

*Township of Andover, NJ
Monday, December 19, 2011*

Chapter 136. SOIL EROSION

[HISTORY: Adopted by the Township Committee of the Township of Andover by Ord. No. 77-11 (Ch. XVII of the 1973 Code), readopted 9-12-1984 by Ord. No. 84-25; as amended through Ord. No. 92-15. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 30.
Flood damage prevention — See Ch. 55.
Land use procedures — See Ch. 74.
Site plan review — See Ch. 131.
Soil removal — See Ch. 140.
Stormwater management — See Ch. 150.

§ 136-1. Title.

This chapter shall be known as the “Andover Township Soil Erosion and Sediment Control Chapter.”

§ 136-2. Purpose.

The purpose of this chapter shall be to control soil erosion and sediment damages and related environmental damage by requiring adequate provisions for surface water retention and drainage and for the protection of exposed soil surfaces in order to promote the public health, safety, convenience and general welfare of the community.

§ 136-3. Definitions.

The following definitions shall apply in the interpretation and enforcement of this chapter:

APPLICANT

A person, partnership, corporation or public agency requesting permission to engage in land disturbance activity.

CRITICAL AREA

A sediment-producing highly erodible or severely eroded area.

EROSION

The detachment and movement of soil or rock fragments by water, wind, ice and gravity.

EROSION AND SEDIMENT CONTROL PLAN

A plan which fully indicates necessary land treatment measures, including a schedule of the timing of their installation, which shall effectively minimize soil erosion and sedimentation. Such measures shall be in accordance with standards for soil erosion and sediment control in New Jersey as promulgated by the State Soil Conservation Committee.

EXCAVATION or CUT

Any act by which soil or rock is cut into, dug, quarried, uncovered, removed, displaced or relocated.

FARM CONSERVATION PLAN

A plan which provides for use of land within its capabilities and treatment, within practical limits, according to chosen use to prevent further deterioration of soil and water resources.

LAND

Any ground, soil, or earth including marshes, swamps, drainageways and areas not permanently covered by water within the Township.

LAND DISTURBANCE

Any activity involving the clearing, grading, transporting, filling and any other activity which causes land to be exposed to the danger of erosion.

MULCHING

The application of plant residue or other suitable materials to the land surface to conserve moisture, hold soil in place, and aid in establishing plant cover.

PERMIT

A certificate issued to perform work under this chapter.

SEDIMENT

Solid material, both mineral and organic, that is in suspension, is being transported or has been moved from its site of origin by air, water or gravity as a product of erosion.

SEDIMENT BASIN

A barrier or dam built at suitable locations to retain rock, sand, gravel, silt or other material.

SITE

Any plot, parcel or parcels of land.

SOIL

All unconsolidated mineral and organic material of any origin.

SOIL CONSERVATION DISTRICT

A governmental subdivision of this state, which encompasses this Township, organized in accordance with the provisions of N.J.S.A. 4:24-1 et seq.

STATE SOIL CONSERVATION COMMITTEE

An agency of the state established in accordance with the provisions of N.J.S.A. 4:24-1 et seq.

STRIPPING

Any activity which significantly disturbs vegetated or otherwise stabilized soil surface including clearing and grubbing operations.

WETLANDS

A marsh swampland, saturated with water, including, but not limited to, all areas composed of soils having a seasonal high-water table at the surface.

§ 136-4. Permit required.

- A. No land area shall be disturbed by any person, partnership or corporation, within the Township unless the applicant has submitted to the Township Engineer a plan to provide for soil erosion and sediment control for such land area in accordance with the Standards for Erosion and Sediment Control promulgated by the New Jersey Soil Conservation Committee and this section and such plan has been approved; and unless a valid soil erosion and sediment control permit has been issued by the Township Engineer. All public facility projects shall be submitted to the Sussex Soil Conservation District for review, certification and enforcement.

[Amended 10-26-2009 by Ord. No. 2009-34]

- B. The purpose of this section is to make clear the fact that soil erosion sediment control approval must be obtained from the Township Engineer for all soil removal, mining and quarrying operations, the placement of fill, and all other land disturbances when permitted except for those disturbances exempted hereafter.
- C. Applications for permit shall be obtained from the Planning and Zoning secretary.

§ 136-5. Application information.

The applicant shall submit a separate soil erosion and sediment control plan for each noncontiguous site. This plan shall be prepared by a licensed professional engineer. Such plan shall contain:

- A. A map of the site, at a scale of one inch equals 50 feet, minimum, showing existing contour lines, at two-foot intervals.
- B. The location and description of existing natural and man-made features on and surrounding the site, including general topography and soil characteristics and a copy of the Soil Conservation District Soil Survey where available.
- C. The location and description of proposed changes to the site.
- D. Measures for soil erosion and sediment control which shall meet or exceed Standards for Soil Erosion and Sediment Control promulgated by the State Soil Conservation Committee. Standards shall be on file at the offices of the local Soil Conservation District and the Township Clerk.
- E. A schedule of the sequence of installation of planned erosion and sediment control measures as related to the progress of the project including anticipated starting and completion dates.
- F. All proposed revisions of data required shall be submitted for approval. The applicant may consult with the Sussex County Soil Conservation District in the selection of appropriate erosion and sediment control measures and the development of the plan.
- G. Any computations and documents which may be required by the Township Engineer to demonstrate that adequate soil erosion measures are employed to assure against the hazards of soil erosion and sedimentation.
- H. An application form completely filled in. This form of application is annexed to this chapter as an appendix. *Editor's Note: The application form referred to herein may be found on file in the office of the Township Clerk.*
- I. The application fee.
- J. An escrow fee for inspections of the site and review of the project.

§ 136-6. Factors considered in approving permits.

- A. In considering and reviewing the application for land disturbance permit, the Township Engineer shall be guided by and take into consideration the public health, safety, and general welfare and the general purposes of land use control. In particular, consideration shall be given to the following factors:
 - (1) Proposed stripping of vegetation.
 - (2) Effects of proposed tree removal.
 - (3) Surface water drainage.
 - (4) Extent of disturbed area and the duration of exposure of subsoil.
 - (5) Soil fertility.
 - (6) Contours, both existing and proposed.
 - (7) Whether proposed land disturbance is necessary and incidental to the development of the property.
 - (8) Erosion of soil by water and wind, and the soil's susceptibility to the production of sedimentation.
 - (9) Lateral support of abutting streets and lands.
 - (10) Land values and uses.

- (11) Effect on water resources, such as streams and wetlands.
- B. The Township Engineer shall not approve such a plan unless it is in conformance with the Standards for Erosion and Sediment Control adopted by the State Soil Conservation Committee. The Township Engineer may seek the assistance of the Sussex County Soil Conservation District in the review of such plans. The Township Engineer may refer the plan to the Sussex County Soil Conservation District for its review.
- C. In the event that the Township Engineer concludes, after considering and reviewing the application, that the resultant effect of the land disturbance would be excessive erosion of the soil and/or subsoil by water or wind, or the sedimentation of streams, ponds, lakes, and/or wetlands, located on or off the site, or that other adverse impact may occur, then the permit may be denied.

§ 136-7. Issuance of permit.

- A. A permit shall be issued after approval of the application in accordance with § 136-6 and after the performance guarantee requirements, as set forth in § 136-11, have been satisfied.
- B. Such review and approval shall be made within a period of 30 days of submission of a complete application unless, by mutual agreement in writing between the Township and the applicant, this period is extended for an additional 30 days. Failure of the Township to make a decision within such period or extension thereof shall constitute certification.
- C. The applicant shall be provided with written notice of such decision by the Township Engineer. A copy of such decision including name of applicant, site location by street address and block and lot number, and proposed land use shall be sent to the Sussex County Soil Conservation District. The Township shall also make available such other information as may be required by the District.
- D. The Township Engineer shall be advised in writing at least 48 hours prior to any land disturbance or construction activity.

[Amended 10-26-2009 by Ord. No. 2009-34]

§ 136-8. Principles applicable to soil erosion and sediment control plan.

Control measures shall apply to all aspects of the proposed land disturbance and shall be in operation during all stages of the disturbance activity. The following principles shall apply to the soil erosion and sediment control plan:

- A. Stripping of vegetation, grading or other soil disturbance shall be done in a manner which shall minimize soil erosion.
- B. Whenever feasible, natural vegetation shall be retained and protected.
- C. The extent of the disturbed area and the duration of its exposure shall be kept within practical limits.
- D. Either temporary seeding, mulching or other suitable stabilization measure shall be used to protect exposed critical areas during construction or other land disturbance.
- E. Drainage provisions shall accommodate increased runoff, resulting from modified soil and surface conditions, during and after development of disturbance. Such provisions shall be in addition to all existing requirements.
- F. Water runoff shall be minimized and retained on site, wherever possible, to facilitate groundwater recharge.
- G. Sediment shall be retained on site to the maximum extent feasible.
- H. Diversions, sediment basins, and similar required structures shall be installed prior to any on-site grading or disturbance.

§ 136-9. Maintenance of control measures; issuance of certificate indicating completion.

All necessary soil erosion and sediment control measures installed under this chapter shall be adequately maintained for one year after completion of the approved plan, or until such measures are permanently stabilized as determined by the Township Engineer. The Township Engineer shall give the applicant, upon request, a certificate indicating the date on which the measures called for in the approved plans were completed.

§ 136-10. Exemptions.

The following activities are specifically exempted from this chapter:

- A. Land disturbances associated with one- or two-family dwellings, if such disturbance involves less than 5,000 square feet of land area.
- B. Land used for gardening primarily for home consumption.
- C. Land used for agricultural purposes, when operated in accordance with a farm conservation plan approved by the local Soil Conservation District.
- D. Land disturbances involving less than 5,000 square feet of land area.

[Added 10-26-2009 by Ord. No. 2009-34]

§ 136-11. Fees.

[Amended 5-25-2005 by Ord. No. 2005-14; 4-13-2009 by Ord. No. 2009-11]

A. Application and inspection fees.

- (1) Upon applying for a permit pursuant to the provisions of this chapter, the applicant shall pay a fee to cover the cost of the initial review of the soil erosion and sediment control application, as well as for any renewal or resubmission thereof, in the amount set forth in the fee schedule as follows:

Type of Permit	Fees		
	Application	Escrow Review/ Inspection	Renewal and Resubmission
Single-family home	\$100	\$1,000	\$100
Minor subdivision	\$200	\$1,500	\$100
Minor site plan	\$250	\$2,000	\$150
Major subdivision	\$250	\$300 per lot, minimum \$3,000	\$150
Major site plan	\$250	\$3,000, plus \$100 per acre	\$150
Soil removal	\$500	\$2,000, plus \$100 per acre	\$250
Land disturbance without construction of improvements	\$500	\$2,000, plus \$100 per acre	\$250

- (2) This is the initial minimum deposit required. Any charges over the initial deposit required for additional reviews for revisions or incomplete applications or inspections shall be paid by additional deposits, to be paid monthly, due the first of each month.

- (3) The provisions of §§ 74-56H, I and J and 74-58 of Chapter 74, Land Use Procedures, shall apply.

- B. Upon the issuance of a permit, the applicant shall pay an escrow review fee as set forth in the schedule to cover the cost of inspections and review of the project by the Township Engineer during the year. In the event that this amount is utilized and additional inspections are required, the applicant shall post an additional escrow review fee as set forth in the above schedule with the Planning Board secretary to cover additional inspections. The provisions of §§ 74-56D through J and 74-58 shall apply with respect to the method of administration of inspection fees and the posting of additional inspection fees.
- C. Inspection shall be provided for during construction, and the applicant shall be required to have the certified plans on site during construction.
- D. Applicants need to comply with the NJDPES Stormwater Phase II, NJ0088323 requirements for proposed land disturbances one acre or larger. The Stormwater Phase II program is administered by the local soil conservation district and upon municipal approval; all eligible activities should be directed to the district for further action.

[Amended 10-26-2009 by Ord. No. 2009-34]

- E. When a conditional report of compliance (ROC) is issued, during the nongrowing season, a performance deposit of \$3,000 per acre of disturbed soil (\$3,000 minimum for a single-family site) will be required and will be placed in an escrow account. An administration fee of \$100 will be charged and retained by the Township of Andover.

§ 136-12. Performance guarantee required.

- A. Before any work is done for which a permit is required, the applicant shall file and maintain a bond, letter of credit or other performance guarantee in a form and with surety approved by the Planning Board Attorney or Zoning Board Attorney in an amount deemed sufficient by the Township Committee, on recommendation of the Township Engineer, that shall be sufficient to insure the faithful performance of the work to be undertaken pursuant to the conditions of the permit and the terms thereof.
- B. The amount of the performance guarantee shall be equal to 120% of the estimated cost of the soil erosion and sediment control improvements of which 10% of the total amount shall be in cash or certified check. This performance guarantee shall be administered pursuant to the provisions of § 74-55 of Chapter 74, Land Use Procedures.

§ 136-13. Maintenance guarantee.

The Township Committee, upon recommendation of the Township Engineer, may also require a maintenance guarantee for a period not to exceed two years after final approval of the soil erosion and sediment control measures, in an amount not to exceed 15% of the cost of the improvement or of the permanent installation.

§ 136-14. Revocation of permit and other relief.

- A. After reasonable notice and opportunity to be heard before the Township Committee, the permit of any person may be revoked or suspended for such period as the Township may determine, for any violation of the terms hereof, or the terms and conditions of any approved plan and permit granted hereunder.
- B. The Township may issue a stop construction order if a project is not being executed in accordance with a certified plan. A certificate of occupancy for a project shall not be issued unless there has been compliance with the provisions of a certified plan for permanent measures to control soil erosion and sedimentation. A formal report of such compliance shall be filed with the municipal agent authorized to issue certificates of occupancy.
- C. Notwithstanding the above, the Township Committee may cause a stop order to be issued by the enforcement official or designee prior to hearing if, in its opinion, such an order should be issued to stop or mitigate irrevocable damage. The Township Committee may also seek appropriate injunctive relief prior to any hearing before it if this remedy is deemed appropriate because of the urgency of the situation.

§ 136-15. Enforcement official.

- A. The requirements of this chapter shall be enforced by the Township Engineer, who shall also inspect or

require adequate inspections of the work.

- B. If the Township Engineer finds existing conditions not as stated in the applicant's erosion and sediment control plan, he may refuse to approve further work and may require necessary erosion and sediment control measures to be promptly installed and may seek other penalties as provided in this chapter.

§ 136-16. Violations and penalties.

- A. If any person shall violate any of the provisions of this chapter or fail to comply with the provisions of a certified plan, the Township may institute a civil action in the Superior Court for injunctive relief to prohibit and prevent such violation or violations, and such Court may proceed in a summary manner.
- B. Any person who shall violate any of the provisions of this chapter or fail to comply with the provisions of a certified plan shall be liable to a penalty of not less than \$25 nor more than \$3,000 to be collected in a summary proceeding pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq. *Editor's Note: Repealed by L. 1999, c. 274. See N.J.S.A. 2A:58-10 et seq.* The Superior Court, County Court, County District Court and Municipal Court shall have jurisdiction to enforce the penalty enforcement law.
- C. If the violation is of a continuing nature, each day during which it continues shall constitute an additional separate and distinct offense.

§ 136-17. Jurisdiction.

- A. In the event the proposed area to be disturbed is located partially in Andover Township and partially in another municipality only the Sussex County Soil Conservation District certification is required so that the Sussex County Soil Conservation District has jurisdiction over the soil erosion and sediment control application, no land shall be disturbed until:

[Amended 10-26-2009 by Ord. No. 2009-34]

- (1) A soil erosion and sediment control plan in conformance with state standards has been approved by the Sussex County Soil Conservation District and a copy of the written approval filed with the Andover Township Engineer.
 - (2) Performance guarantees have been posted in favor of Andover Township in conformance with § 136-12 of this chapter.
 - (3) A soil erosion and sediment control permit has been issued by the Andover Township Engineer.
- B. The Township Engineer shall have 30 days, after receipt of written notice of approval by the Sussex County Soil Conservation District and the posting of a performance guarantee by the applicant, within which to issue a soil erosion and sediment control permit.

§ 136-18. Prerequisites to issuance of certificate of occupancy and release of performance guarantee.

Prior to the issuance of a certificate of occupancy, and prior to the release of any performance guarantee posted for improvements, a letter from the Township Engineer, certifying the compliance of the soil erosion and sediment control measures on the site with the soil erosion and sediment control permit, shall be presented to the Construction Official in the case of the certificate of occupancy and the Township Committee in the case of the release of the performance guarantee.

§ 136-19. Expiration of permit.

A permit is valid for a period of three years from the date of issuance of permit.

§ 136-20. Renewal of permit.

[Added 5-25-2005 by Ord. No. 2005-14] If a permit expires prior to the issuance of a certificate of compliance per § 136-9, an application for permit renewal must be filed along with a renewal fee as set forth in § 136-11.

§ 136-21. Resubmission.

[Added 5-25-2005 by Ord. No. 2005-14] If the project for which a permit has been issued is found to be constructed in a manner inconsistent with the approved plan, revised plans shall be prepared by the applicant's engineer and resubmitted for review by the Township Engineer, along with a resubmission fee as set forth in § 136-11. The Township Engineer or Construction Official, at his or her sole discretion, may require the applicant to resubmit such revised plans to the Township Planning Board or Zoning Board of Adjustment, as deemed appropriate.

§ 136-22. Posting of bond.

[Added 5-25-2005 by Ord. No. 2005-14]

- A. If the project is to be completed at a time of the year wherein established growth is not possible prior to application for a certificate of occupancy, an applicant shall post a bond in the principal sum of \$3,000, plus pay an administrative fee of \$100, providing for full and complete performance.
- B. The \$3,000 bond shall be returned to the applicant after growth is established and a certificate of compliance from the Township Engineer is received by the Construction Official. Such bond will be with such sureties and in such form as is satisfactory to the Andover Township Committee.