

**AGRICULTURE**  
**STATE SOIL CONSERVATION COMMITTEE**  
**Soil Erosion and Sediment Control Act Rules**

**Adopted Rules: N.J.A.C. 2:90-1**

Effective Date: February 20, 2014

Expiration Date: December 8, 2017

**SUBCHAPTER 1. SOIL EROSION AND SEDIMENT CONTROL ON LAND DISTURBANCE**  
**ACTIVITIES**

**2:90-1.1 Purpose and scope**

(a) The rules in this subchapter are to implement P.L. 1975, c.251, N.J.S.A. 4:24-39 et seq. (hereinafter referred to as “the act”), to secure timely decisions by the soil conservation districts on application for development as defined therein, to assure adequate public notice of procedures thereunder to provide for inspection, compliance and enforcement and to continue effective administration of the law. The rules in this subchapter clarify the long standing provisions of the act prescribing the authorities, roles and responsibilities related to implementation of the act for the State Soil Conservation Committee and soil conservation districts. Such authorities, roles and responsibilities include, but are not limited to, the following:

1. For the State Soil Conservation Committee:
  - i. Develop and promulgate rules and technical and administrative standards;
  - ii. Provide program oversight and training, on its own motion or upon request;
  - iii. Conduct appeals from district decisions;
  - iv. Conduct investigations;
  - v. Provide technical assistance;
  - vi. Institute policies and procedures and guidance;
  - vii. Conduct studies;
  - viii. Provide State aid to districts;
  - ix. Approve district fee schedules;
  - x. Discontinue municipal ordinances addressing soil erosion and sediment control;
  - xi. Provide program related interpretative assistance; and
  - xii. Enter into agreements with public agencies; and
2. For soil conservation districts:
  - i. Make determinations and apply the requirements or grant exemption from the act;
  - ii. Review and certify or deny certification of plans;
  - ii. Perform inspections and take enforcement actions, including violation notices, stop construction orders and seek court remedies or fines for violations;

- iv. Issue or withhold reports of compliance, conditional reports of compliance, or final reports of compliance;
- v. Coordinate with municipalities, counties, State and Federal agencies and instrumentalities thereof;
- vi. Conduct appeals from aggrieved parties;
- vii. Adopt or modify a fee schedule and assess fees;
- viii. Monitor the performance of municipalities implementing erosion control ordinances and recommend discontinuance of municipal ordinances when such performance is unsatisfactory; and
- ix. Enter into agreements with public agencies.

## 2:90-1.2 Definitions

All definitions in P.L. 1975, c. 251 are incorporated into the rules of this subchapter. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

**“Act”** means the Soil Erosion and Sediment Control Act of 1975, N.J.S.A. 4:24-39 et seq.

**“Appeal”** means a request for a review of district action.

**“Agriculture and horticulture”** means the utilization of land for the production of food, fiber, animals and related activities customary to agricultural and horticultural production and operations.

**“Certified plan”** means a plan and any revisions thereto reviewed and approved by the district or exempt municipality as conforming to the standards promulgated by the Committee.

**“Committee”** means the State Soil Conservation Committee.

**“Complete application”** means an application and all required items as set forth in N.J.A.C. 2:90-1.4 for soil erosion and sediment control plan certification and that are administratively and technically sufficient for district or exempt municipality certification.

**“Conservation plan”** means a site specific plan which prescribes needed land treatment and related conservation and natural resource management measures deemed by the district to be practical and reasonable for the conservation and protection of agricultural or horticultural productivity and the control and prevention of nonpoint source pollution. Such plan is designed in accordance with the United States Department of Agriculture, June 1, 2005 Field Office Technical Guide, incorporated herein by reference, as amended and supplemented. To obtain a copy of the Field Office Technical Guide, see N.J.A.C. 2:90-1.8(b).

**“Demolition”** means the demolition of one or more structures including the disturbance of all land area necessary to accomplish the work.

**“Exempt municipality”** means any municipality that has secured soil erosion and sediment control ordinance approval for implementing N.J.S.A. 4:24-43 through 47 from the Committee prior to May 31, 1978.

**“Hearing body”** means the State Soil Conservation Committee.

**“Major revision”** means modifications to the soil erosion and sediment control plan which require the district to reevaluate the adequacy of erosion controls for the project and compare the plan to the standards.

**“Minor revision”** means modifications which require minimal examination of the submittal and do not impact the integrity of the previously certified soil erosion control measures as determined by the district.

**“Sequence of construction”** or **“sequence”** means a site specific chronology of proposed erosion

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control plan components including temporary and permanent soil erosion and sediment control measures, integrated with site development related land disturbances that minimizes erosion and sedimentation.

“**Withdrawn plan**” means a plan for soil erosion and sediment control which the applicant or their agent has rescinded from further action by the district.

**2:90-1.3 Standards for Soil Erosion and Sediment Control**

- (a) The State Soil Conservation Committee adopts and hereby incorporates into the rules of this subchapter by reference as standards for soil erosion and sediment control those standards published in the "Standards for Soil Erosion and Sediment Control in New Jersey" and identified as revised on July 11, 2011 as the technical basis for local soil conservation district certification of soil erosion and sediment control plans. Specifically, these standards include the following:

**1. Vegetative Standards:**

Acid Soil Management.....1-1  
Revised July 11, 2011

Dune Stabilization.....2-1  
Revised July 11, 2011

Maintaining Vegetation .....3-1  
Revised July 11, 2011

Permanent Vegetative Cover for Soil Stabilization.....4-1  
Revised April 8, 2013

Stabilization with Mulch Only.....5-1  
Revised July 11, 2011

Stabilization with Sod.....6-1  
Revised July 11, 2011

Temporary Vegetative Cover for Soil Stabilization.....7-1  
Revised April 8, 2013

Topsoiling.....8-1  
Revised April 12, 1999

Tree Protection During Construction.....9-1  
Revised July 11, 2011

Trees, Shrubs and Vines.....10-1  
Revised July 11, 2011

**2. Engineering Standards**

Channel Stabilization.....11-1  
Revised July 11, 2011

Conduit Outlet Protection.....12-1  
Revised July 11, 2011

Detention Structures.....13-1  
Revised July 11, 2011

Dewatering.....14-1  
Revised July 11, 2011

Diversions.....15-1

|                                     |      |
|-------------------------------------|------|
| Revised July 11, 2011               |      |
| Dust Control.....                   | 16-1 |
| Revised July 11, 2011               |      |
| Grade Stabilization Structure.....  | 17-1 |
| Revised July 11, 2011               |      |
| Grassed Waterway.....               | 18-1 |
| Revised July 11, 2011               |      |
| Land Grading.....                   | 19-1 |
| Revised April 12, 1999              |      |
| Lined Waterway.....                 | 20-1 |
| Revised July 11, 2011               |      |
| Offsite Stability Analysis.....     | 21-1 |
| Revised July 11, 2011               |      |
| Riprap.....                         | 22-1 |
| Revised July 11, 2011               |      |
| Sediment Barrier.....               | 23-1 |
| Revised July 11, 2011               |      |
| Sediment Basin.....                 | 24-1 |
| Revised July 11, 2011               |      |
| Slope Protection Structures.....    | 25-1 |
| Revised July 11, 2011               |      |
| Soil Bioengineering .....           | 26-1 |
| Revised July 11, 2011               |      |
| Stabilized Construction Access..... | 27-1 |
| Revised July 11, 2011               |      |
| Storm Sewer Inlet Protection.....   | 28-1 |
| Revised July 11, 2011               |      |
| Stream Crossing.....                | 29-1 |
| Revised July 11, 2011               |      |
| Subsurface Drainage.....            | 30-1 |
| Revised July 11, 2011               |      |
| Traffic Control.....                | 31-1 |
| Revised July 11, 2011               |      |
| Turbidity Barrier.....              | 32-1 |
| Revised July 11, 2011               |      |

3. Copies of the Standards may be obtained by contacting the State Soil Conservation Committee at 609-292-5540, [www.state.nj.us/agriculture](http://www.state.nj.us/agriculture), or any of the soil conservation districts as follows:

- i. Bergen County Soil Conservation District;
- ii. Burlington County Soil Conservation District;
- iii. Camden County Soil Conservation District;
- iv. Cape-Atlantic Soil Conservation District;
- v. Cumberland-Salem Soil Conservation District (Cumberland and Salem Counties);
- vi. Freehold Soil Conservation District;

- vii. Gloucester County Soil Conservation District;
- viii. Hudson, Essex and Passaic Soil Conservation District;
- ix. Hunterdon County Soil Conservation District;
- x. Mercer County Soil Conservation District;
- xi. Morris County Soil Conservation District;
- xii. Ocean County Soil Conservation District;
- xiii. Somerset-Union Soil Conservation District;
- xiv. Sussex County Soil Conservation District; and
- xv. Warren County Soil Conservation District.

- (b) Where it can be satisfactorily demonstrated by the applicant that unique or innovative control measures or procedures not specified in this chapter may be applicable to specific sites, such measures may be proposed for consideration and utilized subject to approval by the soil conservation district and the State Soil Conservation Committee. To secure such approval, a written request shall be sent to the soil conservation district and State Soil Conservation Committee describing the unique or innovative control measure or procedure and its proposed function or use on the project. Such approval may be granted only where it is determined that strict application of the standards are herein specified will not result in the most practical and effective control of soil erosion, sedimentation and stormwater damage.
- (c) The location, address, and telephone and number of the local soil conservation district may be obtained from the State Soil Conservation Committee, PO Box 330, Trenton, New Jersey 08625-0330. 609-292-5540.

#### **2:90-1.4 Application**

- (a) Application for soil erosion and sediment control plan certification shall be made to the local district utilizing standard application forms adopted by the Committee. Such application shall indicate the information required to make a decision on certification of plans. Application forms are available at locations listed at N.J.A.C. 2:90-1.3.
- (b) Applications for certifications of soil erosion and sediment control plans shall include the following items:
  - 1. One copy of the complete subdivision, site plan or construction permit application, including key map as submitted to the municipality (architectural drawings, plans and specifications for buildings not required) which includes the following:
    - i. The location of present and proposed drains and culverts with their discharge capacities and velocities and supporting computations and identification of conditions below outlets;
    - ii. A delineation of any area subject to flooding from the 100-year storm in compliance with the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., or applicable municipal zoning;

- iii. A delineation of streams and wetlands pursuant to N.J.S.A. 13:9A-1 et seq. and 13:9B-1 et seq., and other significant natural features within the project area;
  - iv. The soils and other natural resource information used (delineation of the project site on soil map is desirable);
  - v. The land cover and use of area adjacent to the land disturbance; and
  - vi. All hydraulic and hydrologic data describing existing and proposed watershed conditions and a completed copy of the Hydraulic and Hydrologic Data Base Summary Form SSCC 251 HDF1. Where computer simulation models (such as HEC-HMS, HEC-RAS, TR-55, or other similar models) are used to analyze or predict hydrologic or stream flow responses to project development, a copy of such input files shall be submitted to the district. The Data Base Summary Forms and information regarding these computer programs are available at the locations listed at N.J.A.C. 2:90 1.3;
2. Up to four copies of the soil erosion and sediment control plan at the same scale as the site plan submitted to the municipality nor other land use approval agency which includes the following information detailed at the plat:
- i. The proposed sequence of development including duration of each phase in the sequence;
  - ii. A site grading plan delineating land areas to be disturbed including proposed cut and fill areas together with existing and proposed profiles of these areas;
  - iii. Contours at a two foot interval, showing present and proposed ground elevation;
  - iv. The locations of all streams and existing and proposed drains and culverts;
  - v. A stability analysis below all points of stormwater discharge which demonstrates that a stable condition will exist or there will be no degradation of the existing condition;
  - vi. The location and detail of all proposed erosion and sediment control structures including profiles, cross sections, appropriate notes, and supporting computations;
  - vii. The location and detail of all proposed nonstructural methods of soil stabilization including types and rates of lime, fertilizer, seed and mulch to be applied;
  - viii. Erosion control measures for non-growing season stabilization of exposed areas where the establishment of vegetation is planned as the final control measure;

- ix. For residential development, erosion control measures which apply to dwelling construction on individual lots with notation on the final plat that requirement for installation of such control measures shall apply to subsequent owners if title is conveyed; and
  - x. Plans for maintenance of permanent soil erosion and sediment control measures and facilities during and after construction, which include the designation of persons or entity responsible for such maintenance;
3. An Ownership Disclosure Affidavit Form to determine potential conflicts of interest between the applicant and soil conservation district supervisor or staff.
    - i. A corporation must indicate its registered agent and officers.
    - ii. A corporation, partnership, or limited liability corporation (LLC) shall list the names and addresses of all stockholders or individual partners owning at least 10 percent of its stock of any class, or at least 10 percent of the interest in the partnership.
    - iii. Any transfer of ownership of more than 10 percent must be disclosed to the district;
  4. Appropriate fees as adopted by the individual district and approved by the Committee (see N.J.A.C. 2:90-1.12); and
  5. Additional information as may be required by the district depending upon the scope, topography and complexity of the project.
- (c) The applicant shall certify and agree that the applicant shall:
1. Certify that all soil erosion and sediment control measures are designed in accordance with current Standards for Soil Erosion and Sediment Control in New Jersey as promulgated by the Committee and found at N.J.A.C. 2:90-1.3 and will be installed in accordance with the plan as approved by the district;
  2. Acknowledge that structural measures contained in the soil erosion and sediment control plan are reviewed for adequacy to reduce offsite soil erosion and sedimentation and not for adequacy of structural design;
  3. Retain full responsibility for any damages which may result from any construction activity notwithstanding district certification of the soil erosion and sediment control plan;
  4. Require that all engineering related items of the soil erosion and sediment control plan be prepared by or under the direction of and be sealed by a professional engineer or architect licensed in the State of New Jersey in

accordance with N.J.A.C. 13:27-6;

5. Assure that any conveyance of the project or portion thereof is conditioned upon transfer of full responsibility for compliance with the certified plan to any subsequent owners;
  6. Maintain a copy of the certified plan on the project site during construction;
  7. Allow district agents to go upon project lands for inspection; and
  8. Notify the district in writing at least 48 hours in advance of any land disturbance activity and upon completion of the project.
- (d) If the person submitting the application is not the project owner, a notarized authorization by the owner or authorized corporate officer must be submitted with the application. For public agency projects, such authorization shall be made by the principal executive officer or elected official of the agency.
- (e) All requests for determination that the act does not apply to land disturbance activity shall be submitted to the district by the owner or their authorized representative. Non-applicability requests shall be in writing and include a plot or site plan depicting all proposed areas of disturbance and a resolution from the municipality or other suitable documentation indicating the date the lot was created. Hardship exemptions or waivers shall not be authorized. The act does not apply to the following activities:
1. Land disturbance activities 5,000 square feet or less; and
  2. Single-family dwelling lots not regulated under N.J.A.C. 2:90- 1.5.
- (f) Any land disturbance activity to which the act was initially determined not to apply but which subsequently falls within the definition of project, as defined in N.J.S.A. 4:24-41g, shall be subject to the rules of this subchapter.
- (g) Any application for development for a project that was approved by the State, any county, municipality, or any instrumentality thereof, without the condition that the application for development comply with the act pursuant to N.J.S.A. 4:24-43 and this subchapter, shall not be relieved of the obligation to conform to the act and this subchapter. A successor in title shall be subject to this subchapter.

### **2:90-1.5 Single-family dwelling unit lots**

- (a) An application for a construction permit for any single-family dwelling unit, on any lot that has arisen from a subdivision approved after January 1, 1976 comprising two or more contiguous or non-contiguous single-family dwelling lots, the construction of which would disturb greater than 5,000 square feet, including associated offsite improvements, is subject to the act, and the applicant/owner shall secure certification of a soil erosion and sediment control plan. The act shall also apply if any lots in the subdivision are



conveyed to separate owners or if construction is by the same or a separate applicant, owner, builder or contractor.

- (b) The concurrent construction of two or more single-family dwelling units, by the same applicant, owner, builder or general contractor on lots that were part of a preexisting subdivision approved prior to January 1, 1976, shall be subject to the act and this subchapter provided that the proposed cumulative land disturbance, including associated offsite improvements, is greater than 5,000 square feet.

#### **2:90-1.6 Mining and quarrying activities**

Certification of a soil erosion and sediment control plan shall be required for the operation of all mining or quarrying activities regardless of proposed or actual related agricultural or horticultural use. Mining or quarrying activities shall include the extraction and removal of soil and/or sediment, as defined in N.J.S.A. 4:24-41, from the proposed site.

#### **2:90-1.7 Demolition activities**

Any demolition activity of one or more structures and any associated new disturbance activity involving more than 5,000 square feet in size including the construction of one single-family dwelling or other project shall obtain soil erosion and sediment control plan certification.

#### **2:90-1.8 Clearing or grading of land**

- (a) Except as provided in (b) and (c) below, a person proposing to engage in or who is engaging in clearing or grading of more than 5,000 square feet of land shall be subject to the act unless such land disturbance is for agricultural or horticultural purposes. To demonstrate to the district that such activity is related to proposed agricultural or horticultural activities, the owner shall provide proof that the land is enrolled in a farmland preservation program, eligible for farmland assessment, qualifies for right-to-farm protections, or possesses a farm conservation plan or forest management plan, timber harvest sale contract or other proofs deemed appropriate by the district. Anyone seeking to provide a farm conservation plan as proof of agricultural or horticultural use must waive confidentiality under the Federal Freedom of Information Act. The district shall determine if the proofs demonstrate an agricultural or horticultural activity or is subject to the act and this subchapter.
- (b) Certification of a soil erosion and sediment control plan shall be required for the construction of agricultural structures, involving the disturbance of greater than 5,000 square feet of land unless the disturbance is incorporated into a farm conservation plan approved by the district as conforming to the United States Department of Agriculture, June 1, 2005 Field Office Technical Guide, which is hereby adopted and incorporated by reference, as amended and supplemented.

1. Copies of the New Jersey Field Office Technical Guide are available from the NRCS Field Offices and the State Office at 220 Davidson Ave., 4th Floor, Somerset, NJ 088873.

2. An electronic copy of the New Jersey Field Office Technical Guide is available at <http://www.nrcs.usda.gov/technical/efotg/>.
  3. A copy of this document is on file in the NJDA Office of the Director, Division of Agricultural and Natural Resources, Health and Agriculture Building, Market and Warren Streets, Trenton, NJ 08625.
- (c) Disturbances on agricultural land greater than 5,000 square feet in size other than for agricultural or horticultural purposes, may be subject to the act and this subchapter or may be incorporated into the farm conservation plan when so determined by the district.

### **2:90-1.9 Procedure**

- (a) The district shall carry out the provisions of N.J.S.A. 4:24-43 through 47.
- (b) No project shall be undertaken by any person, partnership, corporation, or limited liability corporation (LLC) or other private or public agency unless the applicant has submitted to the district with local jurisdiction a plan for soil erosion and sediment control for such project, and the plan has been certified by the district as conforming to the standards promulgated by the New Jersey State Soil Conservation Committee. The plan shall provide for the control of soil erosion and sedimentation and utilize the standards adopted by the Committee.
- (c) Approval by a municipality officer or agency for an application for development for any project shall be conditioned upon certification by the district for a plan for soil erosion and sediment control.
- (d) The district shall review all soil erosion and sediment control plans submitted with a complete application and provide that the applicant or their agent with a written notice indicating that:
  1. The plan was certified;
  2. The plan was certified subject to the attached conditions; or
  3. The plan was denied certification with the reasons for the denial stated.
- (e) The district shall include in the notice of certification or on the certified plan the following clause: "This certification is limited to the controls specified in this plan. It is not authorization to engage in the proposed land use unless such use has been previously approved by the municipality, county, State agency or other controlling agency."
- (f) The district shall furnish the municipal planning board, municipal construction official, and municipal engineer, or other responsible official or entity in the case of a county, State or other agency, a copy of the certification or denial including all conditions and statements.
- (g) The district shall grant or deny certification within 30 days from submission of a

- complete application. The district may be granted an additional 30-day review period through mutual written agreement with the applicant. Failure of the district to grant or deny certification within such period or such extension thereof shall constitute certification. When the applicant fails to respond to two or more written requests by the district for additional information, the application may be denied. If the district denies an application for soil erosion and sediment control plan certification, the applicant may resubmit the plan at any future time for review and certification.
- (h) The applicant may withdraw an application or a certified plan by written request to the district. The applicant may subsequently resubmit the plan for certification.
  - (i) District certification of a soil erosion and sediment control plan for any project shall be valid only for the duration of the initial project approval granted by the municipality or other land use approval agency but in no case shall exceed three and one-half years. All such municipal or other agency renewals of the project will require resubmission of the project plan and recertification approval by the district. Certification of the plan is conferred upon the project and may be transferred or conveyed.
  - (j) The current project owner shall notify the district in writing if there is a change of ownership during implementation of the plan.
  - (k) By formal action, a district may delegate jurisdiction over a project to another district. An applicant proposing a project that requires certification by more than one district shall secure certification from each respective district unless full jurisdiction is transferred to one district.
  - (l) The sequence of construction shall be an integral component of the certified plan and shall be followed by the applicant or their agent during all phases of the project. The sequence shall incorporate the installation of temporary and permanent controls, and shall include, but not be limited to, clearing and grading, cuts and fills, temporary diversions, sediment basins, tracking controls, temporary and permanent stabilization and dust control. The sequence of construction may be revised and shall be resubmitted to the district for approval during construction to address site concerns.
  - (m) At its discretion, the district may require an interim clearing and grading plan on a project for critical area stabilization during construction due to the presence of erodable soils, slopes or water quality concerns for mitigating existing, emerging or anticipated erosion hazards.

#### **2:90-1.10 Revisions to the certified plan**

- (a) A district may require a new submission of the plan, supporting documentation, application and fee when a major revision is made. The district may require submission of a revised plan, supporting documentation and a fee where minor revisions are needed.
- (b) Revisions to the certified plan shall be submitted to the district for reevaluation and certification prior to implementation of the change. Such changes shall be in accordance

with the standards in effect on the date that revisions to the plan are being submitted to the district.

- (c) Revisions to a plan required during construction shall be submitted to the district for certification. No report of compliance or conditional report of compliance shall be issued if the district determines that a revision to the plan is required.

### **2:90-1.11 Exempt municipality ordinances and implementation**

- (a) Adoption by the municipality of soil erosion and sediment control ordinances for approval by the Committee must have been completed by May 31, 1978, in order to qualify for an exemption from N.J.S.A. 4:24-43 through 47. Such exempt municipalities shall enforce the provisions of the ordinance in conformance with district policies and procedures for consistency between municipal and district erosion control programs Statewide.
- (b) Exempt municipal ordinances may specifically require municipal certification of demolition, parking lot construction, land clearing or grading or mining and quarrying activities. Where such projects are not encompassed in the ordinance, the municipality shall not exercise jurisdiction until the ordinance is amended and approved by the Committee. No exempt municipality shall exercise jurisdiction over plan certification on any county or a State project; or where municipal regulation of a municipal project would constitute a conflict of interest or the appearance of a conflict of interest. In all such cases, such projects shall be referred to the district for certification and enforcement.
- (c) No exempt municipality or any other municipality shall implement a soil erosion and sediment control ordinance or provision that is more restrictive than the definition of project in the act. No exempt municipality may grant a waiver of the requirements or grant an exemption for a project as defined in the act or rules promulgated thereto.
- (d) Soil erosion and sediment control ordinances adopted by exempt municipalities may provide for the review and certification of plans, inspection and enforcement by the district in accordance with this subchapter. In all such cases, there shall be written contracts with the municipality, the district and the Committee. The district shall utilize its fee schedule for collection of fees from applicants.
- (e) Exempt municipalities implementing ordinances approved by the Committee shall utilize the Committee's standard application form, letter of certification form, reports of compliance form, quarterly report form and Hydraulic and Hydrologic Basin Summary form.
- (f) Exempt municipal officials enforcing the provisions of the ordinance shall be knowledgeable in natural resources management and qualified to review plans and inspect project sites. Municipal staff shall attend Committee approved training courses, no less than once every two years.
- (g) Exempt municipalities implementing ordinances approved by the Committee shall

provide reports to the district and provide information as follows:

1. Verification of municipal certification of the soil erosion and sediment control plan for the Construction General Permit 5G3 for eligible activities: at the end of each business week;
  2. A copy of the Hydraulic and Hydrologic Basin Summary form for all newly certified stormwater basins and stormwater outfalls within 15 days following the end of each calendar-year quarter; and
  3. The following information shall be provided to the local district by March 15 of each year:
    - i. The current soil erosion and sediment control ordinance; and
    - ii. The municipal agent contracts responsible for implementing the erosion control ordinance and training classes attended.
- (h) Failure by any exempt municipality to satisfactorily implement the ordinance as determined by the district or conform with this section, may result in action by the Committee to revoke the ordinance.
- (i) Districts shall annually review for compliance all soil erosion and sediment control ordinances enacted by exempt municipalities within the district. The municipality shall cooperate with the district to demonstrate the manner of municipal implementation of the erosion control ordinances. The district shall inform the committee in writing of the results of this review by April 15 of each year. If at any time during the year, the district determines and so notifies and provides proof to the Committee that any exempt municipality is not enforcing its soil erosion and sediment control ordinance, the Committee shall consider the proofs given and the Committee shall provide written notice to the municipality that it is no longer exempt from N.J.S.A. 4:24-43 through 47. The Committee, at its discretion, may schedule a hearing to review revocation of exempt status.
- (j) Any proposed changes to an exempt municipal ordinance which has received the approval of the committee, and is therefore exempt from N.J.S.A. 4:24-43 through, must be submitted to the Committee for review and approval prior to enactment of the revised ordinance. For the municipality's exempt status to continue, all such changes must be found to be in accordance with the act and approved as such by the Committee. Failure of the municipality to secure written notification of approval will result in discontinuance of municipal exemption from N.J.S.A. 4:24-43 through 47.

## **2:90-1.12 Fees**

- (a) Ordinary fees: Reasonable fees shall be set by the districts based on the costs for providing services. The district shall establish fee categories based on the types and sizes of construction projects and an hourly rate for assessing fees. The fee schedule provisions proposed by each district shall be approved by the committee before it is implemented by

the district. Any person aggrieved on the set fee may appeal to the Committee as outlined in N.J.A.C. 2:90-1.16.

- (b) Extraordinary fees: The district fee schedule may include the assessment of fees for reimbursement of extraordinary expenses resulting from enforcement actions taken. The district may seek reimbursement for litigation expenses including court costs and attorney’s fees from the adverse party as part of a negotiated settlement agreement or where the district prevails in any litigation action.
- (c) Interest income derived from fee reserve balances may be utilized by the district for implementing district education programs for applicants, contractors, municipal officials and the public.
- (d) Fee for certain federal projects: Certain federal project activities that are precluded from making fee payments directly to a district, based on applicable federal and state laws shall remit fees payable to “Treasurer, State of New Jersey” to the local district in which the project is to be undertaken. The fee shall be submitted in conjunction with the plan for soil erosion and sediment control certification. The fee shall be in accordance with the following fee schedule based on the land surface area to be disturbed:

Federal Project Fee Schedule

| <u>Disturbance Area*</u> | <u>Review Fee**</u> | <u>Inspection Fee***</u> |
|--------------------------|---------------------|--------------------------|
| 1 to 5 acres             | \$950               | \$325 per acre           |
| 6 to 10 acres            | \$1,600             | \$260 per acre           |
| 11 to 25 acres           | \$2,300             | \$200 per acre           |
| 26 to 50 acres           | \$3,000             | \$180 per acre           |
| 51 acres and greater     | \$3,500             | \$160 per acre           |

\* For projects greater than one (1) acre, partial acres are to be rounded to the nearest whole acre.

\*\*Major revisions to a previously certified plan are subject to ½ the original review fee.

\*\*\*Reinspection Fee: A fee of \$150 may be assessed (a) when the contractor has failed to provide the district with a 48 hour advance written notice of the start of construction, or (b) when the second or subsequent district inspection was conducted and there was a failure to address the same problem identified in the first written notice of non-compliance issued to the applicant/contractor, or (c) when the contractor requested an inspection for receiving a Report of Compliance and such district inspection was performed, but the site was not in compliance with the certified plan and the Standards. A copy of all written violation notices shall be issued to the contractor with a copy provided to the local controlling federal agency.

### **2:90-1.13 Enforcement**

- (a) Inspection of projects to determine execution in accordance with the certified plan shall be carried out by the district in close coordination with the municipal engineer and building inspector.
- (b) The district shall determine whether or not the provisions of the certified plan and sequence of construction are being followed by the applicant.
- (c) The district shall inform the applicant in writing of observed deviation from the certified plan and request immediate compliance with the plan. Failure of the applicant to adequately correct deficiencies in the time frame set forth in the district letter to the applicant shall result in the issuance of a violation notice. Failure of the applicant to correct the deficiencies in the violation notice may result in the issuance of a stop construction order.
- (d) The district or the municipality may issue a stop-construction order if the applicant fails to take a majority of identified actions to comply with the provisions of the certified plan. The district or municipality may issue a stop-construction order if a person initiates land disturbance prior to securing plan certification or fails to renew plan certification on an active project within 30 days of receiving notice of pending expiration from the district or municipality.
- (e) When a stop-construction order is issued, no further construction activity or any other work may take place on the project except for implementation of erosion controls as required by the district, until such time the project is in compliance with all provisions of the certified plan.

### **2:90-1.14 Reports of Compliance**

- (a) A district having certified a soil erosion and sediment control plan for a project pursuant to N.J.S.A. 4:24-39 et seq. shall issue a written Final Report of Compliance (FROC) in accordance with this section, upon the district's determination that the project is in full and complete compliance with the requirements and provisions of the certified plan such that all permanent measures to control soil erosion and sedimentation are in effect for the entire project.
- (b) A Report of Compliance (ROC) shall be issued when the District determines that a project or portion thereof is in full compliance with the certified plan and the Standards for Soil Erosion and Sediment Control in New Jersey (see N.J.A.C. 2:90-1.3), and that the permanent measures to control soil erosion and sedimentation are in effect for the area encompassed by the ROC.
- (c) A Report of Compliance with Conditions (CRC) shall be issued when the District determines that the project or portion thereof is not yet in full compliance with the certified plan but is in satisfactory compliance to the extent practicable and in accord with the sequence of development and requirements thereof, such that the issuance of a

- temporary and conditional approval is appropriate with such conditions as may be imposed by the District. Satisfactory compliance means temporary measures and appropriate permanent measures for soil erosion and sediment control have been implemented according to the Standards including provisions for stabilization, site work and that no other site specific concerns exists.
- (d) Upon written request from the applicant, the District may issue a ROC or CRC on a lot-by-lot or section-by-section basis for a project when lots or sections are part of the project.
- (e) The district may withhold an ROC, CRC, or FROC for any project that has not secured discharge authorization of the stormwater general permit 5G3 where an NJPDES permit is required for stormwater discharges associated with a construction activity pursuant to N.J.A.C. 7:14A-24.2.
- (f) All fees shall be paid to the district prior to issuance of the ROC, CRC, or FROC.
- (g) A standard Report of Compliance form approved by the State Soil Conservation Committee shall be utilized by the district and shall allow for the district's issuance of a CRC, ROC or FROC. The district shall complete the standard Report of Compliance form in accordance with the requirement set forth in (g) 1 through 4 below.
1. The district shall identify on the standard Report of Compliance form the block and lot, street address (if known), municipal location, the District application number and the date of issuance of the ROC.
  2. The district shall state on the standard Report of Compliance form that the project or applicable portion thereof is in compliance with permanent measures to the extent determined by the district.
  3. In order for the district's issuance of a ROC to be valid and effective, the standard Report of Compliance form shall be signed by an authorized district official, the district chairman or designee, and specify its effective date.
  4. In order for the district's issuance of a CRC to be valid and effective, the district shall comply with the requirements set forth in (g) 1 through 3 above, and shall state in the standard Report of Compliance form all conditions that are to be satisfied to assure compliance with the requirements of the certified plan, as well as the date for completion of such conditions.
- (h) Copies of the ROC, CRC or FROC shall be distributed by the district to the applicant; the municipal construction code official having construction code jurisdiction for the project, if applicable; and/or in the case where a construction permit is not required for a project (such as for mining and land clearing projects among others), the municipal official having jurisdiction over such project, if any.
1. The district may also issue a copy of a ROC or CRC, to such other persons or



entities, as the district deems necessary or appropriate in its discretion. This includes, without limitation, and county, state and Federal agency, or instrumentality thereof, exercising any jurisdiction over the project.

2. In the case where a municipality authorized under N.J.S.A. 4:24-48 is the issuing agent, a copy of all ROC's and CRC's shall be submitted to the local District.
  - (i) No certificate of occupancy (CO) for a building or structure on a project, or any portion thereof, shall be issued by a municipality or any other public agency unless there has been an ROC or FROC issued by the district indicating compliance with the provisions of the certified plan for measures to control soil erosion and sedimentation. The district shall provide the municipality or other public agency with an ROC or FROC in accordance with (h) above.
  - (j) No temporary certificate of occupancy (TCO) for a building or structure on a project, or any portion thereof, shall be issued by a municipality or any other public agency unless a CRC or ROC is issued by the district. The district shall provide the municipality or other public agency with a copy of the CRC, ROC or FROC.
  - (k) During the non-growing season, as defined in the Standards for Soil Erosion and Sediment Control in New Jersey (the Standards), or where seasonal or weather related constraints exist, or where the applicant's scheduling has prevented or delayed final stabilization (for example, completed site work during winter), the District may issue a CRC or ROC in accordance with (k) 1 through 3 below.
    1. Where the applicant has completed temporary stabilization and provided temporary erosion control measures in compliance with the certified soil erosion and sediment control plan, the applicant may request a CRC or ROC from the District. The District may also require the applicant to provide a performance deposit and enter into a performance agreement with the District to assure completion of final stabilization. In such instance, the District, at its option, may issue the CRC or ROC subject to the requirement that final stabilization be completed by the date indicated on the performance agreement such as, by the end of the next growing season, as defined in the Standards or such reasonable time period established by the District.
    2. Upon receipt of the signed performance agreement and cash performance deposit, the District shall deposit the performance deposit into an interest escrow account with interest to accrue to the benefit of the applicant. The applicant shall sign and deliver to the District, any and all forms required by the District or its bank to open and maintain such interest bearing escrow account.
    3. Upon completion of final stabilization by the applicant, the District shall return such performance deposit with interest to the applicant minus the administrative costs assessed by the District pursuant to (i)6 below.
    4. Upon the failure of the applicant to timely or satisfactorily implement the permanent

stabilization in accordance with performance agreement and this section, the District shall provide written notification of such failure to the applicant together with a demand that such failure be fully cured within 10 calendar days of the date of such notification to the District's satisfaction or a later date established by the District.

If after such 10 calendar day period, or agreed-to time frame, such failure is not fully and properly cured to the District's satisfaction the District may utilize the applicant's performance deposit in order to contract for all work necessary or required to cure such failure and to complete all permanent measures in accordance with the performance agreement.

5. The District's rights and remedies pursuant to this subsection are in addition to all of its other rights and remedies under the law including N.J.S.A. 4:24-39 et seq.
  6. The District may charge a fee in connection with the processing and administration of the performance agreement and performance deposit, which shall be listed in the District fee schedule, approved by the Committee.
- (1) Any exempt municipality authorized by the Committee pursuant to N.J.S.A. 4:24-48, and implementing an approved ordinance thereunder shall implement these provisions.

### **2:90-1.15 Reports**

The districts shall submit quarterly reports to the committee giving number of applications, number of certifications, denials and number of reviews and other information as required by the Committee. Reports shall be submitted to the Committee within 15 days after the end of each quarter. A copy shall be retained by the district.

### **2:90-1.16 Appeal process**

- (a) Any person aggrieved by a decision or action of the district shall first submit a written request for reconsideration to the district within 10 working days of the action taken. The district shall convene a meeting and make a determination on the request within 35 calendar days of the request unless additional time is mutually agreed upon by the district and the aggrieved person. All such proceedings shall be memorialized in the district minutes.
- (b) To appeal the determination of the district, the aggrieved person shall subsequently petition the Committee in writing within 10 working days of the determination by the district. The Committee shall schedule a hearing and make a determination within 90 calendar days of the petition for review and notify the appellant pursuant to (c) below unless additional time is mutually agreed upon by the Committee and the aggrieved person. The Committee may appoint and utilize the hearing office procedures of the Department of Agriculture for fact-finding and recommendations to the Committee. The Committee may alternatively pursue an informal resolution of the matter contested. Any person against whom a stop-construction order is issued by any district shall also have the right to appeal directly to the

THIS IS A COURTESY COPY OF THIS ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JANUARY 20, 2014, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

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Committee. Requests for appeal shall be addressed to:

State Soil Conservation Committee  
PO Box 330  
Trenton, New Jersey 08625

- (c) The Committee shall send a written notice to the appellant of the hearing stating:
  - 1. The hearing application number; and
  - 2. The date, time and place of the hearing.
  
- (d) The Committee may, on its own motion or at the request of any person aggrieved of any action by the district, review the decision of any soil conservation district and make whatever determinations it deems appropriate in the matter.
  
- (e) Any party who disagrees with the determination of the Committee may request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1 et seq.