

RULE PROPOSALS

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

AGRICULTURE

(a)

DIVISION OF AGRICULTURAL AND NATURAL RESOURCES

STATE SOIL CONSERVATION COMMITTEE

Soil Erosion and Sediment Control on Land Disturbance Activities

Proposed Amendments: N.J.A.C. 2:90-1.1 through 1.5, 1.8, 1.9, 1.11, 1.13, 1.14, and 1.16

Authorized By: State Soil Conservation Committee and Douglas H. Fisher, Secretary, Department of Agriculture.

Authority: N.J.S.A. 4:24-3, 4:24-41, 4:24-42 and 4:24-42.1.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2012-090.

Submit comments by August 31, 2012 to:

Frank Minch
Coordinator, Soil and Water Conservation Programs
State Soil Conservation Committee
New Jersey Department of Agriculture
PO Box 330
Trenton, NJ 08625-0330
Email: SSCCrules@ag.state.nj.us

The agency proposal follows:

Summary

The Soil Erosion and Sediment Control Act of 1975, N.J.S.A. 4:24-39 et seq., as amended, requires the approval of applications for development where more than 5,000 square feet of land surface area is disturbed. The approval is conditioned upon certification of a plan for soil erosion and sediment control by the local soil conservation district where the soil disturbance occurs. In addition, the Soil Restoration Act (P.L. 2010, c. 113) requires the development of standards to provide for cost-effective restoration of the optimal physical, chemical, and biological functions for specific soil types and intended land use.

The State Soil Conservation Committee (SSCC) is empowered and required to promulgate technical and administrative standards for such controls for Statewide implementation. The proposed amendments establish revised and new Standards for Soil Erosion and Sediment Control (Standards) as the basis for design and installation of vegetative and engineering practices applicable to construction, mining, and other related land disturbance activities.

Ten vegetative standards and 22 engineering standards (a reduction from the current 25 engineering standards) are proposed as a comprehensive listing of practices applicable to controlling soil erosion

and sedimentation. The proposed amendments to the Standards have been developed with the assistance of a technical advisory group comprised of representatives from professional engineering, building and landscape associations, Rutgers Cooperative Extension (Rutgers), New Jersey soil conservation districts, the State Department of Environmental Protection (NJDEP), the State Department of Transportation (NJDOT), the United States Department of Agriculture Natural Resources Conservation Service (NRCS), and other advisors.

The proposed amendments also address the soil restoration requirements of the Soil Restoration Act. Those amendments were developed with the assistance of a subcommittee of representatives from Rutgers, NJDEP, the Department of Agriculture (Department), NJDOT, the New Jersey Builders Association, New Jersey Nursery and Landscaper Association, State soil conservation districts, Pinelands Commission, Pinelands Preservation Alliance, Site Improvement Advisory Board, NRCS, and consulting professional engineers.

The SSCC proposes to amend N.J.A.C. 2:90-1 to provide the orderly continuation of implementing the Act by the SSCC and the local soil conservation districts and to enhance the coordination between soil conservation districts and municipalities that regulate construction activities. The Act is also administered in conjunction with the NJDEP's stormwater construction general permit (5G3) that is implemented by the soil conservation districts and the SSCC. The 5G3 permit is required for most land disturbance activities greater than one acre. These proposed amendments enable persons proposing to engage in development activities to meet both mandates.

N.J.A.C. 2:90-1.1(a)2iv has been expanded to include other types of compliance reports routinely issued by districts, which include the conditional and the final reports of compliance. At N.J.A.C. 2:90-1.2, the definition of agriculture and horticulture is expanded from "cultivation of land" to include uses of land in support of all production agriculture and horticulture activities. The definitions of "certified plan" and "complete application" are expanded to recognize the authority of "exempt municipalities" in implementing the program.

Proposed changes to the Standards in N.J.A.C. 2:90-1.3 correct previous errata and update commonly used engineering methodology. All Standards have been revised to remove references to chapter page numbers to allow for easier insertion or deletion of Standards in the future. Additional criteria have been developed to provide specific guidelines for land stabilization for construction activities taking place within the Pinelands National Reserve. This region possesses a unique ecosystem and the proposed Standard outlines appropriate methods to enhance the use of native vegetation when possible. The Standard for Land Grading and the Standard for Topsoiling have been changed in response to the Soil Restoration Act (P.L. 2010, c. 113). The Top Soiling Standard and the Land Grading Standard incorporate soil restoration measures. A description of other changes to the Standards are as follows:

Vegetative Standards

Management of High Acid Producing Soils - Liming rates were amended for consistency with the New Jersey Department of Environmental Protection rules; and the list of geologic formations that commonly contain high acid producing deposits was expanded for consistency with New Jersey Geologic Survey's updated mapping.

Dune Stabilization - Recommendations were provided for plant species rather than cultivars; and *Rosa rugosa* and Japanese black pine were removed from listing since they are considered invasive species.

Maintaining Vegetation - Fertilizer rates were amended; and additional language regarding soil testing was provided, including suggestions for restricting lime and fertilizer applications in the Pinelands.

Permanent Vegetative Cover for Soil Stabilization - Invasive species were removed from seed mixtures; seed mixtures were reconciled with New Jersey Department of Environmental Protection requirements; seed mixtures were revised along with seeding rates, optimal/acceptable planting dates, and fertilizer; and lime requirements to be consistent with Rutgers recommendations. Specific methods for alternative natural regeneration were established within the Pinelands National Reserve in areas of non-stormwater concentrated flows (roadbanks, site peripheral areas, etc.); preferred Pinelands seed mixtures were provided; as well as reduced lime/fertilizer rates for natural regeneration areas; and a procedural flow chart was added for builders wishing to propose natural regeneration area(s). A note regarding acceptable seed testing dates was incorporated; and emulsified asphalt was removed as an acceptable option to bring the Standard up to date with current science.

Stabilization with Mulch Only - Emulsified asphalt has been removed as an acceptable option to bring the Standard up to date with current science; salt hay was removed as an acceptable mulch material; and language about acceptable mulch coverage has been added to relate to visual cues along with specified amounts (tons/acre).

Permanent Stabilization with Sod - Fertilizer and lime requirements have been changed to be consistent with Rutgers recommendations; and language has been added to emphasize soil testing prior to sod application.

Temporary Vegetative Cover for Soil Stabilization - Emulsified asphalt has been removed as an acceptable option to bring the Standard up to date with current science; invasive species (weeping lovegrass) have been removed from seed mixtures; seed mixtures have been reconciled with New Jersey Department of Environmental Protection requirements; seed mixtures, seeding rates, optimal/acceptable planting dates, as well as fertilizer; and lime requirements have been revised to be consistent with Rutgers recommendations, including a note regarding acceptable seed testing dates. Annual ryegrass has been added as an alternative seed mixture under specified conditions.

Topsoiling - Language has been modified from recommended depth to required depth; required depth of topsoil has been increased to six inches; amended with New Jersey Department of Transportation requirements; and criteria has been added for improving soil condition with organic matter for soil restoration in accordance with the Soil Restoration Act.

Tree Protection during Construction - Has been changed to provide additional guidance on insect/disease resistance; aesthetics; longevity; wildlife benefits; and information regarding tree species response to construction impacts. Protection zone requirements were changed to conform to current science.

Selection of Trees, Shrubs and Vines for Planting - Invasive plant species have been removed.

Engineering Standards

Channel Stabilization - Language has been changed to provide stream restoration design criteria.

Detention Structures for Control of Downstream Erosion - Has been renamed from Standard for Detention Basins; consolidated with the Standard for Rooftop Storage, Standard for Parking Lot Storage, and Standard for Underground Detention Facilities; and criteria has been added to assess infiltration and emphasize the need to cross reference the Standard for Offsite Stability.

Dewatering - A note was added, along with detail that hay bales can be used in conjunction with sediment bags to enhance filtration from pumped discharges.

Diversions - Text has been reorganized for clarity; and a reference to ARS Handbook 667, tractive stress design method was added.

Grassed Waterways - Added two new levels of turf reinforcement matting for increases in allowable velocity per Texas Department of Transportation hydraulics testing lab publications.

Land Grading - Added requirements for soil restoration in accordance with the Soil Restoration Act, including bulk density measurements and testing requirements; addition of organic matter; and requirements for the use of chisel plows/rippers.

Lined Waterways - Has been changed to clarify the design for critical and super critical velocities and slopes.

Offsite Stability - Was changed to reorganize design approach, starting with point discharge analysis first, then downstream analysis; added clarification for infiltration use; added limitation, precluding the use of this method for actively cultivated agriculture fields; simplified Table 21-1 by removing references to velocity; added option for using multiple outlets to split/reduce peak flow to acceptable level at any one point; and clarified integration of infiltration use with reductions.

Riprap - Added additional methods for sizing stone with bioengineering criteria.

Sediment Barriers - Added guidance for reinforced sediment barrier, also known as "super silt fence"; and added graphic detail for reinforcement.

Sediment Basin - Reorganized text to allow design procedure to be more logical; added guidance for floating "skimmers."

Slope Protection - Added design procedure for rock lined chutes on steep slopes; and for parking lot sheet flow down slopes. Incorporated reference to NJDEP Filter Strip Standard criteria.

Soil Bioengineering - Added additional graphics and design guidance.

Stabilized Construction Access - Revised the requirements for a stabilized base course to Hot Mix Asphalt Base Course, Mix I-2.

Stream Crossing - Added guidance for permanent culverts.

Rooftop Storage, Parking lot Storage, and Underground Detention Facilities - Have been merged into revised "Detention Structures for Control of Downstream Erosion" Standard (as discussed above). The Standard for Rooftop Storage, Standard for Parking Lot Storage, and Standard for Underground Detention Facilities are therefore deleted.

Specific Proposed Amendments

N.J.A.C. 2:90-1.3(a)1 and 2 are proposed for amendment to change all "Adopted April 12, 1999" and/or "Revised April 12, 1999" to be "Revised July 11, 2011" and to delete the three standards that are discussed as being deleted from the Standards above.

The proposed amendment to N.J.A.C. 2:90-1.4(b)1vi updates computer model references that must be submitted to the State soil conservation districts. A proposed amendment to paragraph (b)2 changes a fixed number of plan copies that were required at all phases to allow one copy of the precertification plan and no more than three additional copies for the final certification process. A proposed amendment to subparagraph (b)2v removes the reference to channels to be more inclusive of the various methods designed to convey stormwater runoff. Proposed amendments to subparagraph (b)3ii and N.J.A.C. 2:90-1.9 add the term limited liability corporations. Proposed amendments to subsection (e) replace "exemption" with a more accurate description of activities that are not be subject to the Act.

Proposed amendments at N.J.A.C. 2:90-1.5 clarify when the rule applies to single-family dwelling construction. Single-family lots that would have otherwise been subject to regulation upon their creation after 1976, continue to be subject to regulation, whether the lots are contiguous or non-contiguous is proposed for deletion as unnecessary. Proposed amendments also clarify that all land disturbance, including offsite improvements (such as utility tie-ins) necessary to make the lot livable, are considered to be associated with construction of a single-family dwelling and must be included in the 5,000 square foot determination.

Proposed amendments to N.J.A.C. 2:90-1.8 require those seeking an agricultural or horticultural use determination to waive their confidentiality under the Federal Freedom of Information Act because documents necessary to support the determination are otherwise unavailable for review.

A proposed amendment to N.J.A.C. 2:90-1.9(g) corrects a typographical error and the proposed amendment to subsection (j) modifies the term “applicant” to “current project owner.” This modification places the responsibility for notification of change of ownership to the new property owners. The proposed amendment to subsection (m) emphasizes temporary soil erosion and sediment controls during the construction phase of development, an often overlooked period where erosion controls may be most beneficial, by allowing the soil conservation district to require an interim clearing and grading plan when needed during construction.

Proposed amendments at N.J.A.C. 2:90-1.11(g)1 modify the reference to the New Jersey Pollution Discharge Elimination System (NJPDES) Stormwater Program from NJ0088323 to 5G3 as prescribed by NJDEP rules in N.J.A.C. 7:14A.

N.J.A.C. 2:90-1.13 describes compliance and enforcement procedures authorizing violation notices or stop construction orders when there is failure to correct, in a meaningful way, previously identified deficiencies. The proposed amendment to subsection (d) authorizes a stop construction order if a person fails to renew plan certification on an ongoing project. This amendment prevents continuation of a project with minimal corrections of deficiencies.

N.J.A.C. 2:90-1.14(e) through (j) are amended to add “FROC” (which acronym is defined as the Final Report of Compliance elsewhere). At the conclusion of a project in its entirety, applicants may request an FROC from the district. The reference to FROC as a measure of compliance was inadvertently not included in a prior rulemaking.

N.J.A.C. 2:90-1.16(b) is proposed for amendment to delete “executive secretary” from the address that appeals are to be sent to, instead just having them addressed to the “State Soil Conservation Committee.”

These proposed amendments are an initiative to implement the legislative findings in N.J.S.A. 4:24-40 to implement a Statewide comprehensive and coordinated program to reduce stormwater runoff and retard non-point pollution from sediment, to implement through the State Soil Conservation Committee and soil conservation districts in coordination with counties, the municipalities, and the Department of Environmental Protection.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The changes to the Vegetative and Engineering Standards will have a positive social impact by protecting water quality through controlling soil erosion and sedimentation related to construction, mining, and land development activities.

The proposed of N.J.A.C. 2:90-1 as described in the Summary above, which are comprised of rules to implement the Soil Erosion and Sediment Control Act, will have a favorable impact upon citizens of New Jersey through the enhanced control of soil erosion and sedimentation from construction and mining activities. As required under the Soil Restoration Act and as part of Governor Christie’s 10-point plan for the Barnegat Bay watershed, a number of technical Standards have been expanded to provide techniques and requirements for amending soils disturbed by construction activities to relieve soil compaction and allow for improved water infiltration and reduced stormwater runoff.

Economic Impact

The proposed amendments, that prescribe the Soil Erosion and Sediment Control Act rules, will have a favorable impact on the public by reducing the loss of soil and preventing sediment damage from construction, mining, and other land disturbances. Protection of water quality will continue. Persons engaging in land disturbances will be required to prevent offsite damages at their own cost, thereby eliminating or reducing public costs for correcting such damages.

N.J.A.C. 2:90-1.13 sets forth enforcement actions with the goal of securing applicant compliance without resorting to the costs for litigation actions. Where the applicant fails to achieve reasonable compliance with the plan the cost associated with enforcement will increase.

Federal Standards Statement

Executive Order No. 27 (1994) and P.L. 1995, c. 65 require State agencies which adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law.

N.J.A.C. 2:90-1, is solely related to the administrative functions of the State Soil Conservation Committee and the soil conservation districts and is not subject to any Federal requirements or standards.

The Federal Clean Water Act, 33 U.S.C. §§ 1251 et seq., establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. In New Jersey, the section of this Act related to construction site discharges is implemented under the NJDEP Stormwater Construction General Permit 5G3. The Standards for Soil Erosion and Sediment Control in New Jersey are referenced in the general permit and are consistent with Federal requirements.

Jobs Impact

The Department does not anticipate any significant creation or loss of jobs as a result of the proposed amendments. While the enhanced Standards may lengthen development and construction timeframes, they may also expand opportunities for “cottage industries” as there will be an increase in the need for suitable soil amendments, equipment, testing, and proper on-site application.

Agriculture Industry Impact

For the reasons set forth in the Summary, Social Impact, and Economic Impact statements above, the proposed amendments will have no impact on New Jersey’s Agriculture Industry. Most land disturbances related to agricultural or horticultural activities do not require compliance with the Soil Erosion and Sediment Control Act when those disturbances are covered under a Farm Conservation Plan developed in accordance with USDA-NRCS Standards.

Regulatory Flexibility Statement

The proposed amendments have been reviewed for compliance with the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules in N.J.A.C. 2:90-1, pursuant to the Soil Erosion and Sediment Control Act, as described in the Summary above, directly affect contractors in the State. Virtually all applicants under this program are considered small businesses as defined by the Regulatory Flexibility Act and as such are treated equally.

The rule at N.J.A.C. 2:90-1.5 is designed to exempt the construction of one single-family dwelling and other disturbances less than 5,000 square feet in size from regulation under defined parameters. This rule is amended in a limited way only to include those offsite improvements to make the lot livable.

Compliance by all projects as defined in the Act, without exception has been determined to be necessary because negative environmental impacts may result from any land development activity. The cost for implementing erosion controls is integral to the land development process, protection of offsite property and protecting water quality. The professional services provided to develop Plans for certification by the District are primarily professional engineers. The rules prescribe reporting requirements by municipalities to conservation districts on municipal actions taken on soil erosion and sediment control plans so that districts may issue the mandated Stormwater Construction General Permit (5G3) and to assure erosion control program performance is equivalent to district enforcement.

The proposed amendments do not impose any new reporting, recordkeeping, or other compliance requirements on small businesses.

Housing Affordability Impact Analysis

The proposed amendments will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the amendments revise technical standards related to loss of soil and preventing sediment damage.

Smart Growth Development Impact Analysis

The proposed amendment will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a

change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the amendments revise technical standards related to loss of soil and preventing sediment damage.

Full text of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

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

2:90-1.1 Purpose and scope

(a) [These] The rules in this subchapter are to implement P.L. 1975, [chapter] 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. [These] The rules of this subchapter clarify the longstanding 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] soil conservation districts. Such authorities, roles, and responsibilities include, but are not limited to, the following[.];:

- 1. For the State Soil Conservation Committee:
i.-xi. (No change.)
xii. Enter into agreements with public agencies[.]; and
2. For [Soil Conservation Districts] soil conservation districts:
i.-iii. (No change.)
iv. Issue or withhold reports of compliance, conditional reports of compliance, or final reports of compliance;
v.-ix. (No change.)

2:90-1.2 Definitions

All definitions in P.L. 1975 [chapter] c. 251 are incorporated [in these] 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.

"Agriculture and horticulture" means the [cultivation] 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.

"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.

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

(a) The State Soil Conservation Committee adopts and hereby incorporates into [these] 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 [adopted or] revised on [April 12, 1999] 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
[Adopted April 12, 1999] Revised July 11, 2011
Dune Stabilization..... 2-1
Revised [April 12, 1999] July 11, 2011
Maintaining Vegetation..... 3-1
Revised [April 12, 1999] July 11, 2011
Permanent Vegetative Cover for Soil Stabilization..... 4-1
Revised [April 12, 1999] July 11, 2011
Stabilization with Mulch Only 5-1

Revised [April 12, 1999] July 11, 2011
Stabilization with Sod 6-1
Revised [April 12, 1999] July 11, 2011
Temporary Vegetative Cover for Soil Stabilization 7-1
Revised [April 12, 1999] July 11, 2011
Topsoiling 8-1
Revised [April 12, 1999] July 11, 2011
Tree Protection During Construction 9-1
Revised [April 12, 1999] July 11, 2011
Trees, Shrubs, and Vines..... 102
Revised [April 12, 1999] July 11, 2011
2. Engineering Standards:
Channel Stabilization 11-1
Revised [April 12, 1999] July 11, 2011
Conduit Outlet Protection 12-1
Revised [April 12, 1999] July 11, 2011
Detention [Basin] Structures 13-1
Revised [April 12, 1999] July 11, 2011
Dewatering 14-1
[Adopted April 12, 1999] Revised July 11, 2011
Diversions 15-1
Revised [April 12, 1999] July 11, 2011
Dust Control..... 16-1
Revised [April 12, 1999] July 11, 2011
Grade Stabilization Structure 17-1
Revised [April 12, 1999] July 11, 2011
Grassed Waterway 18-1
Revised [April 12, 1999] July 11, 2011
Land Grading 19-1
Revised [April 12, 1999] July 11, 2011
Lined Waterway..... 20-1
Revised [April 12, 1999] July 11, 2011
Offsite Stability Analysis 21-1
[Adopted April 12, 1999] Revised July 11, 2011
[Parking Lot Storage 22-1
Revised April 12, 1999]
Riprap [23-1] 22-1
Revised [April 12, 1999] July 11, 2011
[Rooftop Storage..... 24-1
Revised April 12, 1999]
Sediment Barrier [25-1] 23-1
Revised [April 12, 1999] July 11, 2011
Sediment Basin [26-1] 24-1
Revised [April 12, 1999] July 11, 2011
Slope Protection Structures [27-1] 25-1
Revised [April 12, 1999] July 11, 2011
Soil Bioengineering [28-1] 26-1
[Adopted April 12, 1999] Revised July 11, 2011
Stabilized Construction Access [29-1] 27-1
Revised [April 12, 1999] July 11, 2011
Storm Sewer Inlet Protection [30-1] 28-1
Revised [April 12, 1999] July 11, 2011
Stream Crossing..... [31-1] 29-1
[Adopted April 12, 1999] Revised July 11, 2011
Subsurface Drainage [32-1] 30-1
Revised [April 12, 1999] July 11, 2011
Traffic Control [33-1] 31-1
Revised [April 12, 1999] July 11, 2011
Turbidity Barrier [34-1] 32-1
[Adopted April 12, 1999] Revised July 11, 2011
[Underground Detention Storage 35-1
Revised April 12, 1999]

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

- i.-xiii. (No change.)
xiv. Sussex County Soil Conservation District; and
xv. Warren County Soil Conservation District[.];.
(b)-(c) (No change.)

2:90-1.4 Application

(a) (No change.)

(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.-v. (No change.)

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 [HEC 1 and HEC 2-U.S. Army Corps of Engineers or TR20 and WSP2- USDA Natural Resources Conservation Service computer programs are used for modeling watershed hydrology and hydraulics, a copy of electronic input files shall be included] **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 [above.];

2. [Four] **Up to four** copies of the soil erosion and sediment control plan at the same scale as the site plan submitted to the municipality or other land use approval agency, which includes the following information detailed on the plat:

i.-iv. (No change.)

v. A stability analysis [of all channels] 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.-x. (No change.)

3. **An** Ownership Disclosure Affidavit Form to determine potential conflicts of interest between the applicant and [Soil Conservation District] **soil conservation district** supervisor or staff.

i. (No change.)

ii. A corporation, [or] 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.] **district;**

4.-5. (No change.)

(c)-(d) (No change.)

(e) All requests for [exemption from] **determination that** the act [for a] **does not apply to** land disturbance activity shall be submitted to the district by the owner or their authorized representative. [Exemption] **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 following activities shall be considered exempt:] **The act does not apply to the following activities:**

1.-2. (No change.)

(f) Any land disturbance activity [that may have been initially exempt from] **to which** the act[, and] **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) (No change.)

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 separate applicant, owner, builder, or contractor.

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

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)-(c) (No change.)

2:90-1.9 Procedure

(a) (No change.)

(b) No project shall be undertaken by any person, partnership, [or] 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)-(f) (No change.)

(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 [flare] **future** time for review and certification.

(h)-(i) (No change.)

(j) The [applicant] **current project owner** shall notify the district in writing if there is a change of ownership during implementation of the plan[.].

(k)-(l) (No change.)

(m) At its discretion, the district may require [a] **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.

2:90-1.11 Exempt municipality ordinances and implementation

(a)-(f) (No change.)

(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 [NJG0088323] **5G3** for eligible activities[.] at the end of each business week;

2.-3. (No change.)

(h)-(j) (No change.)

2:90-1.13 Enforcement

(a)-(c) (No change.)

(d) The district or the municipality may issue a stop-construction order if the applicant [takes no] **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) (No change.)

2:90-1.14 Reports of Compliance

(a) A [District] **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] **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)-(d) (No change.)

(e) The district may withhold [a] **an ROC, [or] CRC, or FROC** for any project [which] **that** has not secured discharge authorization of the stormwater general permit [NJG0088323] **5G3** where [a] **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, [or] **CRC, or FROC.**

(g) A standard Report of Compliance form approved by the State Soil Conservation Committee shall be utilized by the [District] **district** and shall allow for the [District's] **district's** issuance of a CRC, [or] **ROC, or FROC.** The District shall complete the standard Report of Compliance form in accordance with the requirements set forth in (g)1 through 4 below.

1.-4. (No change.)

(h) Copies of the ROC, [or] **CRC, or FROC** shall be distributed by the [District] **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.-2. (No change.)

(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 [a] **an ROC or FROC** issued by the [District] **district** indicating compliance with the provisions of the certified plan for measures to control soil erosion and sedimentation. The [District] **district** shall provide the municipality or other public agency with [a] **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] **district.** The [District] **district** shall provide the municipality or other public agency with a copy of the CRC, [or final] **ROC, or FROC.**

(k)-(l) (No change.)

2:90-1.16 Appeal process

(a) (No change.)

(b) To appeal the determination of the district, [the] **an** 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 Committee. Requests for appeal shall be addressed to:

[Executive Secretary]

State Soil Conservation Committee
 PO Box 330
 Trenton, New Jersey 08625
 (c)-(e) (No change.)

COMMUNITY AFFAIRS

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Low Income Housing Tax Credit Qualified Allocation Plan

Proposed Amendments: N.J.A.C. 5:80-33.2, 33.4 through 33.9, 33.11, 33.12, 33.15, 33.16, 33.17, 33.19, 33.21, 33.22, 33.26, 33.34, and 33.37

Proposed New Rule: N.J.A.C. 5:80-33.38

Proposed Repeal and New Rule: N.J.A.C. 5:80-33 Appendix

Authorized By: New Jersey Housing and Mortgage Finance Agency, Anthony L. Marchetta, Executive Director.

Authority: N.J.S.A. 55:14K-5.g and 26 U.S.C. § 42(m).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2012-089.

A **public hearing** on the proposal will be held on the following date and time at the following location:

Tuesday, July 31, 2012 at 10:00 A.M.
 New Jersey Housing and Mortgage Finance Agency
 637 South Clinton Avenue
 Trenton, New Jersey 08611

Please call the Division of Tax Credit Services at (609) 278-7629 if you wish to be included on the list of speakers.

Submit comments by August 31, 2012 to:

Debbie Urban
 Director of Tax Credits
 New Jersey Housing and Mortgage Finance Agency
 637 South Clinton Avenue
 P.O. Box 18550
 Trenton, New Jersey 08650-2085

The agency proposal follows:

Summary

Section 42 of the Internal Revenue Code of 1986 (Code), 26 U.S.C. § 42, establishes a low income housing tax credit that may be applied against the Federal income tax of persons or associations that have invested in certain buildings providing housing for low-income families. As the housing credit agency for the State of New Jersey (State), the New Jersey Housing and Mortgage Finance Agency (NJHMFA or Agency) allocates these credits to qualified taxpayers and thereafter monitors their compliance with Section 42 of the Code. The Low Income Housing Tax Credit (LIHTC) Program is one of a variety of resources used to stimulate the development of affordable housing. As with most State and Federal resources, the LIHTC Program is a limited resource with a finite dollar amount allocated to it each year. With the State's affordable housing needs continually growing, it is imperative to allocate this limited resource to obtain the greatest results. The Agency has promulgated rules at N.J.A.C. 5:80-33 that set forth the standards and procedures used by the Agency to perform its allocation and monitoring responsibilities and that also represent the qualified allocation plan (QAP) for the State as required by Section 42 of the Code.

The Agency has received and considered recommendations from and conducted periodic deliberations among its staff and tax credit industry professionals. As a result, the Agency is proposing amendments to the rules, which are summarized as follows: