

**Topic:** Erosion & Sedimentation Control  
**Resource Type:** Regulations  
**State:** New York  
**Jurisdiction Type:** Municipal  
**Municipality:** Town of Yorktown  
**Year (adopted, written, etc.):** 1991-2002  
**Community Type – applicable to:** Suburban; Rural  
**Title:** Town of Yorktown Erosion and Sediment Control Ordinance  
**Document Last Updated in Database:** March 30, 2016

### ***Abstract***

The purpose of this chapter is to safeguard persons, protect property, prevent damage to the environment and promote the public welfare by guiding, regulating and controlling the design, construction, use and maintenance of any development or other activity which disturbs or breaks the surface of soil or results in the movement of earth on land situated in the Town.

### ***Resource***

Town of Yorktown NY Erosion and Sediment Control  
Code of the Town of Yorktown NY  
Chapter 165: Erosion and Sediment Control

General Code  
[http://www.e-codes.generalcode.com/codebook\\_frameset.asp?t=tc&p=1560%2D165%2Ehtm&cn=341&n=\[1\]\[141\]\[341\]](http://www.e-codes.generalcode.com/codebook_frameset.asp?t=tc&p=1560%2D165%2Ehtm&cn=341&n=[1][141][341])

[HISTORY: Adopted by the Town Board of the Town of Yorktown 4-2-1991 by L.L. No. 17-1991. Amendments noted where applicable.]

### **ARTICLE I General Provisions; Terminology**

#### **§ 165-1. Enabling authority.**

This chapter is enacted pursuant to the authority of the Town to promote the public health, safety and general welfare of its citizenry under § 10 of the New York State Municipal Home Rule Law and Article 36 of the New York State Environmental Conservation Law and any and all applicable laws, rules and regulations of the State of New York, and nothing herein shall be deemed to conflict with any such laws, rules or regulations.

#### **§ 165-2. Findings and purpose.**

A. Findings. The Town Board of the Town of Yorktown hereby finds that:

- (1) Excessive quantities of soil may erode from areas undergoing development for certain uses, including but not limited to the construction of dwelling units, commercial buildings and industrial plants, the building of roads and highways and the construction of recreational facilities;
- (2) The washing, blowing and deposition of eroded soil across and upon roadways endangers the health and safety of users thereof by decreasing visibility and reducing traction of road vehicles;
- (3) Soil erosion necessitates the costly cleaning of gullies and repair of washed-out fills and embankment;
- (4) Sediment from erosion clogs culverts, fills ditches and pollutes and silts rivers, streams, lakes, ponds and reservoirs;
- (5) Sediment limits the use of water and watercourses for some beneficial purposes, promotes the growth of undesirable aquatic weeds, destroys fish and other desirable aquatic life and is costly and difficult to remove; and
- (6) Sediment reduces the channel capacity of watercourses and increases the likelihood of flooding.

B. Purpose. The Town Board therefore declares that the purpose of this chapter is to safeguard persons, protect property, prevent damage to the environment and promote the public welfare by guiding, regulating and controlling the design, construction, use and maintenance of any development or other activity which disturbs or breaks the surface of soil or results in the movement of earth on land situated in the Town.

### **§ 165-3. Word usage.**

Unless specifically defined below, words and phrases used in this chapter shall be interpreted to have the meaning they have in common English usage, to promote the purpose set forth in § 165-2B and to provide reasonable application of this chapter. Words used in the present tense include the future, and the plural includes the singular.

### **§ 165-4. Definitions.**

As used herein, the following terms shall have the meanings indicated:

ADDITION — Any work on an existing structure which changes the external dimensions of such structure.

ADJACENT PARCEL — All contiguous parcels to the subject parcel, as well as all parcels downstream of the subject parcel within the natural or actual drainageway or watercourse.

AGENT — Any Town official who is designated to administer and enforce this chapter.

ALTERATION — Any work on an existing structure which affects the interior of the structure but does not change its external dimensions.

APPEAL — A request to the Town Board for a waiver of the permitting authority's interpretation of any provision of this chapter or a request for a variance.

BEST MANAGEMENT PRACTICES (BMP) — The standards established in:

- A. The series of manuals prepared, published and occasionally amended by Westchester County which consists of various volumes an Best Management Practices for certain described activities and, specifically, the volume for construction related activities;
- B. The USDA Soils Conservation Manual, as amended;
- C. The New York Guidelines for Urban Erosion and Sediment Control, dated March 1989, as amended; and
- D. The DEC Division of Water TOGS § 5.1.8, as amended.

BUILDING INSPECTOR — Any person employed full-time as the Building Inspector or his assistant.

BUILDING PERMIT — A permit issued by the municipality for the construction, erection or alteration of a structure or building.

CERTIFICATION — Formal attestation that the specific inspections and tests, where required, have been performed, and that such tests comply with applicable requirements of this chapter.

CLEARING — The act of clearing is the cutting of trees, shrubs, bushes, windfalls and other vegetation. **[Added 4-2-2002 by L.L. No. 1-2002]**

CUBIC YARDS — The measurement used to determine the amount of material in excavation and/or fill measured by the method of average end areas.

DEVELOPMENT — Any man-made change to unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, removal of vegetation, excavation, blasting or drilling operations.

ENVIRONMENTAL CODE INSPECTOR — The duly appointed Town official charged with the duty of inspecting and enforcing the environmental laws of the Town of Yorktown, including but not limited to Chapter 178, Freshwater Wetlands, of the Town Code, and this chapter.

EROSION AND SEDIMENT-CONTROL PLAN — A plan or set of plans prepared by a New York State licensed engineer, architect, landscape architect or by the Westchester County Soil and Water Conservation District, indicating the specific measures and sequencing to be used in controlling sediment and erosion on a development site both during and after construction.

EXCAVATION — Any act by which organic matter, earth, sand, gravel, rock or any other similar material is cut into, dug, quarried, uncovered, removed, displaced or spread, and shall include the conditions resulting therefrom.

EXISTING GRADE — The elevation of the existing ground surface prior to excavation or filling.

FILL — Any act by which earth, sand, gravel, rock or any other material is deposited, placed, replaced, dumped, transported or moved by man to a new location, and shall include the conditions resulting therefrom.

FINAL GRADE — The elevation of the ground or pavement surface after the grading work is completed in accordance with the approved plan.

FLOODWAY — The channel of a river, stream, brook or other watercourse and the adjacent land areas that must be reserved in order to convey the one-hundred-year flood without cumulatively increasing the water surface elevation more than one foot, as shown on the Federal Emergency Management Agency Floodway Maps.

GRADING — A change in topography by human activities. **[Amended 4-2-2002 by L.L. No. 1-2002]**

LAND-DISTURBING ACTIVITY — Any land change which may result in soil erosion from water or wind and the movement of soil into a watercourse or onto land or increased runoff from waters, including but not limited to clearing, clear cutting, grading, excavating and filling of land. **[Amended 4-2-2002 by L.L. No. 1-2002]**

NATURAL DRAINAGE — Pattern of the movement of water such as channels formed in the existing surface topography of the land prior to changes made by human activities. **[Amended 4-2-2002 by L.L. No. 1-2002]**

PARCEL — All contiguous land under one ownership.

PERMANENT VEGETATION — Mature ground cover to control soil erosion satisfactorily and to survive severe weather conditions.

PERMITTEE — Any person to whom a permit is issued.

PERMITTING AUTHORITY — The administrative board or public official empowered to grant permits under this chapter as follows:

- A. The duly appointed Planning Board shall act as permitting authority upon all applications required to be made hereunder in conjunction with an application for site plan or parking plan or subdivision approval over which the Planning Board otherwise has jurisdiction under the Town Code of the Town of Yorktown.
- B. The Town Board of the Town of Yorktown shall act as the permitting authority upon all applications required to be made hereunder in conjunction with an application made before the Board pursuant to any other chapter of the Town Code of the Town of Yorktown and for site plan, parking plan or subdivision approvals which are not subject to another permitting authority hereunder.
- C. The Building inspector shall act as permitting authority on all applications involving a building permit and for which no previous application and/or permit hereunder has been made or issued in conjunction with a site plan or subdivision application and/or approval.
- D. The Town Engineer or his duly appointed representative shall act as permitting authority for all permit applications relating to activities that do not require

subdivision, site plan approval or a building permit and that involve the clearing, removal or regrading of less than 10,000 square feet of area.

**PERSON** — Any individual, firm or corporation, public or private, the State of New York and its agencies or political subdivisions and the United States of America, its agencies and instrumentalities and any agent, servant, officer or employee of any of the foregoing.

**REMOVAL** — Cutting vegetation to the ground or leaving it as stumpage, complete extraction or killing by spraying.

**REVIEWING AGENCIES** — The duly appointed Conservation Board of the Town of Yorktown, Town Engineer, Planning Board, Town Board and the Westchester County Soil and Water Conservation District.

**SEDIMENT BARRIER** — A temporary barrier of fixed straw bales and/or other material with a life expectancy of six months or less, installed across or at the bottom of a slope in development sites and disturbed soil areas.

**SITE DEVELOPMENT** — Altering terrain and/or vegetation and any type of construction.

**SITE PLAN** — The map or drawing of a proposed development which is submitted to the Town for consideration and approval.

**SOIL STABILIZATION** — Measures which protect soil from the erosive forces of rain, flowing water and wind and includes, but is not limited to, vegetative establishment, mulching and the early application of gravel or stone base on areas to be paved.

**START OF CONSTRUCTION** — The first land-disturbing activity associated with a development, such as clearing, grading and filling; installation of streets and walkways; excavation for basements, footings, piers or foundations; erection of temporary forms; and installation of accessory buildings, such as garages.

**STRIPPING** — Any activity which removes the vegetative surface cover, including tree removal, clearing and storage or removal of topsoil.

**SUBDIVISION** — Any tract of land which is divided into two or more habitable building sites or parcels on any site along an existing or proposed street, highway, easement or right-of-way or other means of proposed means of access, road or street, for sale, lease or rent, regardless of whether the sites are to be sold or offered for sale or leased for any period of time, are described by metes and bounds, or by reference to a map or survey of the property or by any other method of description. "Subdivision" also has any meaning it presently has under the laws of the Town of Yorktown.

**TEMPORARY STREAM CROSSING** — A temporary structural span installed across a watercourse for use by construction traffic. Structures may include, but are not limited to, bridges, pipes, culverts or fords.

**TOWN ENGINEER** — Any person employed full-time as the Town Engineer or his assistant or any consultant engineer retained to act in his stead.

**TOWN OF YORKTOWN (THE TOWN)** — Any area within the Town of Yorktown.

VARIANCE — A grant of relief from the requirements of this chapter which permits a person to undertake construction in a manner otherwise prohibited by this chapter where specific enforcement would result in unnecessary hardship by the Town Board.

WATERCOURSE — Any body of water, including but not limited to lakes, ponds, rivers, streams, intermittent streams and bodies of water which are classified by the New York State Department of Environmental Conservation under Part 6 of the New York Code of Rules and Regulations or delineated on the Hydrological Features Map of the Westchester County Environmental Planning Atlas or delineated on the USGS 7.5 Minutes Quadrangle Sheet(s) for the Town or any area defined as a "wetlands" or "watercourse" in either Chapter 178, Freshwater Wetlands, or the Freshwater Wetlands and Drainage Law of New York State.

WET SEASON — The period from October 15 to April 15.

**§ 165-5. General principles.**

The objective of this chapter is to control soil erosion and sedimentation caused by development activities in the town. Measures taken to control erosion and sedimentation shall be adequate to ensure that erosion is controlled utilizing best management practices. The following principles shall apply to all development activities within the Town and to the preparation of the submissions required under Article II of this chapter:

- A. Selection of control measures. The selection of erosion and sedimentation control measures shall be based on assessment of the probable frequency of climatic and other events likely to contribute to erosion and on an evaluation of the risks and benefits involved.
- B. Protection of adjacent properties.
  - (1) Properties adjacent to the site of a land disturbance shall be protected from sediment deposition. This may be accomplished in part by preserving a well-vegetated buffer strip around the lower perimeter of the land disturbance by installing perimeter controls such as sediment barriers, filter screens, dikes or

sediment basins or by a combination of such measures, as shown on the approved erosion control plan.

- (2) Vegetated buffer strips may be used alone only where runoff in sheet flow is expected and the location of the proposed construction is such that a vegetated buffer strip of at least 20 feet in width can be provided. If at any time it is found that a vegetated buffer strip alone is ineffective in preventing sediment movement onto adjacent property, additional perimeter controls must be provided.

C. Cut and fill slopes.

- (1) Development shall reflect the topography and soils of the site so as to create the least potential for erosion. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.
- (2) In the design of cut and fill slopes, consideration must be given to the length and steepness of the slope, the soil type, upslope drainage area, groundwater conditions and other applicable factors. Slopes which are found to be eroding excessively must be provided with additional measures until the problem is corrected. Fills shall not encroach on areas designated as buffer under Chapter 178, Freshwater Wetlands or the State's Freshwater Wetlands and Drainage Law unless undertaken under an appropriate permit issued under such regulations. In no case shall fills encroach on constructed channels or floodways or adjacent properties.

D. Vegetation.

- (1) Natural vegetation shall be retained and protected wherever possible. A permanent vegetative cover shall be established on denuded areas not otherwise permanently stabilized. Permanent vegetation and related structures shall be installed as soon as practical or within the time specified in the permit. Permanent vegetation shall not be considered established until a ground cover is achieved which, in the opinion of the Town Engineer or his designated agent, is mature and able to control soil erosion satisfactorily and to survive severe weather conditions.
- (2) The smallest practical area of land shall be exposed for the shortest practical time during development.

E. Stabilization of denuded areas and soil stockpiles. Adequate barriers to prevent erosion/siltation shall be applied to stockpiled and denuded areas at the end of each day. Permanent or temporary soil stabilization must be applied to denuded areas within two days after final grade is reached on any portion of the site. Soil stabilization must also be applied within two days to denuded areas which may not be at final grade but may remain dormant (undisturbed) for longer than two weeks.

F. Sediment basins. Sediment basins, silt traps or filters shall be installed and maintained to remove sediment from runoff waters from undergoing development. Structures shall be located to allow access for maintenance purposes.

- G. Timing and stabilization of sediment-trapping measures. Sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment on site must be constructed as a first step in grading and must be made functional before upslope land disturbance takes place. Earthen structures, such as dams, dikes and diversions, must be seeded and mulched immediately after completion of construction.
- H. Stabilization of waterways and outlets. All on-site stormwater conveyance channels and culverts shall be designed and constructed to withstand the expected velocity of flow from a ten-year frequency storm without erosion. Stabilization adequate to prevent erosion must also be provided at the outlets of all pipes and paved channels. Drainageways must be designed to accommodate a one-hundred-year storm event.
- I. Storm sewer inlet protection. All storm sewer inlets which are made operable during construction shall be protected so that sediment-laden water will not enter the conveyance system without first being filtered or otherwise treated to remove sediment. This requirement may be deleted if an adequate sedimentation pond is provided for the project. All sediment shall be removed as necessary for proper operation of the pond.
- J. Working in or crossing watercourse.
  - (1) Construction vehicles should be kept out of watercourses to the greatest extent possible. Where channel work is necessary, precautions must be taken to stabilize the work area during construction to minimize erosion. The channel (including bed and banks) must be restabilized at the end of each day once in-channel work has begun. Channel work is not permitted during the wet season or as may be prescribed by the permitting authority.
  - (2) Where a watercourse must be crossed by construction vehicles regularly during construction, a temporary stream crossing must be provided. In the event that any work is conducted in a wetlands, as that term is defined in Chapter 178, Freshwater Wetlands, that chapter shall control.
- K. Stormwater management criteria for controlling off-site erosion.
  - (1) Erosion control measures shall be implemented to accommodate the increased runoff caused by changed soil and surface conditions during and after development. Drainageways shall be designed so that the final gradients and the resultant velocities of discharges will not create additional erosion.
  - (2) Stormwater management design will follow the procedures and methodology set forth in the Soil Conservation Service Technical Release No. 55 (TR 55) and the provisions of DEC Division of Water TOGS § 5.1.8, or other method acceptable to the Town Engineer. The permittee shall submit a plan for controlling stormwater runoff based upon the aforementioned manual simultaneously with the site plan, subdivision application or building permit to the permitting authority.
- L. Underground utility construction.



- (1) The construction of underground utility lines involving installation, maintenance or repair which disturbs more than 10,000 square feet shall be subject to the following criteria:
  - (a) No more than 300 feet of trench are to be opened at one time unless approval to open a greater length is granted by the Town Engineer.
  - (b) Where consistent with safety and space considerations, excavated material is to be placed on the uphill side of trenches.
  - (c) Trench dewatering devices shall discharge in a manner which will not adversely affect flowing streams, drainage systems or off-site property.
- (2) Individual service connections, telephone and electric lines and underground public utility lines under, streets or sidewalks are exempt from the above requirements.

M. Construction access routes.

- (1) Wherever construction vehicle access routes intersect paved roads, provisions must be made to minimize the transport of sediment by runoff or vehicle tracking on the paved surface in accordance with the Westchester County Best Management Practices.
- (2) Where sediment is transported onto a paved road surface, the roads shall be cleaned thoroughly at the end of each day. Sediment shall be removed from roads by shoveling and sweeping and transported to a sediment-control area. Street washing shall be allowed only after sediment is removed in this manner.

N. Disposition of temporary measures. All temporary erosion and sediment-control measures shall be disposed of within one month after final site stabilization is achieved or after the temporary measures are no longer needed, unless otherwise authorized by the town. Trapped sediment and other disturbed soil areas resulting from the disposition of temporary measures shall be properly removed.

O. Maintenance. All temporary and permanent erosion and sediment-control practices must be maintained and repaired as needed to assure continued performance of their intended function.

P. Grading. During grading operations, appropriate measures for dust control shall be exercised. Grading equipment shall not be allowed to enter or cross any watercourse, except in accordance with the terms of the permit issued by the Town Engineer.

Q. Aesthetics. In the design of erosion control facilities and practices, aesthetics and the requirements of continuing maintenance shall be considered.

## **ARTICLE II Permit Procedure**

### **§ 165-6. Permit required.**

- A. Except as otherwise provided in this chapter, no person shall commence or perform any land-disturbing activity not exempted from this section without first obtaining an

erosion and sediment control permit from the permitting authority. **[Amended 4-2-2002 by L.L. No. 1-2002]**

- B. Best management practices, as defined in § 165-4, shall be used as a guide and reference of performance standards in the issuance of all erosion and sediment control permits and for all work done pursuant to Town authority.
- C. Applicants shall also obtain all other permits as required by state, federal and local laws.
- D. The Westchester County Soil and Water Conservation District may be consulted for review and recommendations for all applications for any permits involving any land-disturbing activity which involves construction on slopes in excess of 25%, excavation or fill of 20,000 cubic yards or more of material, is within 100 feet of a watercourse as defined in Chapter 178, Freshwater Wetlands, or within 100 feet of a wetlands as classified by the unified federal definition or for any applications for any permits involving any land-disturbing activities in the Town and a contiguous municipality. If the Westchester County Soil and Water Conservation District fails to make any recommendation within 30 days upon receipt of mailing, such referral shall be deemed to constitute no objection to the application.
- E. The Town Engineer's office, in conjunction with the Building Department and the Environmental Code Officer, shall be charged with the implementation and enforcement of this chapter and any permits issued hereunder.
- F. The clearing of more than 10 trees with a DBH of six inches or greater within a 5,000 square foot area or the cutting of any vegetation in an area in excess of 5,000 square feet within a twelve- month period will require an erosion and sediment control permit. **[Added 4-2-2002 by L.L. No. 1-2002]**

#### **§ 165-7. Exceptions.**

A permit shall not be required for any of the following activities:

- A. Normal lawn and landscaping maintenance.
- B. Existing nursery and agricultural operations conducted as either a permitted main or accessory, use.
- C. Grading of land in a uniform manner or other land-disturbance activity that is less than 5,000 square feet in area and no more than 20 cubic yards of fill are added or removed from the area, provided that the normal flow of the exterior of the property lines is not altered and, upon completion of the grading, the exposed surfaces are permanently stabilized with vegetation.
- D. Alteration of the exterior of a building and alteration of a building, provided that such exterior alteration does not increase land coverage.
- E. Installation, renovation or replacement of a septic system to serve an existing dwelling or structure(s).
- F. Any emergency activity which is immediately necessary to protection of life, property or natural resources.

- G. The creation of an above-ground pool or garden less than 10,000 square feet on a residential property.

**§ 165-8. Permit application; fee.**

- A. Applications for an erosion and sediment control permit shall be made by the owner of the property or his authorized agent to the following:
  - (1) Town Clerk for all applications to the Town Board;
  - (2) Planning Department for all applications to the Planning Board;
  - (3) Town Engineer's Office for all applications to the Town Engineer; and
  - (4) The Building Department for all applications to the Building Department.
- B. Each application shall bear the name(s) and address(es) of the owner or developer of the site and of any consulting firm retained by the applicant, together with the name of the applicant's principal contact at such firm. Furthermore, each application shall include a certification that any land clearing, construction or development involving the movement of earth shall be in accordance with the plans approved upon issuance of the permit.
- C. Fees.
  - (1) A filing and administrative fee shall be paid as prescribed below:
    - (a) Town Engineer administrative permit: \$40.
    - (b) Planning Board permit: \$250.
    - (c) Town Board permit: \$250.
  - (2) The fee for a Building Inspector administrative permit is included in the cost of the building permit.
  - (3) The excavation permit application fees shall be doubled in the case of any application sought as a result of or in connection with the applicant having been issued a stop-work order or a remedy order prior to applying for a permit. **[Added 12-21-2004 by L.L. No. 25-2004]**

**§ 165-9. Submissions.**

- A. Each application for a permit hereunder shall be accompanied by the following information and/or items, except submittals and/or their substantial equivalents as determined by the permitting authority have been or will be in the case of a building inspection application where required by the Building Inspector or in the case of a Town Engineer application where required by the Town Engineer.
  - (1) A vicinity map in sufficient detail to easily locate in the field the site for which the permit is sought, including the boundary line and approximate acreage for the site, existing zoning and a legend and scale.
  - (2) A plan for controlling stormwater runoff as defined in § 160-5K of this chapter.
  - (3) A development plan for the site showing:

- (a) Existing topography of the site and adjacent land within approximately 100 feet of the boundaries, drawn at no greater than two-foot contour intervals and clearly portraying the conformation and drainage pattern of the area.
  - (b) The location of existing buildings, structures, stone walls, utilities, water bodies, floodplains, drainage facilities, vegetative cover, paved areas, watershed divides, septic systems and walls and other significant natural or man-made features on the site and adjacent land within approximately 100 feet of the boundary.
  - (c) A map and description of the predominant soil types on the site, their location and their limitations for the proposed use.
  - (d) Proposed use of the site, including both present development and planned utilization; areas of excavation, grading and filling; proposed contours, finished grades and street profiles; provisions for storm drainage and including the control of accelerated runoff, with a drainage area map and computations; kinds and locations of utilities; and areas and acreage proposed to be paved, covered, sodded or seeded or vegetatively stabilized.
- (4) An erosion and sediment-control plan or plans showing:
- (a) All erosion and sediment-control measures necessary to meet the objectives of this chapter throughout all phase of construction and permanently, after completion of development of the site. Depending upon the complexity of the project, the drafting of intermediate erosion and sediment control plans also may be required.
  - (b) Seeding mixtures and rates, types of sod, method of seedbed preparation, expected seeding dates, type and rate of lime and fertilizer application and kind and quality of mulching for both temporary and permanent vegetative control measures.
  - (c) Provisions for maintenance of control facilities, including easements.
  - (d) Identification of the person(s) or entity which will have legal responsibility for maintenance of erosion-control structures and measures after development is completed.
- (5) The proposed phasing of development of the site, including stripping and clearing, rough grading and construction and final grading and landscaping. Phasing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, and the sequence of clearing, installation of temporary sediment-control measures, installation of storm drainage, paving of streets and parking areas and establishment of permanent vegetative cover.
- B. These submissions shall be prepared in accordance with the standards and requirements contained in the best management practices as defined in § 165-4.

**§ 165-10. Waiver of required submittals.**

The permitting authority may waive specific requirements for the content of submissions upon finding that the information submitted is sufficient to show that the work will comply with the objectives and principles of this chapter. The permitting authority may approve, approve with conditions or disapprove the erosion and sediment control plan.

**§ 165-11. Improvement security.**

The applicant may be required to file with the Town a cash erosion-control bond or other improvement security satisfactory to the Town Attorney in an amount deemed sufficient by the permitting authority to cover all costs of improvements, landscaping, maintenance of improvements and landscaping for such period as specified by the Town and engineering and inspection costs to cover the cost of failure or repair of improvements installed on the site.

**§ 165-12. Review and approval.**

Each application for an erosion and sediment control permit shall be reviewed and acted upon according to the following procedures:

- A. The permitting authority will review each application for an erosion and sediment control permit to determine its completeness and conformance with the provisions of this chapter. The permitting authority, within 30 days of receipt of the application, shall make a determination as to whether an application is complete so that a decision can be made upon the same. The permitting authority, upon receipt of a completed application or upon a determination of completion, may refer the completed application and supporting plans and documents to the Westchester County Soil and Water Conservation District on all applications meeting the criteria set forth in § 165-6D. All applications not handled by the Building Inspector or Town Engineer administratively shall be referred to the Conservation Board. The Westchester County Soil and Water Conservation District or the Conservation Board, as applicable, shall be required to review the application within 30 days of receipt thereof and shall file a written report with the permitting authority with its recommendations concerning the application, including, but not limited to an evaluation of the completeness of the application. Such report shall evaluate the proposed operation or project in terms of the environmental management objectives of this chapter and shall include the effect of such operation or project on the project area. The permitting authority may also refer any application, where applicable, to any other local governmental or public agency within whose jurisdiction the site is located, for review and comment. Failure on the part of the Conservation Board, the Westchester County Soil and Water Conservation District or other interested agency to report its recommendation within 30 days after receipt of such referral shall be deemed to constitute no objection to the application. Within 30 days of receipt of comments from interested agencies or 60 days after declaring an application complete, whichever is later, the permitting authority shall thereafter, in writing:
  - (1) Approve the permit application if it is found to be in conformance with the provisions of this chapter and issue the permit;

- (2) Approve the permit application subject to such reasonable conditions as may be necessary to secure substantially all the objectives of this chapter and issue the permit subject to these conditions; or
  - (3) Disapprove the permit application, indicating the deficiencies and the procedure for submitting a revised application and/or submission.
- B. No erosion and sediment control permit shall be issued for an intended development site unless:
- (1) The development has been approved by the Town where applicable;
  - (2) Such permit is accompanied by or combined with a valid building permit issued by the town; or
  - (3) The proposed earthmoving is coordinated with any overall development program previously approved by the Town for the area in which the site is situated.
- C. Pending preparation and approval of a revised plan, development activities shall be allowed by the permitting authority.

### **§ 165-13. Appeals.**

The applicant, or any person or agency which received notice of the filing of the application, may appeal the decision of the permitting authority, as provided in § 165-12 of this chapter, to the Town Board. Upon receipt of an appeal, the Town Board shall schedule and hold a public hearing, after giving 15 days' notice thereof. The Town Board shall render a decision within 30 days after the hearing. Factors to be considered in review shall include, but are not limited to, the effects of the proposed development activities on the surface water flow to tributaries and downstream lands; any comprehensive watershed management plans, or the use of any retention facilities; possible saturation of fill and unsupported cuts by water, both natural and domestic runoff surface waters that produce erosion and silting of drainageways; nature and type of soil or rock which, when disturbed by the proposed development activities, may create earth movement and produce slopes that cannot be landscaped; and excessive and unnecessary scarring of the natural landscape through grading or removal of vegetation.

## **ARTICLE III Operation Standards and Requirements**

### **§ 165-14. Applicability.**

All grading, stripping, excavating and filling which is subject to the permit requirements of this chapter and any grading, stripping, excavating and filling which is exempted from the permit requirements by § 165-7, shall be subject to the applicable standard and requirements set forth in this article.

### **§ 165-15. Responsibility.**

The permittee shall not be relieved of responsibility for damage to persons or property otherwise imposed by law, and the Town or its officers will not be made liable for such damage, by:

- A. The issuance of a permit under this chapter;
- B. Compliance with the provisions of that permit or with conditions attached thereto;
- C. Failure of municipal officials to observe or recognize hazardous or unsightly conditions;
- D. Failure of municipal officials to recommend denial of, or to deny a permit; or
- E. Exemptions from the permit requirement of this chapter.

**§ 165-16. Manual adopted by reference; conflicts.**

The standards and specifications contained in the document, cited in § 165-9, are hereby incorporated in this article and made a part hereof by reference for the purpose of delineating procedures and methods of operation under site development and erosion and sedimentation control plans approved under Article II. In the event of conflict between provisions of said documents and of this chapter, this chapter shall govern.

**§ 165-17. Inspection.**

- A. The Town Engineer, Building Inspector, Environmental Code Inspector or their designated agent shall make inspections as hereinafter required and shall either approve that portion of the work completed or shall notify the permittee wherein the work fails to comply with the site development or erosion and sediment control plan, as approved. Plans for grading, stripping, excavating and filling work bearing a stamp affixed by the Town Engineer indicating work has been performed in general accordance with the plans shall be maintained at the site during the progress of the work. In order to obtain inspections, the permittee shall notify the Town Engineer and the Environmental Code Inspector, or a designated agent, at least three working days before the completion of stripping and clearing, rough grading, final grading and final landscaping. If stripping, clearing, grading and/or landscaping are to be done in phases or areas, the permittee shall give notice and request inspection at the completion of each of the above work stages in each phase or area. If an inspection is not made and notification of the results given within five working days after notice is received by the Town from the permittee may continue work at his own risk, without presuming acceptance by the municipality. Notification of the results of the inspection shall be given, in writing, at the site.
- B. The permittee or his agent shall make regular inspections of all control measures in accordance with the inspection schedule outlined in the approved erosion and sediment control plan(s). The purpose of such inspections will be to determine the condition and need for replacement or repair of in-place control measures, the overall effectiveness of the control plan and the need for additional control measures. All inspections shall be documented in written form and submitted to the Town Engineer at the time interval specified in the approved permit.

**§ 165-18. Special precautions.**

- A. If at any stage of the grading at any development site the Town Engineer, Building Inspector, Environmental Code Inspector or a designated agent determines, by inspection, that the nature of the site is such that further work authorized by an existing permit is likely to imperil any property, public way, watercourse or drainage structure, the Town Engineer, Building Inspector or Environmental Code Inspector may require as a condition of allowing the work to be done that such reasonable special precautions be taken as are considered advisable to avoid the likelihood of such peril. Special precautions may include, but are not limited to, a reduced grade of exposed slope, construction of additional drainage facilities, berms, terracing, compaction or cribbing, installation of plan materials for erosion control and recommendations of a registered engineer and/or geologist, which may be made requirements for further work.
- B. Where it appears that storm damage may result from incomplete grading on any development site, work may be stopped and the permittee required to install temporary structures or take such other measures as may be necessary to protect adjoining property or the public safety. On large developments or where unusual site conditions prevail, the Town Engineer or Environmental Code Inspector may specify the time of start of grading and time of completion or may require that the operations be conducted in specific stages to ensure completion of protective measures or devices prior to the advent of seasonal rains.

#### **§ 165-19. Amendment of plans.**

Major amendments of the site development of erosion and sediment control plans shall be submitted to the permitting authority and shall be processed and approved or disapproved in the same manner as the original plans. Field modifications of a minor nature may be authorized by the permitting authority by written authorization to the permittee. There shall be no oral authorization amending an erosion and sediment control plan.

#### **§ 165-20. Expiration of permit.**

All erosion and sediment control permits shall expire if the work authorized by such permit is not substantially started within one year or is not completed by a date which shall be specified in the permit. The permitting authority may, upon written presentation of sufficient justification for delay made prior to the expiration of the permit, grant a reasonable extension of time to begin the work prescribed under the permit. Unless otherwise indicated, all permits shall be valid for a period of three years from the date of issue. No permit shall be valid for greater than a three-year period. An extension of an original permit may be granted upon written request to the permitting authority at least 90 days prior to the expiration date of the original permit. The request for renewal of a permit shall follow the same form and procedure as the original application.

### **ARTICLE IV Enforcement**

#### **§ 165-21. Authorization of exceptions.**



The Town Board may, in accordance with the following procedures, authorize exceptions to any of the requirements and regulations set forth in this chapter:

A. Petition.

- (1) Application for any exception shall be made by a verified petition of the application for an erosion and sediment control permit, stating fully the grounds of the petition and the facts relied upon by the applicant.
- (2) Such petition shall be filed with the erosion and sediment control permit application. In order for the petition to be granted, it shall be necessary that the Town Board find all of the following facts with respect to the land referred to in the petition.
  - (a) That the land is of such shape or size or is affected by such physical conditions or is subject to such title limitations of record that it is impossible and/or impractical for the applicant to comply with all of the requirements of this chapter.
  - (b) The exception is necessary to prevent unreasonable and unnecessary hardship; and
  - (c) That the granting of the exception will not be detrimental to the public welfare or injurious to the other property in the vicinity of the subject property.

B. Each application for an exception shall be referred to the Town Engineer and Conservation Board for review. The Town Engineer and Conservation Board shall transmit its recommendations to the Town Board which shall review such recommendations prior to granting or denying the exception.

C. The Town Board shall hold a public hearing on each application for exception, within 45 days after receiving application in the manner provided with respect to appeals. After public hearing, the Town Board may approve the erosion and sediment control permit application with the exceptions and conditions it deems necessary, or it may disapprove such erosion and sediment control permit application and exception application or it may take such other action as appropriate.

**§ 165-22. Stop-work order. [Amended 4-2-2002 by L.L. No. 1-2002]**

A. The Town Engineer, Building Inspector or Environmental Code Inspector may post a stop-work order for the entire project or any specified part thereof if any of the following conditions exist:

- (1) Any land disturbance activity regulated under Chapters 165 is being undertaken without a permit.
- (2) The erosion and sediment control permit is not being fully implemented.
- (3) Any of the conditions of the permit are not being met.

- B. The stop-work order shall be effective immediately, shall state the specific violations cited and shall state the conditions under which work may be resumed.
- C. For purposes of this section, a stop-work order is validly posted by posting a copy of the stop-work order on the site of the land-disturbing activity in reasonable proximity to a location where the land-disturbing activity is taking place. Additionally, a copy of the order, in the case of work for which there is a permit, shall be mailed by first class mail, postage prepaid, to the address listed by the permittee on the permit. In the case of work for which there is no permit, a copy of the order shall be mailed to the person listed as owner of the property by the Town Assessor on the tax roll or, if none, to the taxpayer shown by the records of the Town Assessor.
- D. If the permittee does not cease the activity or comply with the erosion and sediment control permit or permit conditions within one day, the issuing authority may revoke the permit. No erosion and sediment control permit shall be permanently suspended or revoked until a public hearing is held by the Town Board.
  - (1) Written notice of such hearing shall be served on the permittee, either personally or by registered mail, and shall state:
    - (a) Grounds for complaint or reasons for suspension or revocation, in clear and concise language; and
    - (b) The time and place of the hearing to be held.
  - (2) Such notice shall be served on the permittee at least one week prior to the date set for the public hearing, unless the stop-work order is issued for a violation occurring less than one week before the next regularly scheduled public meeting of the Town Board. At such hearing, the permittee shall be given an opportunity to be heard and may call witnesses and present evidence on his behalf. At the conclusion of the hearing, the Town Board shall determine whether the permit shall be reinstated, suspended or revoked.
- E. If the owner or land user, where no permit has been issued, does not cease the land-disturbance activity, the issuing authority may request the Town Attorney to obtain injunctive relief.
- F. The issuing authority may retract the revocation.
- G. Ten days after posting a stop-work order, the issuing authority may issue a notice of intent to the permittee, owner, or land user of the issuing authority's intent to perform work necessary to comply with Chapter 165. The issuing authority may go on the land and commence work after 14 days from issuing the notice of intent. The costs incurred by the issuing authority to perform this work shall be paid by the owner or permittee out of the posted erosion bond, to the extent that the amount is covered thereby, with the remainder being directly due and owing by the owner or permittee. In the event no permit was issued or no bond was posted, the cost, plus interest, at the rate authorized by the issuing authority, plus a reasonable administrative fee, shall be billed to the owner. If, in any event, the amount due is not paid, the Receiver of Taxes shall enter the amount due on the tax roll and collect as a special assessment against the property using

the procedures for collecting the assessment, providing for the notice of assessment, hearing thereon, and appeal as provided.

H. Compliance with the provisions of Chapter 165 may also be enforced by injunction.

**§ 165-23. Penalties for offenses.**

- A. No person shall construct, enlarge, alter, repair or maintain any grading, excavation or fill, or cause the same to be done, in contravention or violation of any terms of this chapter.
- B. Any person convicted of having violated or disobeyed any provision of this chapter, any order of the approval authority or any condition duly imposed by the approval authority in a permit granted pursuant to this chapter shall, for the first offense, be punishable by a fine of not less than \$1,000. For each subsequent offense, such person shall be punishable by a fine of not less than \$2,000 nor more than \$15,000 and/or a term of imprisonment of not more than 15 days. Each consecutive day of the violation may be considered a separate offense. In addition to any other penalty authorized by this section, any person convicted of violating or disobeying any provisions of this chapter shall be required to restore the site to the condition existing prior to commission of the violation, or the Town Board may cause the violation to be corrected if the permittee fails to act and the cost thereof shall be assessed against the land or property in such manner as Town taxes are levied, and it shall constitute a lien upon the land or property affected. The term "person" as used herein shall mean a natural person or a corporate person.

**§ 165-24. Additional remedies.**

The Town of Yorktown may maintain an action or proceeding in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of any provision of this chapter or the terms and conditions of any permit granted hereunder.

**§ 165-25. Issuance of appearance tickets. [Added 4-2-2002 by L.L. No. 1-2002]**

The purpose of this section is to authorize the Environmental Inspector of the Town of Yorktown to issue and serve appearance tickets in connection with the violation of local laws, ordinances or rules and regulations of the Town of Yorktown which he is authorized or required to enforce.