

Chapter 9

Grading and Excavating

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Part 1**Grading****§9-101. Short Title.**

This Part shall be known and may be cited as the “Borough of Thornburg Grading Ordinance.”

(Ord. 382, 5/8/2006, §201)

§9-102. Grant of Power.

This Part is adopted in accordance with the authority granted to municipalities to regulate subdivision and land development by the Pennsylvania Municipalities Planning Code, Act 247 of 1968, as amended, 53 P.S. §10101 *et seq.*

(Ord. 382, 5/8/2006, §202)

§9-103. Purpose.

The purpose of this Part is to provide minimum standards for regulating earth disturbance activities throughout the Borough by the following:

A. Protecting and promoting the public welfare by preventing excess erosion, hazardous rock and soil slippage, sediment production and other soil and water management problems, and by regulating and controlling the design, construction, quality of materials, use, location and maintenance of grading, excavation and fill.

B. Controlling accelerated erosion and the resulting sediment pollution to waters of this Commonwealth that occur on earthmoving sites within the Borough of Thornburg.

(Ord. 382, 5/8/2006, §203)

§9-104. Definitions.

Wherever used in this Part, the following words shall have the meaning indicated:

Accelerated erosion - the removal of the surface of the land through the combined action of human activities and the natural processes, at a rate greater than would occur because of the natural process alone.

Administrator - the person or persons appointed by the Borough Council to manage this Part. Unless otherwise designated by Borough Council, the Borough Engineer shall act as Administrator of this Part.

Applicant - a landowner, developer or other person who has filed an application for approval to engage in any earth disturbance activity at a project site in the Borough.

Bedrock - the natural rock layer, hard or soft, in place at ground surface or beneath unconsolidated surficial deposits.

BMP (best management practices) - activities, facilities, designs, measures or procedures used to manage stormwater impacts from regulated earth disturbance activities, to meet State water quality requirements, to promote groundwater

recharge and to otherwise meet the purposes of this Part.

Borough - the Borough of Thornburg, Allegheny County, Pennsylvania

Borough Engineer - the appointed professional engineer of the Borough.

Clean fill - uncontaminated, nonwater soluble, inert solid material used to level an area or bring the area to a desired grade. The term does not include material placed into or on waters of this Commonwealth.

Commonwealth - Commonwealth of Pennsylvania.

DEP - Pennsylvania Department of Environmental Protection.

Earth disturbance - a construction or other human activity which disturbs the surface of the land including, but not limited to, clearing and grubbing, grading, excavations, embankments, road maintenance, building construction and moving, disposing, stockpiling or storing of rock or earth materials.

Erosion - the process by which the surface of the land, including channels, is worn away by water, wind or chemical action.

Erosion and sedimentation control plan - a plan for the project site which identifies best management practices (BMPs) to minimize accelerated erosion and sedimentation.

Excavation - any act by which earth, sand, gravel, rock or any other similar material is cut into, dug, quarried, uncovered, removed, displaced, relocated or bulldozed and includes the conditions resulting therefrom.

Fill - any act by which earth, sand, gravel, rock or any other material is deposited, placed pushed, dumped, pulled, transported or moved to a new location, and includes the condition resulting.

Geotechnical engineer - a person registered by the Commonwealth of Pennsylvania as a professional engineer and who has training and experience in the branch of geotechnical engineering.

Governing Body – the Council of the Borough of Thornburg.

Grade - the elevation of the existing ground surface at the location of any proposed excavation or fill.

Grading - excavation or fill or any combination thereof, and includes the conditions resulting from any excavation or fill.

Hazard - a danger or potential danger to life, limb or health, or an adverse effect or potential adverse effect of the safety, use or stability of property, waterways, public ways, structures, utilities and storm sewers, including stream pollution.

Intermittent stream - a body of water flowing in a channel or bed composed primarily of substrates associated with flowing water, which during periods of the year is below the local water table and obtains its flow from both surface runoff and groundwater discharges.

Land development -

(1) The improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving:

(a) A group of two or more residential or nonresidential buildings,

whether proposed initially or cumulatively, or a single nonresidential building on a lot or lots regardless of the number of occupants or tenants.

(b) The division or allocation of land or space, whether initially or cumulatively, between or among two or more existing or prospective occupants by means of, or for the purpose of, streets, common areas, leaseholds, condominiums, building groups or other features.

(2) A subdivision of land.

NPDES - National Pollutant Discharge Elimination System, the Federal government's system for issuance of permits under the Clean Water Act, which is delegated to the DEP in Pennsylvania.

Perched aquifer - an aquifer that is separated from an underlying aquifer by an unsaturated zone.

Perched water table - the water table of a perched aquifer.

Perennial stream - a body of water flowing in a channel or bed composed of substrates associated with flowing waters and is capable, in the absence of pollution or other manmade disturbances, of supporting a benthic macroinvertebrate community which is composed of two or more recognizable taxonomic groups of organisms which are large enough to be seen by the unaided eye and can be retained by the United States Standard No. 30 sieve (28 meshes per inch, 0.595 mm openings) and live at least part of their life cycles within or upon available substrates in a body of water or water transport system.

Person - an individual, partnership, public or private association or corporation, or a governmental unit, public utility or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

Professional engineer - a person licensed by the Commonwealth of Pennsylvania to practice engineering and who is knowledgeable in the branch of civil engineering.

Regional groundwater table - the fluctuating upper water level surface of an unconfined or confined aquifer, where the hydrostatic pressure is equal to the ambient atmospheric pressure. The term does not include the perched water table or seasonal high water table.

Retaining walls - a structure composed of concrete, steel or other approved building material, excluding timber, constructed for the purpose of supporting a cut or filled embankment which would otherwise not comply with the requirements of the standards set forth in this Part and which is more than 4 feet in height as measured on the vertical surface of the wall.

Seasonal high water table - the highest elevation of a saturated condition in the soil profile during certain periods of the year. The condition can be caused by a slowly permeable layer with the soil profile and is commonly indicated by the presence of soil fluctuation of the regional groundwater table.

Sediment - solid material, both mineral and organic, that is in suspension, is being transported or has been removed from its site or origin by air, water, gravity or ice and has come to rest on the earth's surface.

Site - a lot, tract or parcel of land or a series of lots, tracts or parcels of land which are adjoining where earth disturbance activities are continuous and

performed at the same time.

Soil survey - soil survey shall mean "Soil Survey of Allegheny County, Pennsylvania" as prepared by the United States Department of Agriculture, Soil Conservation Service *et al.*

Surface waters of this Commonwealth - any and all rivers, streams, creeks, rivulets, impoundments, ditches, watercourses, storm sewers, lakes, dammed water, wetlands, ponds, springs and other bodies or channels of conveyance of surface water or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.

Water course - a channel or conveyance of surface water, such as a stream or creek, having defined bed and banks, whether natural or artificial, with perennial or intermittent flow.

Water source -

(1) The site or location of a well, spring or water supply stream intake which is used for human consumption.

(2) Existing, designated or planned sources of water or facilities or systems for the supply of water for human consumption or for agricultural, commercial, industrial or other legitimate use, protected by the applicable water supply provisions of 25 Pa.Code §93.3.

Wetlands - areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs and similar areas.

(Ord. 382, 5/8/2006, §204)

§9-105. Exemptions from Required Grading Permit.

1. An excavation for a footing, foundation, driveway and the surrounding area not exceeding 10,000 square feet of a new building site authorized by a building permit. A grading permit shall not be required for the temporary stockpiling of material for such excavation on the same site. A time limit of one year, beginning from the issuance of the building permit, shall be allowed for such activity.

2. Excavation for a swimming pool or underground structure authorized by a building permit.

3. The excavation of an existing driveway in its current location to provide a new surface material.

4. Excavation necessary to reconstruct an existing utility or sewer service line in its current location.

5. Work performed by the Borough or of contractors employed by the Borough.

(Ord. 382, 5/8/2006, §205)

§9-106. Grading Permit Required.

No person or land owner shall commence or perform any grading activity including those with an approved land development plan, without first having obtained a grading

permit from the administrator on approval of the Engineer or an executed developers agreement. A separate grading permit shall be required for each property to be disturbed and having different owners. One permit shall be permitted for land developments performing grading activities on contiguous parcels within the same development.

(Ord. 382, 5/8/2006, §206)

§9-107. Environmental Requirements.

1. In order to prevent the denuding of the landscape, wherever practicable, large trees and other natural features constituting important physical, esthetic and economic assets to existing or impending suburban development shall be preserved.

2. All grading, excavation or fill shall be performed so that no unnecessary dust or smoke shall be raised in such amounts as to cause annoyance or discomfort to, or be offensive and objectionable to the public or shall cause injury or is a health hazard. The permittee shall comply with all statutes and regulations of the Commonwealth of Pennsylvania concerning environmental quality control administered by the Department of Environmental Protection, including the Clean Streams Law and the Air Pollution Control Act, 35 P.S. §4001 *et seq.*

3. All dust, dirt and mud that may be tracked from the site onto public streets shall be cleaned up on a daily basis.

4. No earth disturbance activities within the Borough shall commence until approval by the Borough and/or the Allegheny County Conservation District of an erosion and sediment control plan for construction activities. A copy of the erosion and sediment control plan and any required permit, as required by PADEP regulations, shall be available at the project site at all times.

5. The Pennsylvania Department of Environmental Protection (PADEP) requires that a permit be obtained from them for any earth disturbance activity of 5,000 square feet or more, under 25 Pa.Code §102.4(b).

(Ord. 382, 5/8/2006, §207)

§9-108. Grading Permit Application Requirements.

1. A grading permit shall be required for any earth disturbance activity in the Borough.

2. Every applicant for a grading permit shall file a written application with the Administrator in a form prescribed by the Administrator. Such application shall include the following:

A. Describe the land on which the proposed work is to be done, by lot, block, tract or street address or similar description which will readily identify and definitely locate the proposed work.

B. The grading permit application shall be accompanied with three sets of plans as prepared by a professional engineer or surveyor, licensed in the Commonwealth of Pennsylvania showing the following information:

(1) Property line as surveyed by a registered surveyor.

(2) Location of any existing buildings and their relationship with the

property lines.

(3) Existing and proposed contours in the area where the grading will be completed. A maximum of a 2-foot contour interval shall be maintained on the plan.

(4) Name and address of the property owner.

(5) The name and address of the professional engineer or surveyor who prepared the plan. The plan must also be signed and sealed by this professional.

(6) If the fill material is from an offsite source, a note shall be shown indicating source of the fill material.

(7) If the cut material is being removed from the site, a note shall be shown indicating the location where the material is being hauled.

(8) All existing and proposed subsurface utilities and sewers with existing easements shall be shown.

(9) Details and location of any proposed drainage structures and pipes, walls and cribbing and such other information as the administrator may need to carry out the purposes of this Part.

(10) All waters of the Commonwealth and waterways shall be shown.

(11) Additional topography, including existing and proposed trees, walls, driveways and bushes shall be shown.

(12) The location of the existing street or road the property is located along and the right of way for that street.

(13) All existing infrastructure with existing easements shall be shown. If any disturbance is proposed over any public easement, a profile of the existing and proposed centerline of the easement must be submitted for review.

(a) The total maximum cover over existing sewer lines must be approved by the Borough Engineer. Total maximum cover shall not exceed 15 feet unless approved by the Borough Engineer.

(b) If the easement is for a private utility then permission must be documented by the applicant.

(14) If any cut or fill is to be done within 5 feet of any public storm or sanitary sewer easement, the property owner shall be required to complete a closed circuit television inspection of the sewer line and submit a copy of it to the Borough prior to the issuance of the grading permit. (If required by Borough Engineer)

(15) A plan showing a minimum of two cross sections for each property involved, of the proposed cut or fill which show the method of benching both cut and/or fill.

(16) A geo-technical report verifying the soils conditions and soil stability for the proposed activity. (If required by Borough Engineer.)

(17) The BMP's and the appropriate erosion and sedimentation measures as required by 25 Pa.Code, Chapter 102, for minimizing accelerated soil erosion and sedimentation.

(18) The type of soils as shown in the Allegheny County Soils Survey must be shown on the plan.

(19) The E&S plan shall include notation that requires the landowner and/or developer to install topsoil and plant grass as per the approved plan as soon rough grading has been completed on the property.

(20) The E&S plan shall include notation that the property owner retains all responsibility of maintaining all erosion and sedimentation control structures until the property is stabilized (grass, not weeds, growing on 90 percent of the property).

(21) Approximate starting and completion dates for the proposed grading.

(22) Approximate excavation and fill quantities for each site.

C. Where, owing to special circumstances and conditions, compliance with the provisions of paragraph .B would result in unnecessary hardship, the Administrator may make such special reasonable exceptions thereto, upon recommendation from the Engineer, as will not be contrary to the public interest, and may impose such conditions as it deems necessary to adequately protect the public interest.

(Ord. 382, 5/8/2006, §208)

§9-109. Hazardous Conditions; Notice to Repair.

1. Whenever the Borough Council, upon the recommendation of its Administrator or Engineer, determines that any existing excavation, embankment or fill has become a hazard as defined in §9-104, the owner of the property upon which the excavation, embankment or fill is located, or other person or agent in control of said property, upon receipt of notice in writing from the administrator, shall, within the reasonable period specified therein, apply for an earth disturbance permit that specifies the repair, reconstruction or removal of such excavation, embankment or fill so as to eliminate the hazard.

2. If, after such notification, the property owner has not made the necessary repairs within the time adopted, then the Borough Council may direct government employees or an agent acting on the behalf of the Borough to make the required repairs and the cost thereof shall be borne by the property owner by a lien filed as provided by law.

(Ord. 382, 5/8/2006, §209)

§9-110. Permit Approval; Fee; Guaranty; Escrow Account.

1. The Administrator shall receive all applications and shall collect all fees as required by this document. All fees should be determined as per a fee schedule adopted and amended from time to time by resolution of Borough Council.

2. The Administrator shall transmit all applications to the Borough Engineer, who shall indicate his approval thereon. In the event of disapproval, the Borough Engineer shall note the reasons therefore; a copy of which shall be sent the applicant.

3. Before issuance of any grading permit, the applicant shall post a bond, with corporate surety or other approved security in the amount of 50 percent of the estimated cost of the earth disturbance work to guarantee the completion of said work, including, but not limited to, slope treatment, ground cover and drainage contemplated

under the permit. Such bond shall be executed by a corporate surety, as well as by the principal, and shall be subject to the approval of the Borough Solicitor as to form. The bond shall be issued to the benefit of the Borough and be conditioned upon the faithful performance of the work required under the terms and conditions of the grading permit to the satisfaction of the Borough.

4. In lieu of a bond, a cash deposit in the amount of 50 percent of the estimated cost of the earth disturbance work to guarantee the completion of said work, including, but not limited to, slope treatment, ground cover and drainage contemplated under the permit may be made to the Borough.

5. In addition, upon the receipt of the application for an earth disturbance permit, the Administrator shall require a cash escrow account in an amount determined by fee schedule adopted by resolution by the Borough Council. This cash escrow shall cover plan review and inspection charges of the Borough Engineer and any other expense, cost or charge of any kind incurred by the Borough in reviewing and processing the application. If during the life of the project, the cash escrow account is depleted, the permit holder shall be responsible for all additional costs necessary to cover the Borough Engineer fees and any other expense, cost or charge of any kind incurred by the Borough in administering the application until the project has been completed.

(*Ord. 382, 5/8/2006, §210*)

§9-111. Expiration of Permit; Extension.

Every grading permit shall expire by limitation and become null and void if the work authorized by such permit has not been commenced within 3 months or is not completed within 1 year from the date of issue; provided, that the Administrator, acting upon the recommendation of the Borough Engineer, may, if the permit holder presents satisfactory evidence that unusual difficulties have prevented work being started or completed within the specified time limits, grant a reasonable extension of time; and, provided further, that the application for the extension of time is made before the date of expiration of the permit.

(*Ord. 382, 5/8/2006, §211*)

§9-112. Denial of Permit; Appeal.

1. Where in the opinion of the Borough Engineer or Administrator the work as proposed by the applicant is likely to endanger any property or person or any street or alley or create hazardous conditions, the Borough shall deny the grading permit. In determining whether the proposed work is likely to endanger property or streets or alleys or create hazardous conditions, the Borough Engineer shall give due consideration to possible saturation by rains, earth movements, runoff surface waters and subsurface conditions such as the stratification and faulting of rock aquifers, springs and the nature and type of the soil or rock as well as all applicable State and Federal laws regarding earth disturbance.

2. The Council of the Borough shall consider promptly appeals from the provisions of this Part or from the determinations of the Administrator within 30 days, at which time the Council shall make determinations of alternate methods, standards or materials, when in its opinion, strict compliance with the provisions of this Part is unnecessary. Any applicant or permit holder shall have the right to appeal to any court

of competent jurisdiction from any decision or determination of the Council of the Borough.

3. Borough Council, by resolution, may from time to time set fees for appeals brought under this Section. In addition to the appeal fee, the appellant shall be responsible for any costs of advertising an appeal hearing and for the cost of a court reporter.

(Ord. 382, 5/8/2006, §212)

§9-113. Inspections.

1. The Borough Engineer or Administrator shall, as required by the permit or at the request of the permit holder, make the inspections hereinafter required and shall either approve that portion of the work which has been completed or notify the permit holder wherein the same fails to comply with the provisions of this Part. Where it is found by inspection that the conditions are not as stated or shown in the application, the Borough Engineer or Administrator may refuse to approve further work until approval is obtained for a revised earth disturbance plan, conforming to existing conditions.

2. Plans for earth disturbance work bearing the stamp of approval of the Borough shall be maintained at the site during the progress of the earth disturbance activities and until the work has been approved.

3. The permit holder shall notify the Borough in order to obtain inspections in accordance with the following schedule and at least 72 hours before the inspection is to be made. Before calling for any inspection, the owner shall have the property line stakes set and sufficient grade stakes set by a registered engineer or surveyor to enable the Borough Engineer to verify the grading operation.

A. *Initial Inspection.* When work on the excavation or fill is about to be commenced.

B. *Rough Grading.* When all rough grading has been completed.

C. *Drainage Facilities.* When drainage facilities are to be installed and before such facilities are backfilled.

D. *Special Structures.* When excavations are complete for retaining and crib walls and when reinforcing steel is in place and before concrete is poured.

E. *Final Inspection.* When all work, including the installation of all drainage and other structures has been completed.

F. If at any stage of the work the Borough Engineer or Administrator shall determine by inspection that the nature of the formation is such that further work as authorized by an existing permit is likely to endanger property or streets or alleys or create hazardous conditions, the Borough may require as a condition to allowing the work to be done that such reasonable safety precautions be taken as the Borough Engineer or Administrator considers advisable to avoid such likelihood of danger. Safety precautions may include, but shall not be limited to, specifying a flatter exposed slope, construction of additional drainage facilities, berms, terracing, compaction, shoring or cribbing.

(Ord. 382, 5/8/2006, §213)

§9-114. Performance Standards.1. *Standards for Excavation.*

A. Maximum slope steepness of a cut shall be determined as follows:

(1) Landslide prone soils where slopes are greater than 25 percent shall have a slope no greater than three horizontal to one vertical on its exposed face and shall be safe and stable. A written statement, signed and sealed by a professional engineer registered in the Commonwealth of Pennsylvania specializing in geotechnical engineering shall be submitted with the grading plan. Soil survey map symbols are: GrE, and GqF.

(2) Landslide prone soils where slopes are less than 25% shall have a slope no greater than two horizontal to one vertical on its exposed face and shall be safe and stable. A written statement, signed and sealed by a professional engineer registered in the Commonwealth of Pennsylvania specializing in geotechnical engineering shall be submitted with the earth disturbance plan. Soil survey map symbols are: UaB, UaC, GqB, GpC, GpD, GvB, EvB, EvC and EvD.

(3) Soils which are not, or have a low probability of being, landslide prone shall have a slope no greater than one and one-half horizontal to one vertical on its exposed face and shall be safe and stable. A written statement, signed and sealed by a professional engineer registered in the Commonwealth of Pennsylvania specializing in geotechnical engineering shall be submitted with the earth disturbance plan. All soil survey map symbols except those listed above denote soils of a low landslide probability.

B. Cut slopes which are steeper than those specified above may be allowed under a grading permit, provided the following are satisfied:

(1) The material in which the excavation is made is sufficiently stable to sustain a slope steeper than the slope specified above for recognized soil conditions on the site. A written statement, signed and sealed by a professional engineer registered in the Commonwealth of Pennsylvania specializing in geotechnical engineering, stating that the steeper slope will have sufficient stability and that the risk of creating a hazard will be miniscule, must be submitted to the Administrator.

(2) A retaining wall or other approved support greater than 4 feet in height designed by a professional engineer and approved by the Administrator and Borough Engineer is provided to support the surface of excavation.

(3) Before commencing any excavation which will in any way affect an adjoining property or structures thereon, the person making or causing the excavation to be made shall notify, in writing, the owners of the adjacent property or buildings not less than 30 days before such excavation is to be made that the proposed excavation is to be started. Copies of all such notices shall be supplied to the Administrator. All notices and copies of such notices shall be sent registered mail.

2. *Standards for Fills.*

A. Maximum slope steepness of a cut shall be determined as follows:

(1) Landslide-prone soils where slopes are greater than 25 percent shall

have fill slopes no steeper than four horizontal to one vertical and shall be safe and stable. A written statement, signed and sealed by a professional engineer registered in the Commonwealth of Pennsylvania specializing in geotechnical engineering shall be submitted with the earth disturbance plan. Soil survey map symbols are: GrE, GqE and GqF.

(2) Landslide-prone soils where slopes are less than 25 percent shall have fill slopes no steeper than three horizontal to one vertical and shall be safe and stable. A written statement, signed and sealed by a professional engineer registered in the Commonwealth of Pennsylvania specializing in geotechnical engineering shall be submitted with the earth disturbance plan. Soil survey map symbols are: UaB, UaC, GpB, GpC, GpD, GvB, GvC, GvD, EvB, EvC and EvD.

(3) Soils which are not, or have a low probability of being, landslide prone shall have a slope no greater than two horizontal to one vertical on its exposed face and shall be safe and stable. A written statement, signed and sealed by a professional engineer registered in the Commonwealth of Pennsylvania specializing in geotechnical engineering shall be submitted with the earth disturbance plan. All soil survey map symbols except those listed above denote soils of a low landslide probability.

B. Fill slopes that are steeper than two horizontal to one vertical may be allowed under a grading permit, provided the following is satisfied:

(1) The material in which the fill is created with is sufficiently stable after proper compaction to sustain a slope steeper than the slope specified for recognized soil conditions on the site. A written statement, signed and sealed by a professional engineer registered in the Commonwealth of Pennsylvania specializing in geotechnical engineering, stating that the steeper slope will have a sufficient stability and that risk of creating a hazard will be slight, must be submitted to the Borough.

(2) A retaining wall or other approved support greater than four in height for the fill slope designed by a professional engineer registered in the Commonwealth of Pennsylvania specializing in geotechnical engineering, and approved by the Administrator and the Borough Engineer is provided to support the fill installed.

(3) Before commencing any excavation which will in any way affect an adjoining property or structures thereon, then person making the fill slope shall notify, in writing by registered or certified mail, the owners of the adjacent property(ies) or building(s) not less than 30 days before such construction is to be started. Copies of all such notices shall be supplied to the Administrator. All notices and copies of such notices shall be sent registered mail.

C. *Standards for Compaction of Fills.*

(1) All fills shall be compacted to provide stability of fill material and to prevent undesirable settlement or slippage.

(2) The fill shall be installed in a series of layers, each not exceeding 12 inches in thickness, and each layer shall be compacted by passing a sheepsfoot roller or other approved equipment across the layer in a minimum of four

passes as the layer is spread.

(3) Pieces of rock or boulders having thickness of more than 6 inches or a cross-sectioned area in any plane of more 1½ square feet shall not be permitted in fills.

(4) No fill material that will support combustion shall be permitted.

(5) Where fills are placed on any existing slope greater than 5 percent, the toe of the fill shall be prepared by cutting a bench 10 feet wide on a reverse slope of one vertical to ten horizontal.

(6) For fills higher than 10 feet above the toe of the proposed slope, there shall be constructed benches at 8 foot intervals measured vertically from the base of the fill. Said benches shall be 6 feet in width and shall have a floor cut to a reverse slope of one vertical to six horizontal.

(7) The Borough Engineer, with the approval of the Borough Council, may require tests or other information if, in his opinion, the conditions or materials of fill are such that the additional information is necessary.

D. Whenever a fill is to be made of materials other than clean soil or earth, the earth disturbance permit shall be subject to the following additional limitations and requirements:

(1) The fill shall be completed within a reasonable length of time as determined by the Engineer and specified on the grading permit.

(2) Clean soil or earth shall be placed over the top and exposed surfaces of the fill to a depth sufficient to effectively conceal all materials used in the fill other than clean soil or earth. If the filling operation is intermittent, the Engineer may require that the top and exposed surfaces of the fill be so covered at the completion of each lift.

(3) No fill of any kind shall consist of building materials or any other material that would not allow for 95 percent compaction under normal fill operations.

(4) No fill of any kind shall be placed over trees, stumps or other material which would create a nuisance or be susceptible of attracting rodents, termites or other pests.

(Ord. 382, 5/8/2006, §214)

§9-115. Retaining Walls.

1. If a retaining wall is constructed to satisfy a requirement of this Part, a building permit, as provided for by other municipal regulations, shall not be required. The grading permit will apply to the retaining wall, and the requirements for inspections, and performance standards, as stated herein, will be complied with.

2. Retaining walls must be constructed in accordance with sound engineering practice. The plans submitted for approval shall bear the seal of a professional engineer registered in the Commonwealth of Pennsylvania.

3. The backfilling of retaining walls and the insertion of subterranean drainage facilities shall be installed in accordance with the design engineer's recommendations and plans and provide positive drainage away from the slope and wall.

4. In general, where a wall is replacing an exposed slope, the vertical face of the wall shall be 5 feet 0 inches back from the adjoining property.

A. A waiver to this requirement may be applied for and granted by the Administrator if it can be satisfactorily demonstrated that such a variance is necessary to ensure normal use of the property, i.e., for a side-line driveway.

B. The requirement of this subsection may also be waived when the proposed retaining wall is a joint venture between adjacent property owners and appropriate documents so stating are filed with the application for the permit.

(Ord. 382, 5/8/2006, §215)

§9-116. Drainage.

1. Adequate provisions shall be made to prevent any surface waters from damaging:

A. The cut face of an excavation.

B. The sloping surface of a fill.

C. Adjacent property affected by the change in the existing natural runoff.

2. All drainage provisions shall be of such a design to carry surface waters to the nearest practical street storm sewer or natural watercourse, as approved by the Engineer as a safe place to deposit and receive such waters.

3. The Borough Engineer shall require such drainage structures or pipes to be constructed or installed as may be necessary to prevent erosion and damage and to satisfactorily carry off accumulated surface waters. All drainage provisions shall be designed to safely convey the 25-year design storm.

4. Constructed benches in fills or cuts or at the top of slopes shall have horizontal gradients of at least 2 percent for the purpose of carrying off surface waters.

5. To prevent erosion, the planting of sod, shrubs or other vegetation shall be required on all slopes.

(Ord. 382, 5/8/2006, §216)

§9-117. Post Construction Runoff Control Requirements for New Development and Redevelopment.

1. No regulated earth disturbance activities within the Borough shall commence until approval by the Borough of a plan which demonstrates compliance with State water quality requirements after construction is complete. An operation and maintenance post development stormwater plan must be submitted to the Borough prior to final approval.

2. The best management practices (BMPs) must be designed to protect and maintain existing uses (e.g., drinking water use; cold water fishery use) and maintain the level of water quality necessary to protect those uses in all streams, and to protect and maintain water quality in "special protection" streams, as required by Statewide regulations at 25 Pa.Code, Chapter 93 (collectively referred to herein as "State water quality requirements").

3. To control post-construction stormwater impacts from regulated earth disturbance activities, State water quality requirements can be met by BMPs, including

site design, which provide for replication of pre-construction stormwater infiltration and runoff conditions, so that post-construction stormwater discharges do not degrade the physical, chemical or biological characteristics of the receiving waters. Stormwater shall be managed such that the rate of runoff after development shall not exceed the predevelopment conditions.

(*Ord. 382, 5/8/2006, §217*)

§9-118. Maintenance.

1. The owner of any property on which an earth disturbance activity has been completed shall maintain in good condition and repair the earth disturbance activity permitted and also all retaining walls, cribbing, drainage structures, fences, ground cover and any other protective devices as may be a part of the permit requirements.

2. If at any time subsequent to the completion of the earth disturbance activities the cut face or fill slope show signs of deterioration, erosion or other evidence which might be detrimental to the adjacent properties, the Administrator or Borough Engineer, may direct the property owner to take whatever necessary remedial steps are deemed necessary to restore the grading area to a safe condition and to do so in a reasonable period of time.

3. If after such notification the property owner has not made the necessary repairs within the allotted time, then the Borough Council may direct Borough employees or contractor to make the required repairs and the cost thereof shall be borne by the property owner by a lien filed as provided by law.

(*Ord. 382, 5/8/2006, §218*)

§9-119. General Requirements.

1. The top and/or bottom edge of all cut or fill slopes shall be at least 5 feet from the adjacent property lines or street right of way lines in order to permit the normal rounding of the edge without encroaching on the abutting property or street.

2. At the top of all cut or fill slopes which are in excess of one and one-half horizontal to one vertical and 6 or more feet in total height, a fence not less than 4 feet in height and of a design meeting the Borough standards shall be erected.

3. The owner of the property being graded shall be responsible to protect and clean up lower properties of silt and debris which have washed down onto the lower properties as a result of the grading work on the higher property.

4. In order to prevent the denuding of the landscape, wherever practicable, large trees and other natural features constituting important physical, aesthetic and economic assets to existing or impending development work shall be preserved.

5. Burning of materials from clearing and grubbing operations is not permitted.

(*Ord. 382, 5/8/2006, §219*)

§9-120. Disclaimer of Liability.

Neither the issuance of a permit under the provisions of this Part nor the compliance with the provisions hereof or with any condition imposed by the Administrator or Borough Engineer hereunder shall relieve any person from responsibility for damage to persons or property resulting therefrom or as otherwise imposed by law, nor

impose any liability upon the Borough or Administrator for damages to persons or property.

(*Ord. 382, 5/8/2006, §220*)

§9-121. Enforcement, Suspension and Revocation of Permits and Approvals.

1. Whenever the Borough finds that a person has violated a prohibition or failed to meet a requirement of this Part, the Borough may order compliance by written notice to the responsible person as prepared by the Administrator. Such notice may require without limitation:

- A. The performance of monitoring, analyses, and reporting.
- B. The elimination of prohibited discharges.
- C. Cessation of any violating discharges, practices, or operation.
- D. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property.
- E. Payment of a fine to cover administrative and remediation cost.
- F. The implementation of stormwater BMPs.
- G. Operation and maintenance of stormwater BMPs.

2. The violation of any provision of this Part is hereby deemed a public nuisance.

3. Any building, land development or other permit or approval for regulated earth disturbance activities issued by the Borough may be suspended or revoked by the governing body for:

- A. Noncompliance with or failure to implement any provision of the permit.
- B. A violation of any provision of this Part.
- C. The creation of any condition or the commission of any act during construction or development which constitutes or creates a hazard or nuisance, pollution or which endangers the life or property of others.

(*Ord. 382, 5/8/2006, §221*)

§9-122. Violations and Penalties.

1. No person shall create earth disturbance activities including but not limited to the construction, enlargement, alteration, repair or maintenance of any excavation or fill or cause the same to be done contrary to or in violation of any provision of this Part.

2. When written notice of violation of any of the provisions of this Part has been served by the Administrator, such violation shall be discontinued immediately.

3. Any person, firm or corporation who shall violate any provision of this Part, upon conviction thereof, shall be sentenced to pay a fine of not more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 30 days. Each day that a violation of this Part continues shall constitute a separate offense. Whenever such person shall have been notified by the Administrator by service of summons in a prosecution or in any other way that he is committing such violation of this Part, each day that he shall continue such violation after such notification shall constitute a separate offense, punishable by a like fine or penalty.

Such Grading Administrator, Borough Engineer, Borough Solicitor and Mayor are each authorized to institute proceedings to assess penalties under §9-123 before a magisterial district judge or other proper judicial officer. [*Ord. 387*]

(*Ord. 382, 5/8/2006, §222; as amended by Ord. 387, 12/14/2009*)

§9-123. Remedies.

In case any work is performed by any person in violation of any of the provisions of this Part, the proper officer of the Borough, in addition to other remedies, may institute in the name of the Borough any appropriate action or proceeding, whether by legal process or otherwise, to prevent such unlawful work and to restrain or abate such violation.

(*Ord. 382, 5/8/2006, §223*)