health, safety, and welfare of New Jersey's citizens and its environment require it. (2)

RESPONSE: The APA at N.J.S.A. 52:14B-23 and 24 requires State agencies to include in their Federal standards analysis a discussion of the policy reasons that support the agency's decision to impose a standard that is more stringent than a comparable Federal standard. This is in addition to the cost/benefit analysis that the APA requires, as discussed in the immediately preceding response. The Legislature stated, at N.J.S.A. 52:14B-22, "[i]t is the declared policy of the State to reduce, wherever practicable, confusion and costs involved in complying with State regulations. Confusion and costs are increased when there are multiple regulations of various governmental entities imposing unwarranted differing standards in the same area of regulated activity. It is in the public interest that State agencies consider applicable federal standards when adopting, readopting or amending regulations with analogous federal counterparts and determine whether these federal standards sufficiently protect the health, safety and welfare of New Jersey citizens."

Governor Christie's Executive Order No. 2, section 1e, requires State agencies to "[d]etail and justify every instance where a proposed rule exceeds the requirements of federal law or regulation. State agencies shall, when promulgating proposed rules, not exceed the requirements of federal law except when required by State statute or in such circumstances where exceeding the requirements of federal law or regulation is necessary in order to achieve a New Jersey specific public policy goal." This directive establishes a focus and approach to the comparison with Federal law that the APA requires all State agencies and the Department to conduct for rulemaking.

As the commenter points out, the conditions and circumstances of New Jersey and its citizens can be unique to the State. Consequently, both the APA and Executive Order No. 2 acknowledge that there will be times when it is absolutely appropriate for the Department to

promulgate standards that are more stringent than Federal standards, either because New Jersey law so requires or because doing so is necessary in order to achieve important public policy goals for the State.

11. COMMENT: There are probably many instances where Department procedures could be more clear. For example, Department forms may have increased in complexity over the years, some information may be requested redundantly and some permits could, perhaps, be merged. The Department, however, should keep in mind that it is not a “Department of Environmental Permitting,” and its mission should not be to smooth the path from developmental permit applications to development. Central to the idea of protection is that one must often say “no.” The Department should not look at “process improvement” as making it easier to get to “yes.”

(2)

RESPONSE: The Department undertakes various efforts to assist the regulated community in the permit application and review process. For example, in accordance with N.J.S.A. 13:1D-111, the Department develops and makes available technical manuals relating to its various environmental permits. The Department also provides checklists, identifying the application steps and submissions required under the respective permitting program rules. Checklists and applications are made available through the Department’s website. The Department often assigns case managers to assist applicants with the permit process, and to coordinate permitting across various Department programs.

The Department convened the Permit Efficiency Review Task Force in 2008 and, in response to its recommendations (see <http://www.state.nj.us/dep/permittf/documents.html>), has

undertaken various initiatives to improve outreach for rulemaking and to streamline and improve the permit application and review process. The Department is committed to upgrading its information technology infrastructure to support electronic submission and processing of permit applications and associated reports. The Department is in the process of increasing its network capacity, and is accelerating its efforts to design and develop electronic permitting and reporting services. Recent efforts include, for instance, implementation of an electronic water use and transfer reporting program by the water supply program to facilitate data management, eliminate the use of paper forms, reduce data errors, improve tracking and reporting of data, and make data available in a more timely fashion.

The Department believes process improvements that facilitate the issuance of permits that are consistent with the applicable standards and that are issued in a coordinated and timely fashion are beneficial to the regulated community, the Department, and the environment. Streamlining permitting will conserve the resources of all involved and maintain proper focus on achieving substantive environmental protections. As the Permit Efficiency Review Task Force's recommendations and Governor Christie's Executive Orders recognize, the process of obtaining a permit from the Department should not stand in the way of development that is otherwise allowable under applicable environmental protection law and standards.

12. COMMENT: Although many of the State's environmental regulations could be improved, the Department ought not curtail any protections or delay any rules based on the Governor's Executive Orders. (2)

RESPONSE: The Department, in order to inform the reviews of pending proposed rules being conducted by the Department and the Red Tape Review Group established under Executive Order No. 3 issued by Governor Christie on January 20, 2010, extended or reopened the public comment period for certain pending proposals. (See Notice of extension or reopening of comment periods and informal stakeholder meetings for pending Department of Environmental Protection proposals suspended under Executive Order No. 1 (2010), <http://www.nj.gov/dep/rules/notices.html>, 42 N.J.R. 642(a).) In accordance with Executive Order Nos. 1 and 3, the Red Tape Review Group's task is, among other things, to examine various proposed administrative rules and regulations by a number of State agencies prior to their adoption and make detailed recommendations to the Governor to rescind, repeal or amend those rules. Based on those recommendations, the Commissioner of the Department will determine whether or not to proceed with adoption or amendment of the Department's affected proposals.

The Executive Orders and the Red Tape Review process expressly recognize that some rules must be adopted in order to prevent an adverse impact to public safety or security or public health; prevent prejudice to the State with regard to receipt of funding or certifications from the Federal government; allow State agencies to exercise their essential powers, duties and functions; and comply with any judicial deadline. Rule proposals that would result in such adverse impacts if adoption were delayed therefore were not suspended. Executive Order No. 2 also directs State agencies to implement the “common sense principles” in all rulemaking while keeping in mind the core missions of the agency; public health, safety, welfare and the environment; and the agency’s underlying regulatory objectives. In determining whether to proceed with its rule proposals and for all future rulemaking, the Department will necessarily take all of these factors into consideration.

Summary of Agency-Initiated Changes:

On adoption, the Department is changing the title of the Subchapter 2 to “Forestation Program of the New Jersey State Forest Nursery” to clarify that the Forestation Program to which this subchapter pertains is the one conducted by the New Jersey State Forest Nursery. Additionally, the Department is correcting three errors in Subchapter 4. At N.J.A.C. 7:3-4.2(e), the Department is correcting a cross-reference. In N.J.A.C. 7:3-4.3(b), the Department is updating the text, including the address, to reflect that a Certified Tree Expert is required to submit his or her annual renewal fee to the Treasurer—State of New Jersey, rather than to the Department’s Examination and Licensing Unit. In N.J.A.C. 7:3-4.4(c), the Department is making a grammatical correction.

Federal Standards Analysis

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c.65) require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. N.J.A.C. 7:3 is not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. Accordingly, no further analysis is required.

Full text of the readoption follows (additions to the proposal are indicated in boldface with asterisks ***thus***; deletions from the proposal are indicated in brackets with asterisks ***[thus]***):

SUBCHAPTER 2. FORESTATION PROGRAM ***OF THE NEW JERSEY STATE FOREST NURSERY***

SUBCHAPTER 4. CERTIFIED TREE EXPERTS

7:3-4.2 Application procedure

(a) – (d) (No change from proposal.)

(e) If an applicant meets the qualifications set forth in (c) above, the applicant shall take the CTE examination pursuant to (f) below, except that the Board may, at its discretion, waive this examination requirement for an applicant who has previously been a CTE and has voluntarily relinquished his or her CTE certificate in accordance with ***[(i) below]* *N.J.A.C. 7:3-4.5(g)***. Unless the requirement has been waived, the Board shall notify each applicant in writing of the CTE examination requirement.

(f) – (h) (No change from proposal.)

7:3-4.3 Fees

(a) (No change from proposal.)

(b) A person who is certified as a Certified Tree Expert shall submit each year an annual renewal fee of \$25.00, ***payable to Treasurer—State of New Jersey, by mailing it*** to the following address:

*[Examination and Licensing Unit

New Jersey Department of Environmental Protection

P.O. Box 441]*

***NJ Department of the Treasury**

Division of Revenue

P.O. Box 417*

Trenton, New Jersey *[08065-0411]* ***08646-0417***

7:3-4.4 Advertising by Certified Tree Experts

(a) – (b) (No change from proposal.)

(c) The owner or operator of a business that employs a Certified Tree Expert and that claims in advertising that one or more of its employees ***[is a]* *are*** Certified Tree Experts shall do so in accordance with the following:

1. – 2. (No change from proposal.)

(d) – (f) (No change from proposal.)

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order No. 27 (1994),

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2010 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

permit the public to understand accurately and plainly the purposes and expected consequences of this readoption. I hereby authorize this readoption.

Date: _____

Bob Martin, Commissioner
Department of Environmental Protection