

CHAPTER 90

STATE SOIL CONSERVATION COMMITTEE

Authority

N.J.S.A. 4:1C-24, 4:24-3, and 4:24-42.

Source and Effective Date

Effective: November 3, 2017.
See: 49 N.J.R. 3669(a).

Chapter Expiration Date

Chapter 90, State Soil Conservation Committee, expires on November 3, 2024.

Chapter Historical Note

Subchapter 1, General Provisions, was adopted as R.1975 d.360, effective January 1, 1976. See: 8 N.J.R. 3(b).

Subchapter 2, Soil and Water Conservation Project Cost Sharing: Eligible Projects, was adopted as R.1984 d.452, effective October 15, 1984. See: 16 N.J.R. 1416(a), 16 N.J.R. 2781(a).

Subchapter 3, Soil and Water Conservation Project Cost Sharing: Procedural Rules, was adopted as R.1985 d.158, effective April, 1985. See: 17 N.J.R. 7(a), 17 N.J.R. 807(a).

Pursuant to Executive Order No. 66(1978), Subchapter 1, General Provisions, was readopted as R.1995 d. 370, effective June 24, 1985. See: 17 N.J.R. 1160(a), 17 N.J.R. 1756(a).

Pursuant to Executive Order No. 66(1978), Chapter 90, State Soil Conservation Committee, was readopted as R.1990 d.356, effective June 22, 1990. See: 22 N.J.R. 1299(a), 22 N.J.R. 2142(a).

Pursuant to Executive Order No. 66(1978), Chapter 90, State Soil Conservation Committee, was readopted as R.1995, d.382, effective June 21, 1995. See: 27 N.J.R. 1506(a), 27 N.J.R. 2685(a).

Subchapter 4, Agricultural Conservation Cost Share Program, was adopted as R.1999 d.56, effective February 16, 1999. See: 30 N.J.R. 4096(a), 31 N.J.R. 527(a).

Pursuant to Executive Order No. 66(1978), Chapter 90, State Soil Conservation Committee, was readopted as R.2000 d.237, effective May 11, 2000. See: 32 N.J.R. 1109(a), 32 N.J.R. 2047(b).

Chapter 90, State Soil Conservation Committee, expired on November 7, 2005, and Chapter 90, State Soil Conservation Committee, was adopted as new rules and Subchapter 1, General Provisions, was renamed Soil Erosion and Sediment Control on Land Disturbance Activities by R.2006 d.12, effective February 6, 2006. See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Chapter 90, State Soil Conservation Committee, was readopted as R.2011 d.020, effective December 8, 2010. See: 42 N.J.R. 1937(a), 43 N.J.R. 33(a).

Administrative correction. See: 46 N.J.R. 281(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 90, State Soil Conservation Committee, was scheduled to expire on December 8, 2017. See: 43 N.J.R. 1203(a).

Chapter 90, State Soil Conservation Committee, was readopted, effective November 3, 2017. See: Source and Effective Date.

Cross References

Flood control, spoil material to be stabilized, see N.J.A.C. 7:13-2.7.

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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 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. 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;

- iii. 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.

Amended by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Section was "Purpose"; rewrote (a).

Amended by R.2014 d.023, effective January 21, 2014 (operative February 20, 2014).

See: 44 N.J.R. 1813(a), 44 N.J.R. 2015(a), 46 N.J.R. 193(a).

Rewrote the introductory paragraph of (a); in (a)xii, substituted "; and" for a period at the end; in the introductory paragraph of (a)2, substituted "soil conservation districts" for "Soil Conservation Districts"; and in (a)2iv, inserted ", conditional reports of compliance, or final reports of compliance".

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 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.

Amended by R.2006 d.12, effective February 6, 2006.
See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

In introductory paragraph, added “P.L. 1975”, deleted “, Laws of 1975,” and substituted “rules” for “regulations”; rewrote definition “Appeal”; added definitions “Act,” “Agriculture and horticulture,” “Certified plan,” “Committee,” “Complete application,” “Conservation plan,” “Demolition,” “Exempt municipality,” “Major revision,” “Minor revision,” “Sequence of construction” and “Withdrawn plan.”
Amended by R.2014 d.023, effective January 21, 2014 (operative February 20, 2014).

See: 44 N.J.R. 1813(a), 44 N.J.R. 2015(a), 46 N.J.R. 193(a).
In the introductory paragraph, substituted “c.” for “chapter”, and substituted “into the rules of this subchapter” for “in these rules”; in definition “Agriculture and horticulture”, substituted “utilization” for “cultivation”, inserted a comma following “animals”, and inserted “and horticultural”; in definition “Certified plan”, inserted a comma following “plan” and following “thereto”, and inserted “or exempt municipality”; and in definition “Complete application”, inserted “or exempt municipality”.

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 December 14, 2015, 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 December 14, 2015	
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 December 14, 2015	
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, 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 (Cape May and Atlantic Counties);
- v. Cumberland-Salem Soil Conservation District (Cumberland and Salem Counties);
- vi. Freehold Soil Conservation District (Middlesex and Monmouth Counties);
- vii. Gloucester County Soil Conservation District;
- viii. Hudson, Essex and Passaic Soil Conservation District (Hudson, Essex and Passaic Counties);
- 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 (Somerset and Union Counties);
- 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 de-

scribing 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 as herein specified will not result in the most practical and effective control of soil erosion, sedimentation and stormwater damages.

(c) The location, address, and telephone 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.

As amended, R.1978 d. 5, eff. January 5, 1978.

See: 9 N.J.R. 554(a), 10 N.J.R. 54(b).

As amended, R.1980 d. 305, eff. July 3, 1980.

See: 12 N.J.R. 301(b), 12 N.J.R. 451(a).

Amended by R.1987 d. 171, effective April 6, 1987.

See: 18 N.J.R. 2081(a), 19 N.J.R. 513(a).

Completely revised vegetation standards.

Amended by R.1999 d.205, effective July 6, 1999 (operative October 1, 1999).

See: 30 N.J.R. 2105(a), 31 N.J.R. 1799(a).

Rewrote (a); and in (b), inserted a new second sentence.

Amended by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Deleted former (a)3; recodified and rewrote (a)4 as (a)3.

Amended by R.2014 d.023, effective January 21, 2014 (operative February 20, 2014).

See: 44 N.J.R. 1813(a), 44 N.J.R. 2015(a), 45 N.J.R. 1877(a), 46 N.J.R. 193(a).

Rewrote the section.

Amended by R.2017 d.152, effective August 21, 2017 (operative December 7, 2017).

See: 48 N.J.R. 1847(a), 49 N.J.R. 2787(a).

In the introductory paragraph of (a), substituted "December 14, 2015" for "April 8, 2013"; and in the table in (a)1, under the entry for "Topsoiling"; and in the table in (a)2, under the entry for "Land Grading", substituted "December 14, 2015" for "April 12, 1999".

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 or other land use approval agency, which includes the following information detailed on 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 storm-water 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 require-

ment for installation of such control measures shall apply to subsequent owners if title is conveyed;

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; and

xi. Where applicable, the location and details for all proposed soil restoration areas including appropriate notes and sequencing;

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.

Amended by R.1993 d.13, effective January 4, 1993.
See: 24 N.J.R. 3587(a), 25 N.J.R. 65(a).

Revised (a); added new (b)-(d).
Amended by R.1995 d.382, effective July 17, 1995.
See: 27 N.J.R. 1506(a), 27 N.J.R. 2685(a).
Amended by R.2006 d.12, effective February 6, 2006.
See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Rewrote (b); added (e) through (g).
Amended by R.2014 d.023, effective January 21, 2014 (operative February 20, 2014).

See: 44 N.J.R. 1813(a), 44 N.J.R. 2015(a), 46 N.J.R. 193(a).
In the introductory paragraph of (b)1, inserted a comma following "plan", following "plans", and following "required"; rewrote (b)1vi; in the introductory paragraph of (b)2, substituted "Up to four" for "Four", and inserted a comma following "agency"; in (b)2v, deleted "of all channels" following "analysis", and inserted a comma following "discharge"; in the introductory paragraph of (b)3, inserted "An", and substi-

tuted "soil conservation district" for "Soil Conservation District"; in (b)3ii, substituted "partnership, or limited liability corporation (LLC)" for "or partnership"; in (b)3iii, substituted "district;" for "District."; and rewrote the introductory paragraph of (e) and (f).

Amended by R.2017 d.152, effective August 21, 2017 (operative December 7, 2017).

See: 48 N.J.R. 1847(a), 49 N.J.R. 2787(a).

In (b)2ix, deleted "and" from the end; in (b)2x, inserted "and" at the end; and added (b)2xi.

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 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 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 requirements of the act provided that the proposed cumulative land disturbance, including associated offsite improvements, is greater than 5,000 square feet.

New Rule, R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Former N.J.A.C. 2:90-1.5, Procedure, recodified as N.J.A.C. 2:90-1.9. Amended by R.2014 d.023, effective January 21, 2014 (operative February 20, 2014).

See: 44 N.J.R. 1813(a), 44 N.J.R. 2015(a), 46 N.J.R. 193(a).

In (a) and (b), deleted "contiguous or non-contiguous" following "more", and inserted a comma following "builder"; in (a), inserted "including associated offsite improvements,"; and in (b), inserted "general" and "including associated offsite improvements," and substituted "that" for "which" following "lots".

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.

New Rule R.1987 d.222, effective May 18, 1987.

See: 19 N.J.R. 395(a), 19 N.J.R. 861(a).

Recodified from N.J.A.C. 2:90-1.13 by R.2005 d. 39, effective January 18, 2005.

See: 36 N.J.R. 3961(a), 37 N.J.R. 265(a).

Former N.J.A.C. 2:90-1.14, Minor subdivision, recodified to N.J.A.C. 2:90-1.15.

Recodified from N.J.A.C. 2:90-1.14 and amended by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Changed "soils" to "soil"; former N.J.A.C. 2:90-1.6, Appeal process, repealed.

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.

New Rule, R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Former N.J.A.C. 2:90-1.7, Municipal ordinances, recodified as N.J.A.C. 2:90-1.11.

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, 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 08873.

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.

New Rule, R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Former N.J.A.C. 2:90-1.8, Fees, recodified as N.J.A.C. 2:90-1.12. Amended by R.2014 d.023, effective January 21, 2014 (operative February 20, 2014).

See: 44 N.J.R. 1813(a), 44 N.J.R. 2015(a), 46 N.J.R. 193(a).

In (a), deleted "or" preceding "possesses", inserted a comma following "contract", and inserted the next-to-last sentence.

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 municipal 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 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, soil restoration measures, 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 erodible soils, slopes, or water quality concerns for mitigating existing, emerging, or anticipated erosion hazards.

Amended by R.1987 d.222, effective May 18, 1987.

See: 19 N.J.R. 395(a), 19 N.J.R. 861(a).

New (e) added; renumbered old (e)-(g) as (f)-(h).

Amended by R.1993 d.13, effective January 4, 1993.

See: 24 N.J.R. 3587(a), 25 N.J.R. 65(a).

Added new (i).

Recodified from N.J.A.C. 2:90-1.5 and amended by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Rewrote the section; former N.J.A.C. 2:90-1.9, Enforcement, recodified as N.J.A.C. 2:90-1.13.

Amended by R.2014 d.023, effective January 21, 2014 (operative February 20, 2014).

See: 44 N.J.R. 1813(a), 44 N.J.R. 2015(a), 46 N.J.R. 193(a).

In (b), substituted "corporation, or limited liability corporation (LLC)," for "or corporation"; in (g), substituted "future" for "flare"; in (j), substituted "current project owner" for "applicant", and substituted a period for a colon at the end; and in (m), substituted "an interim" for "a", and inserted "during construction" and a comma following "slopes" and following "emerging".

Amended by R.2017 d.152, effective August 21, 2017 (operative December 7, 2017).

See: 48 N.J.R. 1847(a), 49 N.J.R. 2787(a).

In (l), inserted ", soil restoration measures,".

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.

New Rule, R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Former N.J.A.C. 2:90-1.10, Reports of Compliance, recodified as N.J.A.C. 2:90-1.14.

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 47, 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.

As amended, R.1978 d.5, eff. January 5, 1978.

See: 9 N.J.R. 554(a), 10 N.J.R. 54(b).

Recodified from N.J.A.C. 2:90-1.7 and amended by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Section was "Municipal ordinances"; rewrote the section; former N.J.A.C. 2:90-1.11, Changes, repealed.

Amended by R.2014 d.023, effective January 21, 2014 (operative February 20, 2014).

See: 44 N.J.R. 1813(a), 44 N.J.R. 2015(a), 46 N.J.R. 193(a).

In (g)1, substituted "5G3" for "NJG0088323", and deleted a colon following "activities".

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 upon 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	\$950.00	\$325.00 per acre
6 to 10 acres	\$1,600	\$260.00 per acre
11 to 25 acres	\$2,300	\$200.00 per acre
26 to 50 acres	\$3,000	\$180.00 per acre
50.01 acres and greater	\$3,500	\$160.00 per acre

*For projects greater than one 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 \$150.00 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.

Recodified from N.J.A.C. 2:90-1.8 and amended by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Rewrote (a) and added (b) and (c); former N.J.A.C. 2:90-1.12, Reports, recodified as N.J.A.C. 2:90-1.15.

Amended by R.2008 d.318, effective October 20, 2008.

See: 40 N.J.R. 1397(a), 40 N.J.R. 5959(b).

Added (d).

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/current project owner 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 re-new 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.

Amended by R.2005 d.39, effective January 18, 2005.

See: 36 N.J.R. 3961(a), 37 N.J.R. 265(a).

Deleted (f).

Recodified from N.J.A.C. 2:90-1.9 and amended by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

In (b), added "and sequence of construction"; in (c), added last two sentences; in (d), added last sentence; rewrote (e); former N.J.A.C. 2:90-1.13, Municipal ordinances for soil erosion and sedimentation control, repealed.

Amended by R.2014 d.023, effective January 21, 2014 (operative February 20, 2014).

See: 44 N.J.R. 1813(a), 44 N.J.R. 2015(a), 45 N.J.R. 1877(a), 46 N.J.R. 193(a).

Rewrote (d).

Case Notes

Township manager is without authority either under the Soil Erosion and Sediment Control Act or this rule to issue a stop construction order for noncompliance with the certified plan; only the municipal construction code enforcement official may issue such a stop order. J.P. Properties, Inc. v. Macy, 183 N.J.Super. 572 (Law Div.1982).

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 a 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 requirements 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 a 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/current project owner; 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 nec-

essary or appropriate in its discretion. This includes, without limitation, any 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 ROCs and CRCs 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 bearing 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 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.

(l) 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.

(m) Where soil restoration measures are required, a standard form adopted by the SSCC must be utilized indicating the type of soil test method used, test location, test results, and proposed remediation methods. This form shall be provided to the soil conservation district prior to the Report of Compliance inspection. The district shall withhold an ROC, CRC, or FROC for any project that has not provided this form or it is determined that the remediation area has not adequately addressed restoration measures.

New Rule, R.2005 d.39, effective January 18, 2005.

See: 36 N.J.R. 3961(a), 37 N.J.R. 265(a).

Former N.J.A.C. 2:90-1.10, Changes, recodified to N.J.A.C. 2:90-1.11.

Recodified from N.J.A.C. 2:90-1.10 and amended by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Rewrote the section; former N.J.A.C. 2:90-1.14, Mining and quarrying activities, recodified as N.J.A.C. 2:90-1.6.

Amended by R.2014 d.023, effective January 21, 2014 (operative February 20, 2014).

See: 44 N.J.R. 1813(a), 44 N.J.R. 2015(a), 45 N.J.R. 1877(a), 46 N.J.R. 193(a).

Substituted "district" for "District" and "district's" for "District's" and inserted "(FROC)", "or (FROC)", and ", or (FROC)" throughout; in (e), substituted "an" for "a" twice, and substituted "that" for "which" and "5G3" for "NJG0088323"; in (f), substituted a comma for "or" preceding "CRC"; in the introductory paragraph of (g), substituted a comma for "or" preceding "ROC", and substituted "requirements" for "requirement"; in the introductory paragraph of (h), substituted a comma for "or" following "ROC", and inserted "current project owner"; in (i), substituted "an" for "a" preceding "ROC" twice; and in (j), substituted a comma for "or final".

Amended by R.2017 d.152, effective August 21, 2017 (operative December 7, 2017).

See: 48 N.J.R. 1847(a), 49 N.J.R. 2787(a).

Added (m).

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.

Recodified from N.J.A.C. 2:90-1.11 by R.2005 d. 39, effective January 18, 2005.

See: 36 N.J.R. 3961(a), 37 N.J.R. 265(a).

Former N.J.A.C. 2:90-1.12, Municipal ordinances for soil erosion and sedimentation control, recodified to N.J.A.C. 2:90-1.13.

Recodified from N.J.A.C. 2:90-1.12 and amended by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Added "and other information as required by the Committee" and the last two sentences; former N.J.A.C. 2:90-1.15, Minor subdivision, repealed.

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, 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:

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.

New Rule, R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Amended by R.2014 d.023, effective January 21, 2014 (operative February 20, 2014).

See: 44 N.J.R. 1813(a), 44 N.J.R. 2015(a), 46 N.J.R. 193(a).

In (b), substituted "an" for "the" preceding "aggrieved", and in the address, deleted "Executive Secretary".

SUBCHAPTER 2. SOIL AND WATER CONSERVATION PROJECT COST SHARING: ELIGIBLE PROJECTS

2:90-2.1 Applicability

The projects contained in this subchapter are applicable to participants in a farmland preservation program pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, C.32 all rules and regulations promulgated thereunder.

2:90-2.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"District" or "soil conservation district" (SCD) means a governmental subdivision of this State, organized in accordance with the provisions of N.J.S.A. 4:24 et seq.

"Farmland Preservation Program" means any voluntary "Farmland Preservation Program" or "municipally approved farmland preservation program," the duration of which is at least eight years, authorized by law enacted subsequent to the effective date of the "Farmland Preservation Bond Act of 1981," P.L. 1981, c.276, which has as its principal purpose the long term preservation of significant masses of reasonably contiguous agricultural land within agricultural development areas adopted pursuant to N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32 and the maintenance and support of increased agricultural production as the first priority use of the land.

"Natural Resources Conservation Service" (NRCS) means Natural Resources Conservation Service of the United States Department of Agriculture.

"New Jersey Forest Service" means the Forest Service, Division of Parks and Forestry of the New Jersey Department of Environmental Protection.

"Soil and Water Conservation Project" means any project designed for the control and prevention of soil erosion and sediment damages, the control of pollution on agricultural

lands, the impoundment, storage and management of water for agricultural purposes, or the improved management of land and soils to achieve maximum agricultural productivity. Definitions of individual projects are contained in United States Department of Agriculture, Natural Resources Conservation Service Standards and Specifications, Technical Guide Section 4, and are incorporated herein by reference.

"State Soil Conservation Committee" (SSCC) means an agency of the State established pursuant to Chapter 24 of Title 4 of the Revised statutes.

Amended by R.1995 d.382, effective July 17, 1995.

See: 27 N.J.R. 1506(a), 27 N.J.R. 2685(a).

Amended by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Rewrote definition "New Jersey Bureau of Forest Management."

2:90-2.3 Standards and specifications

All soil and water conservation projects contained within this subchapter shall be in conformance with the United States Department of Agriculture Natural Resources Conservation Services Standards and Specifications, Technical Guide Section IV, which is hereby adopted by reference. All forest management type practices shall be in accordance with standards and specifications adopted by New Jersey Forest Service. Where determined necessary, the State Soil Conservation Committee may develop and adopt additional standards and specifications for installation of practices.

Amended by R.1995 d.382, effective July 17, 1995.

See: 27 N.J.R. 1506(a), 27 N.J.R. 2685(a).

Amended by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Substituted "IV" for "4" and "Service" for "Management"; deleted "Bureau of."

2:90-2.4 Eligible projects

The soil and water conservation projects contained in this subchapter are approved for cost-sharing in a farmland preservation program.

2:90-2.5 Terrace systems

(a) Terrace systems which reduce pollution of water, land, or air from agricultural non-point sources may be applied to cropland subject to erosion from water runoff.

(b) The following types of practices are approved for terrace systems:

1. Terraces and the necessary leveling and filling to permit installation of an effective system.
2. Materials and installation of underground pipe outlets and other mechanical outlets.
3. Necessary vegetative protective outlets or waterways.

4. Converting the present system to a new system **ONLY** if the present system is not serving its intended conservation purpose.

5. Removing portions of stone walls or hedgerows if necessary to permit establishment of the practice.

(c) A protective outlet or waterway which is installed solely as an outlet for the terrace system and serves no other conservation purpose should be cost-shared as a component of this practice. A protective outlet or waterway which by itself solves a conservation problem, but also serves as an outlet for a terrace system, should be cost-shared under Sod Waterways or Sediment Retention, Erosion, or Water Control Structures.

(d) The system shall be maintained for a minimum of eight years following calendar year of installment.

2:90-2.6 Diversions

(a) Diversions which conserve water, prevent erosion, and prevent or reduce pollution of water, land, or air from agricultural non-point sources may be applied to farmland subject to erosion from excess surface or subsurface water runoff where the problem can be corrected by such diversion facilities.

(b) The following types of practices are approved for diversion systems:

1. Diversions, ditches, dikes, or subsurface drains where necessary for proper functioning of diversion.

2. Installation of structures such as pipes, chutes, underground outlets, or other outlets, if needed for proper functioning of a ditch or dike for more even flow, or to protect outlets from erosion.

3. Necessary leveling and filling to permit installation of an effective system.

4. Removing portions of stone walls or hedgerows if necessary to permit establishment of the practice.

(c) The following special conditions are applicable to diversion systems:

1. Cost-sharing is not authorized for ditches or dikes designed to impound water for later use, or which will be a part of a regular irrigation system. (Refer to other practices that permit such measures.)

2. A protective outlet or waterway which is installed solely as an outlet for diversion systems and serves no other purpose should be cost-shared as a component of this practice. A protective outlet or waterway which by itself solves a conservation problem, but also serves as an outlet for a diversion system, should be cost-shared under Sod Waterways or Sediment Retention, Erosion, or Water Control Structures.

(d) The system shall be maintained for a minimum of eight years following calendar year of installation.

2:90-2.7 Contour farming

(a) A contour farming system which will protect soil from wind or water erosion and abate pollution of water, land, or air from agricultural non-point sources may be applied to non-terraced cropland subject to wind or water erosion which constitutes a pollution hazard.

(b) The following types of practices are approved for contour farming:

1. Cost-sharing is limited to the establishment of a contour farming system and the necessary removal of obstacles such as fences, stone walls, or hedgerows where applicable.

2. Cost-sharing is authorized for subsurface drains needed to eliminate spot seepage on five percent or greater slopes where the seepage makes cross-slope tillage impractical. Subsurface drains may be the sole component if spot seepage develops and makes cross-slope tillage impractical in existing contour farming.

(c) The following special conditions are applicable to contour farming:

1. All agricultural operations must be performed as nearly as practicable on the contour.

2. On acreage devoted to row crops, one of the following must apply:

i. The crop stubble or crop residue must be left standing over the winter;

ii. A winter cover crop must be established;

iii. Adequate protective tillage operations must be performed.

3. This practice is not applicable on any acreage that is approved under strip cropping.

4. Cost-sharing is not authorized for repeating any approved measure under this practice with the same person on the same acreage.

(d) The acreage approved in the established system or an approximate equal acreage shall be maintained for a minimum of eight years after year of establishment.

2:90-2.8 Stripcropping systems

(a) Contour stripcropping systems which protect soil from wind or water erosion and reduce pollution of water, land, or air from agricultural non-point sources may be applied to cropland subject to erosion or soil movement.

(b) The following types of practices are approved for stripcropping systems.

1. Cost-sharing is limited to the establishment of the systems and, if necessary, the removal of such obstacles as fences, stone walls, or hedgerows where applicable.

2. Cost-sharing is authorized for subsurface drains needed to eliminate spot seepage on five percent or greater slopes where the seepage makes cross-slope tillage impractical. Subsurface drains may be the sole component if spot seepage develops and makes cross-slope tillage impractical in existing stripcropping systems.

(c) The following special conditions are applicable to stripcropping systems:

1. On acreage devoted to row crops, one of the following must apply:

i. The crop stubble or residue must be left on the land during the winter;

ii. A winter cover crop must be established;

iii. Adequate protective tillage operations must be performed.

2. For contour stripcropping systems, cultural operations must be performed as nearly as practicable on the contour.

3. Cost-sharing is not authorized for repeating any approved measure under this practice with the same person on the same acreage.

(d) The system shall be maintained for a minimum of eight years following calendar year of installation.

2:90-2.9 Sod waterways

(a) Sod waterways which reduce erosion of land and the pollution of water from agricultural non-point sources may be applied to farmland needing permanent sod waterways to safely convey excess surface runoff water.

(b) The following types of practices are approved for sod waterways:

1. Cost-sharing is authorized for site preparation, grading, shaping, filling, and establishing permanent vegetative cover.

2. Cost-sharing is authorized for subsurface drains and stone lining that are necessary for proper functioning of the waterway.

(c) The following special conditions are applicable to sod waterways:

1. The cover may consist of sod-forming grasses, legumes, mixtures of grasses and legumes, or other types of vegetative cover that will provide the needed protection from erosion.

2. Close-sown small grains or annuals may be used for temporary protection followed by eligible permanent vegetative cover established by seeding.

(d) The system shall be maintained for a minimum of eight years following calendar year of installation.

2:90-2.10 Windbreak restoration or establishment

(a) Windbreak restoration or establishment systems which restore or establish windbreaks for protecting eligible farmland from soil erosion and for reducing the pollution of water, air, or land may be applied to farmland needing protection against serious wind erosion.

(b) The following types of practices are approved for windbreak restoration or establishment:

1. Planting trees or shrubs as needed for restoring or establishing field or farmstead windbreaks including cost of site preparation.
2. Permanent fences needed to protect the planted area from grazing, excluding boundary and road fences.

(c) The following special conditions are applicable to windbreak restoration or establishment:

1. Cost-sharing is not authorized for planting orchard trees or plantings for ornamental purposes.
2. Planting must be protected from destructive fire and destructive grazing.
3. Chemicals used in performing this practice must be registered Federally, with the State, and must be applied strictly in accordance with authorized uses, directions on the label, and other Federal or State policies and requirements.
4. Wildlife and environmental considerations must be given when designing this practice.

(d) The system shall be maintained for a minimum of eight years following calendar year of installation.

2:90-2.11 Stream protection

(a) Stream protection which reduces erosion or the pollution of water from agricultural activity may be applied to specific problem areas on small streams or lakes located on or adjacent to farmland where the bank is subject to damage from livestock or where sediment or runoff containing pollutants constitutes a significant hazard to water quality.

(b) The following types of practices are approved for stream protection:

1. Permanent fencing to protect banks from damage by domestic livestock. Cost-sharing may be authorized for fencing as a single eligible component where it is the most practical solution to the problem, or for repair of fencing where damaged by flooding or other natural disaster.
2. Planting trees, shrubs, or perennial grass cover as filter strips or buffer zones along banks.
3. To provide controlled access to water for livestock.
4. To install livestock crossings that will retard sedimentation and pollution. The installation of livestock crossings is limited to small streams. Where required, permits must be obtained by the applicant from appropriate authorities before the practice will be approved.

5. Impact on wildlife, trout production and maintenance, shellfish growing waters, and other environmental factors will be considered when designing the practice.

(c) The practice shall be maintained for a minimum of eight years following calendar year of installation.

2:90-2.12 Permanent vegetative cover on critical areas

(a) Permanent vegetative cover on critical areas which reduces erosion and the pollution of land, water, or air from sedimentation of agricultural or silicultural origin may be applied to critical areas (such as gullies, banks, roadsides, trails and roads, and field borders and similar problem areas), on farms which are susceptible to erosion and where runoff carrying substantial amounts of sediment constitutes a significant pollution hazard, or where both exist.

(b) The following types of practices are approved for permanent vegetative cover on critical areas:

1. Practices needed to stabilize a source of sediment such as grading, shaping, and filling, and the establishment of vegetation, (including the use of lime and fertilizer), trees or shrubs and similar practices which the SCD determines are practical for the solution of the problem.

(c) The following special conditions are applicable to permanent vegetative cover on critical areas:

1. Cost-sharing is authorized only if the measures will significantly reduce erosion and maintain, or improve, the quality of water in a stream, lake, pond, or other water source.
2. Cost-sharing is authorized for measures performed on public roadsides only where such measures are essential to solve a farm-based pollution or conservation problem.
3. Consideration should be given to wildlife and enhancing the appearance of the area when establishing the protective measures.

(d) The system shall be maintained for a minimum of eight years following calendar year of installation.

2:90-2.13 Landshaping or grading

(a) Landshaping or grading which permits effective surface drainage may be applied to cropland.

(b) No cost-sharing is authorized for any shaping or grading performed through normal farming operations required to prepare the land for planting or cultivating crops.

(c) The practice shall be maintained for a minimum of eight years following calendar year of installation or establishment.

2:90-2.14 Water impoundment reservoirs

(a) Water impoundment reservoirs which provide water for agricultural uses and other benefits when possible may be applied to farmland on which the construction or sealing of water impoundment structures, including dugouts, is needed for the above purposes.

(b) The following types of practices are approved for water impoundment reservoirs:

1. Cost-sharing is authorized only for structures that provide water for agricultural uses, including livestock water impoundments, and irrigation.
2. Cost-sharing is authorized for fencing and vegetative cover (including mulching) needed to protect the structure.

(c) The following special conditions are applicable to water impoundment reservoirs:

1. Cost-sharing is not authorized for any reservoir which would be used primarily for recreation or household water.
2. Cost-sharing is not authorized for pipelines or troughs to furnish water to farm buildings.
3. Consideration shall be given to the needs of wildlife and to enhancing the appearance of the area when designing or installing any reservoirs under this practice.

(d) The structure shall be maintained for a minimum of eight years following calendar year of installation.

2:90-2.15 Irrigation systems

(a) Irrigation water systems which conserve irrigation water, improve water quality and management, control erosion, and reduce the pollution of water on land from agricultural non-point sources may be applied on land for which an adequate supply of water is available and on which irrigation will be continued for agricultural and horticultural purposes.

(b) The following types of practices are approved for irrigation systems:

1. Permanently installed systems, mainlines, and wells.
2. Land leveling. (This may be authorized as a single component for performance during a program year if it is part of a reorganizing plan which includes other components. The other required components must be carried out in other years with or without cost-sharing.)
3. Tailwater recovery systems or other installations for the conservation of soil or water where needed as an integral part of the irrigation system.
4. Where existing systems are converted to, or new systems are installed for trickle or similar low volume, low-loss systems, cost-sharing is authorized for pumping, filtering and application equipment where such components are permanently installed.

(c) The following special conditions are applicable to irrigation systems:

1. Cost-sharing is not authorized for:
 - i. Portable pipe or any other normally portable equipment.

- ii. Pipe installed in the well (other than casing), pumps, and pumping equipment except as specified in (b)4 above.

- iii. Installation of power supplies.

- iv. Sprinklers or other above-ground water application equipment except as specified in (b)4 above.

2. Consideration must be given to the needs of wildlife, preserving or enhancing the appearance of the area, and potential pollution hazards.

3. Cost-sharing is authorized for land leveling as the sole component if it is a needed part of the plan for the reorganization of the system.

(d) The system shall be maintained for a minimum of eight years following calendar year of installation.

Amended by R.1986 d.105, effective April 7, 1986.

See: 18 N.J.R. 131(a), 18 N.J.R. 638(a).

Added (b)4 and (c)lii-iv.

2:90-2.16 Sediment retention, erosion, or water control structures

(a) Sediment retention, erosion, or water control structures which reduce erosion and the pollution of land or water from agricultural or silvicultural non-point sources or salt water intrusion may be applied to specific problem areas on farms where runoff of substantial amounts of sediment or runoff containing pesticides or nutrients constitute a significant pollution hazard.

(b) The following types of practices are approved for sediment retention, erosion or water control structures:

1. Sediment detention or retention structures, such as erosion control dams (excluding water storage type dams), desilting reservoirs, sediment basins, dikes, sluice gates or similar structures; including maintenance and repair where normal life span is exceeded or structures are damaged by natural causes or wildlife.

2. Channel linings, chutes, drop spillways, and pipe drops that dispose of excess water.

3. Fencing and vegetative cover (including mulching needed to protect the structure) and for leveling and filling to permit the installation of the structure.

4. Installing sediment retention structures on public roadsides only where such structures are essential to solve a farm-based pollution or conservation problem.

(c) The following special conditions are applicable to sediment retention, erosion or water control structures:

1. Cost-sharing is authorized only if the measures will contribute significantly to maintaining or improving soil or water quality.

2. Consideration must be given to the needs of wildlife when establishing the protective measures.

(d) The system shall be maintained for a minimum of eight years following calendar year of installation.

2:90-2.17 Permanent open drainage systems

(a) Permanent open drainage systems which dispose of excess water on farmlands may be applied to cropland that has been cropped for at least three out of the last five years.

(b) The following special conditions are applicable to permanent open drainage systems:

1. Due consideration must be given to maintaining wildlife habitat when installing the system.
2. Cost-sharing is authorized to clear the necessary minimum right-of-way construction of ditches, pipes and other necessary structures, and for spreading spoil banks if needed to effectively use the system.
3. Cost-sharing is not authorized for installing structures which are primarily for the farm operator's convenience.
4. Cost-sharing is authorized for reconstruction of existing ditches if design life span has been exceeded.

(c) The practice shall be maintained for a minimum of eight years following calendar year of installation.

Amended by R.1986 d.105, effective April 7, 1986.
See: 18 N.J.R. 131(a), 18 N.J.R. 638(a).

Added text in (a) "that has been . . . last five years."

2:90-2.18 Underground drainage systems

(a) Underground drainage systems which dispose of excess water may be applied to cropland that has been cropped for at least three out of the last five years.

(b) The following special conditions are applicable to underground drainage systems:

1. Due consideration must be given to maintaining wildlife habitat when installing the system.
2. Cost-sharing is not authorized for installing tile in open drain ditches that are meeting the drainage problem.

(c) The practice shall be maintained for a minimum of eight years following calendar year of installation.

Amended by R.1986 d.105, effective April 7, 1986.
See: 18 N.J.R. 131(a), 18 N.J.R. 638(a).

Added text in (a) "that has been . . . last five years."

2:90-2.19 Developing facilities for livestock water

(a) Facilities for livestock water which protect vegetative cover or make practicable the use of the land for vegetative cover so as to prevent soil erosion and to prevent or reduce the pollution of water, air, or land may be applied to installations that provide water at locations which will bring about better distribution of grazing, proper rotation of grazing, or better grassland management.

(b) The following types of practices are approved for developing facilities for livestock water:

1. Construct or deepen wells.
2. Develop springs or seeps, including fencing of the area, if needed, to protect the development from pollution by livestock.
3. Install pipelines, storage facilities, cisterns, and artificial watersheds.
4. Installations to permit the continuance, expansion, or initiation of a livestock grazing operation.

(c) The following special conditions are applicable to developing facilities for livestock water:

1. Wells must be provided with pumping equipment (except for artesian wells) and adequate storage facilities; no cost-sharing is authorized for pipe installed in the well (other than casing), pumps, pumping equipment, or for dry wells.
2. No cost-sharing is authorized under this practice for any installation which:
 - i. Is primarily for recreation, wildlife, dry lot feeding, corrals, or barns;
 - ii. Makes it possible to graze crop residues, field borders, or temporary or supplemental pasture crops;
 - iii. Is for land on which the cover will be used for hay or silage or will be field chopped and hauled to headquarters for feeding;
 - iv. Primarily provides water for headquarters. (Incidental use of water at headquarters is permitted if it does not lessen the effectiveness of the installation in serving its conservation purpose.) Costs may be shared to install a structure at or near headquarters only if that is the most practical location and the structure will effectively accomplish its conservation purpose at such location.

3. Consideration should be given to the needs of wildlife and enhancing the appearance of the area, when installing watering facilities.

(d) The practice shall be maintained for a minimum of eight years following calendar year of installation or establishment.

(e) The practice shall be maintained for a minimum of eight years following calendar year of installation or establishment.

(f) The practice shall be maintained for a minimum of eight years following calendar year of installation or establishment.

(g) The practice shall be maintained for a minimum of eight years following calendar year of installation or establishment.

2:90-2.20 Forest tree stand improvement

(a) Forest tree stand improvement practices which enhance the environment by improving or protecting a stand of desirable trees intended for timber production, pulpwood, posts, etc., and to provide soil protection may be applied to stands of forest trees where quality can be improved through timber stand improvement.

(b) The following types of practices are approved for forest tree stand improvement:

1. Thinning;
2. Pruning crop trees;
3. Releasing desirable seedlings and young trees.

(c) The following special conditions are applicable to forest tree stand improvement:

1. Cost-sharing is not authorized for:
 - i. Correcting existing erosion problems with forestry practices. (The correction of erosion problems created by past land use activities may be authorized under other appropriate State practices);
 - ii. Fencing, fire breaks, fuel breaks, firelanes, or roads;
 - iii. Timber stand improvement in stands where the undesirable stems can be removed by commercial sales, such as fuelwood, poles, etc.
2. Chemicals used in performing this practice must be Federally and State registered and must be applied strictly according to authorized uses, directions on label, and other Federal or State policies and requirements.
3. The area must be protected from destructive fire and, if seedlings are present, from destructive grazing.
4. Improvement measures should be carried out in a way that preserves or improves the quality of the environment, especially wildlife habitat and the appearance of the area.

(d) The practice shall be maintained for a minimum of eight years following calendar year of installation or establishment.

2:90-2.21 Forest tree plantations

(a) Forest tree plantations that establish a stand of trees for soil protection, forestry purposes, and preserves and improves the environment may be applied to farmland suitable for growing tree species that will provide multi-purpose forest benefits. Where shrubs are used, preference should be given to varieties beneficial to wildlife.

(b) The following types of practices are approved for forest tree plantations:

1. The establishment of a plantation that will provide both forest products and improved protection from wind or water erosion.
2. Clearing land occupied largely by scrubby brush of no economic value, only where essential to permit planting desirable tree species. Technical assistance must be utilized to determine suitability of the land for clearing and the measures necessary to prevent erosion.

(c) The following special conditions are applicable to forest tree plantations:

1. Cost-sharing is not authorized for fencing, fire breaks, fuel breaks, firelanes, roads, or for parcels of woodland less than one acre.
2. Cost-sharing is not authorized for planting orchard trees, for plantings for ornamental purposes, or for Christmas tree production.
3. Planting must be protected from destructive fire and grazing.
4. Chemicals used in performing this practice must be Federally and State registered and must be strictly applied in accordance with authorized uses, directions on label, and other Federal or State policies and requirements.
5. Consideration must be given to preserving and improving the environment.

(d) This practice shall be maintained for a minimum of eight years following calendar year of installation or establishment.

2:90-2.22 Site preparation for natural regeneration

(a) Site preparation for natural regeneration which establishes a stand of trees for soil protection, forestry purposes, and to preserve and improve the environment may be applied to farmland suitable for growing tree species that will provide multi-purpose forest benefits.

(b) Cost-sharing is authorized for site preparation for natural reseeding (including prescribed burning with plow lines), if all of the special conditions in (c) below apply.

(c) The following special conditions are applicable to site preparation for natural regeneration:

1. The following conditions must be met:
 - i. Sufficient desirable seed trees are present to permit natural reseeding.
 - ii. Brush, dense litter, or other material must be broken up and removed to expose the forest soil to permit reseeding.
 - iii. Seed trees must be left until the area is restocked.
2. Cost-sharing is not authorized for:
 - i. Site preparation for the natural regeneration of ornamental or Christmas trees;
 - ii. Correcting existing erosion problems with forestry practices. The correction of erosion problems caused by past land use activities may be authorized under other appropriate State practices;
 - iii. Fencing or roads.

3. Planting area must be protected from destructive fire and destructive grazing.

4. Chemicals used in performing this practice must be Federally and State registered and must be applied strictly according to authorized uses, directions on label, and other Federal or State policies and requirements.

5. Consideration must be given to preserving and improving the environment.

(d) This practice shall be maintained for a minimum of eight years following calendar year of installation or establishment.

2:90-2.23 Animal waste control facilities

(a) Animal waste control facilities which reduce the existing pollution of water, land, or air by animal wastes may be applied to areas on farmland where animal wastes from the farm constitute a significant pollution hazard. This practice is designed to provide facilities for storage and handling of livestock and poultry waste and the control of surface runoff water to permit the recycling of animal waste onto the land in such a manner as to abate pollution which would otherwise result from livestock or poultry operations.

(b) The following types of practices are approved for animal waste control facilities:

1. For animal waste storage facilities such as aerobic or anaerobic lagoons, liquid manure tanks, holding ponds, collection basins, settling basins, composting facilities and similar facilities as well as diversions, channels, waterways, outlet structures, piping, land shaping, and similar measures needed as part of a system on the farm to manage animal waste.

2. Permanently installed equipment needed as an integral part of the system; for fencing and vegetative cover (including mulching needed to protect the facility); and for leveling and filling to permit the installation of an effective system.

(c) The following special conditions are applicable to animal waste control facilities:

1. Cost-sharing is limited to solving the pollution problems where the livestock or poultry operation is part of a total farming operation, and shall be limited to the most cost-effective facilities.

2. Cost-sharing is authorized only if the storage and diversion facilities will contribute significantly to maintaining or improving the soil or water quality.

3. Cost-sharing is not authorized for the following:

i. Measures primarily for the prevention or abatement of air pollution unless the measures also have soil and water conserving benefits;

ii. Portable pumps, pumping equipment or other portable equipment, buildings or modifications of buildings or for spreading animal wastes on the land;

iii. For that portion of animal waste structures installed under or attached to buildings which serve as part of the building or its foundation;

iv. For animal waste facilities that do not meet local or State regulations.

(d) The system shall be maintained for a minimum of eight years following calendar year of installation.

2:90-2.24 Agrichemical handling facility

(a) The storage, handling, and mixing of agrichemicals and the cleaning of application equipment can constitute a pollution hazard to surface and ground water. This practice is designed to provide an impervious containment area for isolation of spillage from on-farm agrichemical mixing, loading, unloading, and rinsing operations in order to minimize pollution of soil, water, air, plant, or animal resources.

(b) The following types of practices and components are approved for an agrichemical facility:

1. Land shaping, leveling, and filling to permit installing the system;

2. Formed concrete, reinforcing, sump, sealant, gravel for sub-base and access ramps;

3. Pumps, pipes, valves, and storage tanks permanently installed for use in the agrichemical facility;

4. Diversions, waterways, outlet structures, and similar measures to convey surface water away from the facility; and for fencing and vegetative cover including mulching;

5. Roof, including gutters and downspouts, and sidewalls to exclude precipitation from the facility; and for providing water and electric services from proximate locations.

(c) Cost-sharing is not authorized for the following:

1. Offsite disposal of rinsate and spillage; nor for remedial action to correct soil, water, or other resources affected by agrichemical spillage.

2. Agrichemical facilities that do not meet local or State regulations.

3. Non permanent interior wall partitions and enclosures, including insulation, ventilation, shelving, etc., for the storage of agrichemicals.

(d) The agrichemical facility shall be operated and maintained for a minimum of eight years following the calendar year of installation.

New Rule R.1995 d.380, effective July 17, 1995.
See: 27 N.J.R. 1836(a), 27 N.J.R. 2686(a).

2:90-2.25 Cost share rates

(a) Projects as identified in N.J.A.C. 2:90-2.5 through 2.24 shall be cost shared at 75 percent of the actual cost, not to exceed 75 percent of a maximum amount per project as estimated by the district in consultation with the United States Department of Agriculture, Natural Resources Conservation Service District Conservationist and Farm Services Agency County Executive Director. Districts shall consult with authorized personnel within the New Jersey Forest Service for forestry related practices.

(b) The maximum per project cost shall be based upon the average cost for installation of such practices in the district, as determined from actual Farm Services Agency and NRCS cost records for similar work under Federal cost share programs. For those practices which are not in the Federal programs, the district shall consult with USDA or Forest Service officials in the district to investigate actual costs and establish a suitable average maximum cost reflecting current prices. An average cost schedule developed in accordance with this procedure shall be adopted by the district and filed with the State Soil Conservation Committee on or before January 15 of each year. The SSCC shall reserve the right to review maximum cost rates and to require adjustments if deemed necessary.

(c) The least cost practice or system which is determined to be effective and functional shall be the basis for cost-share rates. An applicant may install a more expensive practice or system if it is determined to be effective and conforms to the standards and specifications in N.J.A.C. 2:90-2.3, but shall be eligible for reimbursement only for up to 75 percent of the least cost option described above.

New Rule. R.1985 d.303, effective June 17, 1985.

See: 17 N.J.R. 86(a), 17 N.J.R. 1542(c).

Amended by R.1986 d.105, effective April 7, 1986.

See: 18 N.J.R. 131(a), 18 N.J.R. 638(a).

(c) added.

Recodified from 2:90-2.24 and amended by R.1995 d.380, effective July 17, 1995.

See: 27 N.J.R. 1836(a), 27 N.J.R. 2686(a).

Amended by R.1995 d.382, effective July 17, 1995.

See: 27 N.J.R. 1506(a), 27 N.J.R. 2685(a).

Amended by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

In (a) and (c), increased percentages from 50 percent to 75 percent; in (a) and (b), substituted "Farm Services Agency" for "CFSA", substituted "Service" for "Management" and deleted "Bureau of."

(P.L. 1983, C.32). These rules shall be utilized in conjunction with N.J.A.C. 2:90-2 and N.J.A.C. 2:76-5.

2:90-3.2 Definitions

The following words and terms, when used in this subchapter shall have the following meanings unless the context clearly indicates otherwise.

"Application form" means a standard form adopted by the State Soil Conservation Committee.

"County Agriculture Development Board" (CADB) means a county agriculture development board established pursuant to N.J.S.A. 4:1C-14 or a subregional agricultural retention board established pursuant to N.J.S.A. 4:1C-17.

"District" or "Soil Conservation District" (SCD) means a governmental subdivision of this State, organized in accordance with the provisions of N.J.S.A. 4:24-1 et seq.

"Farm conservation plan" or "plan" means a plan which indicates needed land treatment and related conservation and resource management measures including approved forest management practices that are determined practical and reasonable for a particular farm to conserve and protect natural resources and to maintain and enhance agricultural productivity.

"Farm Services Agency" (FSA) means the Farm Services Agency of the United States Department of Agriculture.

"Farmland Preservation Program" means any voluntary "Farmland Preservation Program" or "municipally approved farmland preservation program", the duration of which is at least eight years, authorized by law enacted subsequent to the effective date of the "Farmland Preservation Bond Act of 1981," P.L. 1981, c.276, which has its principal purpose the long term preservation of significant masses of reasonably contiguous agricultural land within agricultural development areas adopted pursuant to N.J.S.A. 4:1C-11 et seq., (P.L. 1983, c.32) and the maintenance and support of increased agricultural production as the first priority use of the land.

"Natural Resources Conservation Service" (NRCS) means Natural Resources Conservation Service of the United States Department of Agriculture.

"New Jersey Forest Service" means the Forest Service, Division of Parks and Forestry of the New Jersey Department of Environmental Protection.

"Soil and water conservation practice" means any practice designated for the control and prevention of soil erosion and sediment damages, the control of pollution on agricultural lands, the impoundment, storage and management of water for agricultural purposes, or the improved management of land and soils to achieve maximum agricultural productivity. Definitions of individual practices are contained in United States Department of Agriculture, Natural Resources

**SUBCHAPTER 3. SOIL AND WATER CONSERVATION
PROJECT COST SHARING: PROCEDURAL
RULES**

2:90-3.1 Applicability

This subchapter contains State Soil Conservation Committee rules which describe procedures for soil conservation districts and other participating conservation agencies regarding the review and approval of applications for soil and water conservation projects pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq.,

Conservation Service standards and specifications, Technical Guide Section IV, which are hereby adopted by reference. All forest management type practices shall be in accordance with standards and specifications adopted by New Jersey Forest Service. Where determined necessary, the State Soil Conservation Committee may develop and adopt additional standards and specifications for installation of practices.

“State Agriculture Development Committee” (SADC) means the State Agriculture Development Committee established pursuant to N.J.S.A. 4:1C-4.

“State Soil Conservation Committee” (SSCC) means an agency of the State established pursuant to N.J.S.A. 4:24-1 et seq.

“Standards and specifications” means the United States Department of Agriculture Natural Resources Conservation Service standards and specifications, Technical Guide Section IV, which are hereby adopted by reference. All forest management type practices shall be in accordance with standards and specifications adopted by New Jersey Forest Service. Where determined necessary, the State Soil Conservation Committee may develop and adopt additional standards and specifications for installation of practices. Copies of Standards and Specifications are on file and may be viewed at www.nj.nrcs.usda.gov/efotg.

“System” means a group of practices which when combined provide for the resolution of land treatment and related conservation problem(s).

“Technical agency” means the United States Department of Agriculture National Resources Conservation Service or the New Jersey Forest Service having responsibility for standards and specifications as identified above for soil and water conservation projects approved by the State Soil Conservation Committee.

Amended by R.1995 d.382, effective July 17, 1995.
See: 27 N.J.R. 1506(a), 27 N.J.R. 2685(a).
Amended by R.2006 d.12, effective February 6, 2006.
See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Deleted definitions “Agricultural Conservation Program”, “Consolidated Farm Service Agency” and “Soil and Water Conservation Practice”; added definition “Farm Services Agency”; rewrote definitions “New Jersey Bureau of Forest Management,” “Soil and water conservation project,” “Standards and specifications” and “Technical agency.”

2:90-3.3 Eligibility

Any landowner enrolled in a Farmland Preservation Program is eligible to apply for State funding assistance for soil and water conservation projects approved by the State Soil Conservation Committee and promulgated in N.J.A.C. 2:90-2. A farm operator may act as agent for the landowner when so designated in writing by the landowner. Upon the concurrence of the SCD, the landowner may request SCD review and recommendations for State funding assistance prior to formal enrollment in a Farmland Preservation Program provided he has expressed his desire in writing to

enroll in such a program and has verified that his land is eligible to be enrolled in such a program as prescribed by the CADB.

Amended by R.2000 d.237, effective June 5, 2000.
See: 32 N.J.R. 1109(a), 32 N.J.R. 2047(b).
Amended N.J.A.C. reference.
Amended by R.2006 d.12, effective February 6, 2006.
See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).
Rewrote the section.

2:90-3.4 Application procedure

(a) An applicant shall apply to the appropriate SCD for up to 75 percent of the cost of installing a soil and water conservation practice(s) on the application form as defined in N.J.A.C. 2:90-3.2.

(b) The SCD shall advise the applicant of program provisions and policies and may assist the applicant in providing the appropriate information to complete the application.

(c) The SCD may establish priorities for providing technical assistance for the plan.

(d) A copy of the completed application shall be sent to the CADB for its information.

Amended by R.2006 d.12, effective February 6, 2006.
See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

In (a), increased percentage from 50 percent to 75 percent and substituted “practice” for “project.”

2:90-3.5 Feasibility review and technical agency referral

(a) The SCD shall seek the assistance of appropriate technical agencies or agents to determine the feasibility of the requested practices to the land.

(b) The technical agency shall review the application and recommend projects that are essential and applicable to the landowners’ proposed operation. If the technical agency determines that the requested projects are not feasible and upon the SCD concurrence, the applicant shall be so advised by the district.

Amended by R.2006 d.12, effective February 6, 2006.
See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

In (a), substituted “feasibility” for “applicability” and “practices” for “projects.”

2:90-3.6 Preparation of conservation plan

(a) A conservation plan shall be developed in consultation with the landowner. The plan shall indicate the proposed practices, their location, schedule for installation, maintenance requirements, and estimated costs.

(b) The completed plan shall be submitted to the SCD for review and approval. The landowner shall be advised by the SCD of action taken on the plan.

(c) The plan may be modified at the landowners request subject to technical agency concurrence and SCD approval. If

the applicant determines that the requested practices cannot be completed within the original schedule because of circumstances beyond his control, the applicant may request an extension of time. The request, including reasons why the extension is needed, shall be submitted, in writing, to the SCD. Upon its concurrence, the SCD shall forward such request to the SSCC for implementation. In no case shall extensions be granted for more than 12 months.

(d) If the SCD determines that serious soil and water management problems exist on the applicants' land, it may require that such problems be addressed prior to the initiation of other projects which are not directly related to the observed soil and water management problems. In addition, projects which are dependent upon prior installation of protective practices identified in the plan must be installed in accordance with the plan schedule.

Amended by R.1985 d.302, effective June 17, 1985.

See: 17 N.J.R. 861(b), 17 N.J.R. 1543(a).

Added (d).

Amended by R.1986 d.190, effective May 19, 1986.

See: 18 N.J.R. 449(a), 18 N.J.R. 1099(a).

(c) substantially amended.

Amended by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Rewrote (a) and (b); in (c), substituted "practices" for "projects."

2:90-3.7 Coordination with other cost share programs

(a) Where Federal or other cost-sharing is available, the SCD shall coordinate the appropriate integration of projects. The SCD shall advise the applicant of funding available via other programs and recommend appropriate division of projects in the approved plan to assure maximum utilization of all other funding sources.

(b) No Federal cost share program may be used as the landowner's matching portion of costs for a practice or any other component of a practice funded under the provisions of this program.

(c) No portion of the State cost share program may be used as the landowner's portion of costs for a practice or any component of a practice funded under the provisions of any Federal cost share program.

Amended by R.1995 d.382, effective July 17, 1995.

See: 27 N.J.R. 1506(a), 27 N.J.R. 2685(a).

Amended by R.2000 d.237, effective June 5, 2000.

See: 32 N.J.R. 1109(a), 32 N.J.R. 2047(b).

Deleted former (f) and (g) and added a new (f).

Amended by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Rewrote the section.

2:90-3.8 District approval process

(a) Following review by the technical agencies and coordination with other cost share programs, the SCD shall review the application for program conformance.

(b) Upon verification that all eligibility criteria and other program provisions have been satisfied, the SCD shall approve or conditionally approve the application.

(c) For a project where the applicant provides at least 25 percent of the project cost without county funding assistance, the approved application and W-9 form shall be forwarded by the SCD to the State Soil Conservation Committee for approval. The SCD shall send a copy of the approved application to the CADB for its information.

(d) For a practice where the applicant receives financial assistance from county appropriated funds for the cost of practices, the SCD shall forward the approved application to the CADB for concurrence. Following its approval, the CADB shall forward the application and W-9 form to the SSCC for approval.

Amended by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Deleted (c); recodified existing (d) and (e) as (c) and (d) and rewrote each.

2:90-3.9 State review and approval process

(a) The SSCC shall review and verify that the application is in conformance with program guidelines.

(b) Following verification, the SSCC shall approve the application and recommend SADC approval and obligation of funds for the entire amount of the approved plan. The SSCC may delegate this authority to the appropriate staff.

(c) Following SADC approval the SSCC, CADB and landowner and the SCD shall be advised of project funding approval.

(d) The SCD shall advise the applicant and appropriate technical agencies of application approval.

Amended by R.1986 d.190, effective May 19, 1986.

See: 18 N.J.R. 449(a), 18 N.J.R. 1099(a).

(e) added.

Amended by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

In (c), added "CADB and landowner and"; deleted (e).

2:90-3.10 Project completion and payment

(a) Upon practice completion, the applicant shall notify the SCD, request payment and provide verification of costs.

(b) The SCD shall secure technical agency verification that the practice has been completed in accordance with technical standards and specifications and also verify applicant's payment claims. If payment claims are satisfactory, the SCD shall forward the payment request with the payment claim voucher, itemized bills, and related documentation that substantiates all costs incurred to the SSCC.

(c) The SSCC shall verify that program provisions have been satisfied prior to recommending SADC payment to the applicant.

Amended by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

In (a) and (b), substituted "practice" for "project or project component"; in (a), added "and provide verification of costs" and deleted "and"; in (b), rewrote "applicants" as "applicant's."

2:90-3.11 Maintenance

(a) The applicant shall be responsible for maintaining the practices for eight years following date of completion.

(b) The SCD shall be responsible for inspecting the practice(s) for maintenance in accordance with guidelines provided by the SSCC and the standards and specifications set forth in N.J.A.C. 2:90-1.3.

(c) The applicant shall allow SCD and other program agents reasonable access to the project site for the purpose of site inspections.

Amended by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

In (a) and (b), substituted "practice" for "project"; in (b), added N.J.A.C. reference and deleted requirement that annual inspections on five percent of each practice are performed.

2:90-3.12 Violations

(a) If the SCD determines that an applicant fails to comply with the provisions for maintenance of the practice, the SCD shall advise the landowner of required corrective measures. The SCD shall forward a copy of such notification to the SSCC.

(b) The landowner shall not be liable for inadequate maintenance or destruction of a practice if caused by a natural disaster that could not have been reasonably anticipated.

Amended by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

In (a) and (b), substituted "practice" for "project."

2:90-3.13 Records

The SCD shall retain application forms, plans, performance reports, and all other related information pertaining to the applicant and approved practices.

Amended by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Substituted "practices" for "projects."

SUBCHAPTER 4. AGRICULTURAL CONSERVATION COST SHARE PROGRAM

2:90-4.1 Applicability

(a) through the New Jersey Department of Agriculture (NJDA) Conservation Cost Share Program (CCSP), the State Soil Conservation Committee (SSCC) provides technical, educational, and, when available, financial assistance to eligible farmers to address soil, water, and related natural resources concerns, and to encourage environmental

enhancements on their lands in an environmentally beneficial and cost-effective manner. The purposes of the program are achieved through the implementation of structural, vegetative, and land management practices on eligible land.

(b) This program will be integrated with and will complement the USDA Environmental Quality Incentives Program (EQIP) administered by the Natural Resources Conservation Service (NRCS). These rules are closely aligned with EQIP rules, at 7 CFR Part 1466, and establish responsibilities and clarify requirements related to program administration by the State Soil Conservation Committee and the New Jersey Department of Agriculture and the soil conservation districts. To the extent possible, these rules shall be interpreted to achieve maximum compatibility with EQIP. Responsibility and accountability for administration and expenditure of State funds appropriated to this program reside solely with the New Jersey Department of Agriculture, and are allocated to the State Soil Conservation Committee. Full coordination, cooperation and consultation with the 15 soil conservation districts, and the NRCS is expected. Authority for final interpretation of these rules is retained by the SSCC, NJDA.

(c) To the extent that finds are made available in the future, NJDA hereby adopts and incorporates by reference 7 CFR Part 1466, as amended and supplemented.

1. A copy of 7 CFR Part 1466 may be obtained at <http://www.access.gpo.gov/nara/cfr/waisidx02/7cfr146602.html>.

2. A copy of this document is on file in the Director's Office, Division of Agriculture and Natural Resources, New Jersey Department of Agriculture, PO Box 330, Trenton, NJ 08625.

Amended by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

In (a), added " , when available, "; in (b), deleted "jointly," "and the Farm Service Agency (FSA)" and "and FSA," decreased number of soil conservation districts from 15 to 16, substituted "CFR" for "C.F.R." and "and" for " , " following "district," and made "district" plural; added (c).

2:90-4.2 Administration

(a) CCSP is administered by SSCC in cooperation with the soil conservation districts and the Natural Resources Conservation Service (NRCS) as set forth in (b) and (c) below.

(b) SSCC shall, following consultation with the agencies listed in (a) above:

1. Provide overall program management and implementation leadership for CCSP;
2. Establish policies, procedures, priorities, and guidance for program implementation, including determination of priority areas;
3. Establish cost-share and incentive payment limits;
4. Determine eligibility of practices;

5. Provide technical leadership for conservation planning and implementation, quality assurance and evaluation of program performance;

6. Make funding decisions and determine allocations of program funds;

7. Be responsible for the administrative processes and procedures for applications, contracting and financial matters, including allocation and program accounting; and

8. Provide leadership for establishing, implementing, and overseeing administrative processes for applications, contracts, payment processes and administrative and financial performance reporting.

(c) The Soil Conservation Districts shall:

1. Advise producers within the District of the availability, terms and conditions of CCSP;

2. Receive applications and approve conservation plans from applicants;

3. Assist applicants in completing the application;

4. Coordinate with NRCS and SSCC in the review of applications;

5. Provide technical assistance to the applicant in the development and implementation of the approved conservation plan and with the installation of conservation practices included in the approved CCSP contract; and

6. Recommend SSCC approval of the CCSP application and contract.

Amended by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

In (a), substituted "and" for "," following "districts" and deleted "and the Farm Service Agency (FSA)"; in (c)4, deleted ", FSA."

2:90-4.3 Definitions

The following definitions shall apply to this subchapter and all documents issued in accordance with this subchapter, unless specified otherwise:

"District or Soil Conservation District" (SCD) means a governmental subdivision of this State organized in accordance with the provisions of N.J.S.A. 4:24-1 et seq.

"Life span" means the period of time specified in the contract or conservation plan during which the conservation management systems or component conservation practices are to be maintained and used for the intended purpose.

"Liquidated damages" means a sum of money stipulated in the contract which the participant agrees to pay if the participant breaches the contract. The sum represents an estimate of the anticipated or actual harm caused by the breach, and reflects the difficulties of proof of loss and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

"Operation and maintenance" means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during its life span. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

"Participant" means an applicant who is a party to a CCSP contract.

"State Soil Conservation Committee" (SSCC) means an agency of the State established in accordance with N.J.S.A. 4:24-3 chaired by the New Jersey Secretary of Agriculture. The Chairman of the Committee may act on behalf of the Committee.

Amended by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Deleted definitions "Agricultural land" through "Designated conservationist," "Environmental Quality Incentive Program" through "Land management practice," "Livestock" through "Natural Resources Conservation Service," "Priority area" through "State executive director," "State technical committee" through "Vegetative practice".

2:90-4.4 Contract requirements

(a) In order for a participant to receive cost-share or incentive payments, the participant shall enter into a contract agreeing to implement a conservation plan or portions thereof. SSCC in coordination with the SCD shall determine the eligibility of participants.

(b) A CCSP contract shall:

1. Incorporate by reference all portions of the conservation plan to be funded through CCSP;

2. Be for a duration of not less than five years nor more than 10 years;

3. Incorporate all provisions as required by law or statute, including participant requirements to:

i. Not conduct any practices on the farm unit of concern that would tend to defeat the purposes of the contract;

ii. Refund any program payments received with interest, and forfeit any future payments under the program, on the violation of a term or condition of the contract consistent with N.J.A.C. 2:90-4.8;

iii. Refund all program payments received on the transfer of the right and interest of the producer in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations of the contract in accordance with N.J.A.C. 2:90-4.7;

iv. Supply information as required by SSCC to determine compliance with the contract and requirements of the program;

4. Specify the participant's requirements for operation and maintenance of the applied conservation practices.

Recodified from N.J.A.C. 2:90-4.10 and amended by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

In (a), substituted "the" for "FSA and" and deleted "The SSCC shall use the NRCS ranking and grant final approval of a contract."; in (b)3iii and iv, rewrote N.J.A.C. references; deleted (c) and (d); former N.J.A.C. 2:90-4.4, Program requirements, repealed.

2:90-4.5 Conservation practice operation and maintenance

The contract shall incorporate the operation and maintenance of conservation practices applied under the contract. The participant shall operate and maintain the conservation practice for its intended purpose for the life span of the conservation practice, as identified in the contract or conservation plan, as determined by the SSCC. Conservation practices installed before the execution of a contract, but needed in the contract to obtain the environmental benefits agreed upon, are to be operated and maintained as specified in the contract. NRCS and the SCD may periodically inspect the conservation practice during the life span of the practice as specified in the contract to ensure that operation and maintenance is occurring.

Recodified from N.J.A.C. 2:90-4.11 by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Former N.J.A.C. 2:90-4.5, Priority areas and significant Statewide natural resource concerns, repealed.

2:90-4.6 Cost-share and incentive payments

(a) The maximum direct State share of cost-share payments to a participant shall not be more than 75 percent of the projected cost of a structural or vegetative practice. The direct State share of cost-share payments to a participant shall be reduced proportionately below 75 percent, or the cost-share limit as set in (a)2 below, to the extent that total financial contributions for a structural or vegetative practice from all public and private entity sources exceed 100 percent of the projected cost of the practice. The total of all public funding shall not exceed 90 percent of the projected costs of a practice and the direct State share shall be reduced proportionately to assure same.

1. SSCC shall provide incentive payments to participants for a land management practice in an amount and at a rate necessary to encourage a participant to perform the land management practice that would not otherwise be initiated without government assistance. Such payment shall not be more than 75 percent of the cost of performing a land management practice for the full term of the contract.

2. SSCC shall set the cost-share and incentive payment limits for CCSP as set forth in (a) and (a)1 above. The SSCC shall consider recommendations of:

i. The designated conservationist, in consultation with the SCD, the local work group and the State technical committee for a priority area; or

ii. The NRCS State conservationist, in consultation with the State technical committee, for participants subject to environmental requirements or with significant Statewide natural resource concerns outside a funded priority area.

3. Cost-share payments and incentive payments may both be included in a contract.

4. Cost-share and incentive payments will not be made to a participant who has applied or initiated the application of a conservation practice prior to approval of the contract.

(b) Based upon the integration of CCSP with EQIP as described in N.J.A.C. 2:90-4.1(b), cost share and incentive payments paid to a person shall be based upon the combined total of CCSP and EQIP financial assistance funds as allocated by NJDA/SSCC and USDA/NRCS respectively for any fiscal year. State cost share and incentive payments paid to a person under this section shall be a percentage of the total of the combined CCSP and EQIP payments approved for that person which exactly reflects the percentage of CCSP financial assistance funds allocated to the combined total CCSP and EQIP funds allocated in any fiscal year. Except as provided in (c) below, total cost share and incentive payments from CCSP and EQIP to any person from the combined total of CCSP and EQIP financial assistance funds for any fiscal year shall not exceed \$100,000 for any multi-year contract or \$30,000 for any fiscal year. The total amount of State cost share and incentive payments paid to a person may not exceed the above described percentage of combined financial assistance funds for any multi-year contract or for any fiscal year.

(c) To determine eligibility for payments, SSCC shall use the provisions in 7 C.F.R. Part 1400 related to the definition of person and the limitation of payments, incorporated herein by reference, except that:

1. States, political subdivisions, and entities thereof will not be persons eligible for payment;

2. For purposes of applying the payment limitations provided for in this section, the provisions in 7 C.F.R. Part 1400, subpart C for determining whether persons are actively engaged in farming, subpart E for limiting payments to certain cash rent tenants, and subpart F as the provisions apply to determining whether foreign persons are eligible for payment, will not apply.

3. The SSCC in consultation with NRCS State conservationist may authorize, on a case-by-case basis, payments in excess of \$20,000 in any fiscal year, up to the

State maximum approval portion of the combined CCSP and EQIP \$100,000 limitation in (b) above. However, such increase in payments for a certain year shall be offset by reductions in the payments in subsequent years. A decision to approve payments in excess of the annual limit will consider whether:

- i. The practices in the system need to be applied at once so that the system is fully functioning to resolve the natural resource problem;
- ii. The natural resource problem is so severe that resolving the problem immediately is needed;
- iii. The producer needs to complete the practices in one year so that the farming operation is not interrupted or disturbed by the practice installation over a five to 10 year period; or

iv. The producer can install the practices at a lower total cost when installed in one year, thereby reducing the program payments;

4. With respect to land under CCSP contract which is inherited in the second or subsequent years of the contract, the \$20,000 fiscal year limitation shall not apply to the extent that the payments from any contracts on the inherited land cause an heir, who was party to a CCSP contract on other lands prior to the inheritance, to exceed the annual limit;

5. Any cooperative association of producers that markets commodities for producers shall not be considered to be a person eligible for payment; and

6. The status of an individual or entity on the date of application shall be the basis on which the determination of the number of persons involved in the farming operation is made.

(d) The participant, and the SCD and NRCS, must certify that a conservation practice is completed in accordance with the contract before the SSCC will approve the payment of any cost-share or incentive payments.

Amended by R.2000 d.237, effective June 5, 2000.

See: 32 N.J.R. 1109(a), 32 N.J.R. 2047(b).

Rewrote (b).

Recodified from N.J.A.C. 2:90-4.12 by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Former N.J.A.C. 2:90-4.6, Conservation plan, repealed.

2:90-4.7 Contract modifications and transfers of land

(a) The participant and SSCC may modify a contract if the participant and SSCC agree to the contract modification and the conservation plan is revised in accordance with NRCS requirements and is approved by the conservation district.

(b) The parties may agree to transfer a contract with the agreement of all parties to the contract. The transferee must

be determined by SSCC to be eligible and shall assume full responsibility under the contract, including operation and maintenance of those conservation practices already installed and to be installed as a condition of the contract.

(c) SSCC may require a participant to refund all or a portion of any assistance earned under CCSP if the participant sells or loses control of the land under a CCSP contract and the new owner or controller is not eligible to participate in the program or refuses to assume responsibility under the contract.

Recodified from N.J.A.C. 2:90-4.13 by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Former N.J.A.C. 2:90-4.7, Conservation practices, repealed.

2:90-4.8 Contract violations and termination

(a) If SSCC determines that a participant is in violation of the terms of a contract or documents incorporated by reference into the contract, the SSCC shall give the participant a reasonable time, as determined by the SCD, in consultation with NRCS, to correct the violation and comply with the terms of the contract and attachments thereto. If a participant continues in violation, SSCC may, in consultation with the SCD and NRCS, terminate the CCSP contract.

1. Notwithstanding the provisions of (a) above, a contract termination shall be effective immediately upon a determination by the SSCC and SCD, in consultation with NRCS, that the participant has submitted false information or filed a false claim, or engaged in any act for which a finding of ineligibility for payments is permitted under the provisions of N.J.A.C. 2:90-4.12 or in a case in which the actions of the party involved are deemed to be sufficiently purposeful or negligent to warrant a termination without delay.

(b) If SSCC terminates a contract, the participant shall forfeit all rights for future payments under the contract and shall refund all or part of the payments received, plus interest. The SSCC has the option of requiring only partial refund of the payments received if a previously installed conservation practice can function independently, are not affected by the violation or other conservation practices that would have been installed under the contract, and the participant agrees to operate and maintain the installed conservation practice for the life span of the practice.

1. If SSCC terminates a contract due to breach of contract or the participant voluntarily terminates the contract before any contractual payments have been made, the participant shall forfeit all rights for further payments under the contract and shall pay such liquidated damages as are prescribed in the contract. The SSCC, will have the option to waive the liquidated damages depending upon the circumstances of the case.

2. When making all contract termination decisions, SSCC may reduce the amount of money owed by the

participant by a proportion which reflects the good faith effort of the participant to comply with the contract, or the hardships beyond the participant's control that have prevented compliance with the contract.

3. The participant may voluntarily terminate a contract if SSCC agrees based on SSCC's determination that termination is in the public interest.

4. In carrying out its role under this section, SSCC shall consult with the local conservation district.

5. In the event a participant fails to comply with any of the terms of the contract and the Department incurs legal or other expenses for the collection of repayments due or the enforcement or performance of any of the participant's obligations under the contract or this subchapter, the participant shall pay these expenses on demand by the Department. The Department shall not be required to mitigate any damages to the participant resulting from the participant's non-compliance with the terms of the participant's non-compliance with the terms of the contract or these regulations.

Recodified from N.J.A.C. 2:90-4.14 and amended by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

In (a)1, rewrote N.J.A.C. reference; former N.J.A.C. 2:90-4.8, Technical and other assistance provided by qualified personnel not affiliated with USDA, repealed.

2:90-4.9 Appeals

(a) A participant may request a hearing on any adverse decision under CCSP within 20 days from the receipt of such determination, as follows:

1. A request for a hearing shall be in writing and shall include:

i. The name, address, telephone number of a contract person familiar with the matter;

ii. A copy of the determination objected to; and

iii. A concise statement listing the material facts in dispute and describing the basis of the participant's objection.

2. The SSCC shall, within 30 days of receipt of a properly completed request for a hearing, determine whether a hearing will be provided, and will notify the participant in writing of this determination.

(b) Nothing in this section shall be construed to provide a right to a hearing.

(c) The following decisions are not appealable:

1. Payment rates, payment limits, and cost-share percentages;

2. The designation of State-approved priority areas, conservation or significant Statewide natural resource concerns;

3. Eligible conservation practices; and

4. Other matters of general applicability as set forth in N.J.A.C. 2:90-4.1.

Recodified from N.J.A.C. 2:90-4.15 by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Former N.J.A.C. 2:90-4.9, Application for contracts and selecting offers from producers, repealed.

2:90-4.10 Compliance with regulatory measures

Participants who carry out conservation practices shall be responsible for obtaining the authorizations, rights, easements, permits, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants shall be responsible for compliance with all laws and for all effects or actions resulting from the participant's performance under the contract.

Recodified from N.J.A.C. 2:90-4.16 by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Former N.J.A.C. 2:90-4.10, Contract requirements, recodified as N.J.A.C. 2:90-4.4.

2:90-4.11 Access to operating unit

Any authorized SSCC or SCD representative shall have the right to enter an operating unit or tract for the purpose of ascertaining the accuracy of any representations made in a contract or in anticipation of entering a contract, as to the performance of the terms and conditions of the contract. Access shall include the right to provide technical assistance and inspect any work undertaken under the contract. The SSCC representative shall make a reasonable effort to contact the participant prior to the exercise of this provision.

Recodified from N.J.A.C. 2:90-4.17 by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Former N.J.A.C. 2:90-4.11, Conservation practice operation and maintenance, recodified as N.J.A.C. 2:90-4.5.

2:90-4.12 Misrepresentation and scheme or device

(a) A producer who is determined to have erroneously represented a fact affecting a program determination made in accordance with this subchapter shall not be entitled to contract payments and must refund to SSCC any such payments, plus interest determined in accordance with EQIP rules. The producer's interest in all contracts shall be terminated.

(b) A producer who is determined to have knowingly adopted any scheme or device that tends to defeat the purpose of the program or made fraudulent misrepresentation shall refund to SSCC any contract payment, plus interest determined in accordance with EQIP rules. The producer's interest in all contracts shall be terminated.

Recodified from N.J.A.C. 2:90-4.18 by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Former N.J.A.C. 2:90-4.12, Cost-share and incentive payments, recodified as N.J.A.C. 2:90-4.6.

2:90-4.13 (Reserved)

Recodified as N.J.A.C. 2:90-4.7 by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Section was "Contract modifications and transfers of land."

2:90-4.14 (Reserved)

Recodified as N.J.A.C. 2:90-4.8 by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Section was "Contract violations and termination."

2:90-4.15 (Reserved)

Recodified as N.J.A.C. 2:90-4.9 by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Section was "Appeals."

2:90-4.16 (Reserved)

Recodified as N.J.A.C. 2:90-4.10 by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Section was "Compliance with regulatory measures."

2:90-4.17 (Reserved)

Recodified as N.J.A.C. 2:90-4.11 by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Section was "Access to operating unit."

2:90-4.18 (Reserved)

Recodified as N.J.A.C. 2:90-4.12 by R.2006 d.12, effective February 6, 2006.

See: 37 N.J.R. 2313(a), 38 N.J.R. 917(a).

Section was "Misrepresentation and scheme or device."