

BOROUGH OF MENDHAM
MORRIS COUNTY, NEW JERSEY

ORDINANCE #16-2024

**ORDINANCE OF THE BOROUGH OF MENDHAM, COUNTY OF MORRIS,
STATE OF NEW JERSEY, AMENDING PART I, ADMINISTRATIVE
LEGISLATION, OF THE BOROUGH CODE TO ESTABLISH NEW
CHAPTER 180 ENTITLED “SOIL/FILL IMPORTATION”**

WHEREAS, the New Jersey Department of Environmental Protection (“NJDEP”) encourages municipalities to adopt an ordinance to proactively regulate imported soil in an effort to keep contaminants from being deposited on residential, construction and development sites; and

WHEREAS, the Borough of Mendham Administration and Engineer have reviewed an NJDEP model ordinance regarding soil and fill importation and have recommended adopting the attached ordinance, which complies with NJDEP requirements; and

WHEREAS, the Mayor and Borough Council find it in the best interest of the health, safety and welfare of the Borough to adopt the ordinance.

NOW THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Mendham, County of Morris, State of New Jersey, as follows:

SECTION 1. Part I, Administrative Legislation, is hereby amended to establish new Chapter 180, Soil/Fill Importation, to read as follows:

Chapter 180 – SOIL/FILL IMPORTATION

§ 180-1 Purpose.

The purpose of this chapter is to manage the importation and deposition of soil/fill to protect the safety, public health, and general welfare of the community and the environment. The adoption and enforcement of this chapter does not exempt an applicant from other required local, State or Federal approvals or local Soil Conservation District requirements regarding the acceptability and placement of soil/fill materials.

This chapter does not apply to soil/fill imported for the purposes of remediation pursuant to the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS, N.J.A.C. 7:26C) and Technical Requirements for Site Remediation (N.J.A.C. 7:26E), operation and/or closure of sanitary landfills (N.J.A.C. 7:26), or dredge repository sites approved by State or Federal agencies.

§ 180-2 Definitions.

For purposes of this chapter, the terms used herein are defined as follows:

ACCEPTABLE SOIL/FILL

Non-water-soluble, non-decomposable, inert solids such as soil, subsoil, topsoil, sand, clay, loam, gravel, humus, rock, concrete, brick, glass, and/or clay or ceramic products, free of construction/demolition debris, garbage, refuse, or sludge and not containing concentrations of one or more contaminants that exceed the DEP's Residential Direct Contact Soil Remediation Standards or Non-Residential Direct Contact Soil Remediation Standards, whichever is more stringent, as set forth in N.J.A.C. 7:26D, Remediation Standards.

APPLICANT

The property owner requesting a soil importation permit as provided for in this chapter.

CONSTRUCTION/DEMOLITION DEBRIS

Mixed waste building material and rubble resulting from construction, remodeling, repair, and demolition operations on houses, commercial buildings, pavements and other structures that includes, but is not limited to, treated and untreated wood scrap; tree parts, tree stumps and brush; plaster and wallboard; roofing materials; corrugated cardboard and miscellaneous paper; ferrous and nonferrous metal; non-asbestos building insulation; plastic scrap; carpets and padding; and other miscellaneous materials.

CONTAMINATED SOIL/FILL

Any soil/fill containing contaminants exceeding the current requirements for the most stringent concentrations between the Non-residential and Residential Direct Contact Soil Remediation Standards pursuant to N.J.A.C. 7:26D, Remediation Standards.

CONTAMINATED PROPERTY

Any property, including but not limited to structures, sediment, soil and water, that contains a contaminant which is present at such levels or concentration as to require action pursuant to any federal or state statutes or regulations.

DREDGED MATERIAL

Sediments removed from under a body of water such as, but not limited to, a bay, harbor, lake, stream and river, removed during a dredging operation that are displaced or removed to another location.

FILL

Material placed at a location for the purpose of filling low areas, changing the contours of an area, stabilizing existing grades and/or raising the grade of an area. Fill usually consists of soil, but may also include non-water-soluble, non-decomposable, inert solids, such as rock, gravel, brick, block, concrete, glass, and/or clay or ceramic products or any combination thereof.

PERMIT

The official document issued by the Borough approving the Soil Importation Application.

PERSON

Includes an individual, firm, corporation, association, society or partnership, or other business entity and their agents or employees.

REMEDIAL ACTION

As defined in the Technical Requirements for Site Remediation (Technical Requirements) at N.J.A.C. 7:26E-1.8, those actions taken at a contaminated site as may be required by the Department, including, without limitation, removal, treatment measures, containment, transportation, securing, or other engineering or institutional controls, whether to an unrestricted use or otherwise, designed to ensure that any contaminant is remediated in compliance with the applicable remediation standards. A remedial action continues as long as an engineering control or an institutional control is needed to protect the public health and safety and the environment, and until all unrestricted use remediation standards are met.

REMEDICATION

“Remediation” or “remediate” means all actions to investigate, clean up, or respond to any known, suspected, or threatened discharge of contaminants, including the preliminary assessment, site investigation, remedial investigation, and remedial action, or any portion thereof, provided, however, that “remediation” or “remediate” shall not include the payment of compensation for damage to, or loss of, natural resources.

§ 180-3 Permit required for deposit of acceptable soil/fill material.

- A. No person shall deposit or place soil/fill material, or cause, allow, or permit soil/fill to be placed on any property in the Borough of Mendham unless a permit is issued by the Borough and any other applicable county, state or federal approval(s) or permit(s). No permit under this chapter shall be required for any development that requires a Land Use Approval from the Joint Land Use Board provided the approval contains a condition(s) that meet the standards of this chapter.
- B. Unless otherwise exempt, no permit shall be issued unless: (1) the applicant submits proof that the soil/fill material has been tested consistent with any applicable requirements set forth herein; (2) the soil/fill meets the definition of acceptable soil/fill; and (3) the application otherwise conforms with the standards of this chapter.

§ 180-4 Permit Exemptions.

A person is not required to obtain a permit under this chapter for the following:

- A. Minor filling associated with landscaping activities at any property where up to 15 cubic yards, or as otherwise allowed by the New Jersey Department of Environmental Protection under applicable regulations, per year of acceptable soil/fill material is being deposited.
- B. Fill for septic installation and/or repair certified to be such by a licensed New Jersey engineer; or approved by the local health agency.

- C. Virgin quarry products including, but not limited to, rock, stone, gravel, sand, clay and other mined natural products.
- D. Acceptable soil/fill material being moved from one section of an owner's property to another section of the same property.
- E. Public works projects conducted or contracted for by a public entity or utility regulated by the Board of Public Utilities provided the soil/fill material meets the definition of acceptable soil/fill.

§ 180-5 Responsibility for obtaining permit.

The property owner receiving the soil/fill material is responsible for obtaining the permit.

§ 180-6 Duration of permit.

Each permit issued under the terms of this chapter shall be valid only for the location(s) and soil/fill material described therein and shall be valid for the duration of the project specified in the permit application.

§ 180-7 Permit Application Requirements.

The procedure to apply for a Soil/Fill Importation Permit shall be as follows:

- A. All applications for Soil/Fill Importation Permits shall be filed with the Borough Engineer who shall administer the applications and permits.
- B. An application fee, in the amount of \$250.00, shall be remitted at the time of application. The fee shall address the costs associated with the review of the application. Upon review of the application, an inspection fee shall be established by the Borough Engineer and must be posted before the release of the permit. This inspection fee shall be supplemented as necessary by the applicant.
- C. The application shall include FORM SI-1 ACCEPTABLE SOIL/FILL MATERIAL CERTIFICATION FORM to be completed as follows:

By the soil/fill material supplier

Part 1: The date the form is completed, the soil/fill supplier's name, title, company name, address, telephone number, and email contact information.

Part 2: The site name(s), address(es), and block/lot of the property(ies) supplying the soil/fill material.

Brief history of the source property(ies), including current or past use of the property.

Answers to questions 1 through 3.

If applicable, the date soil/fill material was subject to analytical testing in accordance with applicable requirements of the New Jersey Department of Environmental Protection's guidance entitled "Understanding Requirements for Soil and Fill Materials." If analytical testing was not conducted, justification for making a determination that the soil/fill is acceptable without having analytical results.

Certification (signature) from the soil/fill supplier that the soil/fill being imported meets the definition of acceptable soil/fill.

By the person receiving or placing acceptable soil/fill material

Part 3: The date the form is completed, the name, title, company name, address, telephone number, and email contact information.

The address of the location where soil/fill placement will be placed.

Answers to questions 1 through 5.

Certification (signature) from the person receiving or placing the soil/fill material.

§ 180-8 Review of Application.

Within 30 days after receipt of a complete application, the Borough shall review the application and either approve, conditionally approve or deny the application.

§ 180-9 Appeals.

Whenever an application for a permit is denied, the applicant may appeal the denial to the municipal governing body by filing a written notice of appeal with the Borough Clerk within 30 days after receiving written notice of the denial of such application. The municipal governing body shall thereafter hold a public hearing within 60 days on the matter in accordance with rules or procedures to be established by the municipal governing authority and may modify, affirm or reverse the decision.

§ 180-10 Violations and penalties.

Any person who violates any provision of this Chapter shall be liable for penalties consistent with the penalty provisions of Chapter 1-15 of the Borough Ordinance, at the direction of the Municipal Court. Every day in which such violation continues after due notice has been served shall constitute a separate violation or offense. Upon order of the Court, the violator shall pay

all costs associated with analytical testing, remediation, removal and proper disposal of soil/fill material determined to not to comply with the definition of acceptable soil/fill.

§ 180-11 **Permit suspension or revocation.**

The person receiving a permit pursuant to this Chapter shall comply with all conditions set forth in the permit. Submitting false information or noncompliance with a permit may subject the person receiving a permit to a penalty pursuant to section X above and/or suspension or revocation of such a permit.

SECTION 2. All ordinances of the Borough of Mendham that are inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of such inconsistency.

SECTION 3. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

SECTION 4. This Ordinance shall take effect immediately upon final passage, approval, and publication as required by law.

Dated: October 9, 2024

Attest:

BOROUGH OF MENDHAM

Lauren McBride
Acting Borough Clerk

Christine Serrano-Glassner, Mayor

FORM SI-1 ACCEPTABLE SOIL/FILL MATERIAL CERTIFICATION FORM

Instructions: The supplier shall make the acceptability determination at the site of soil/fill origin and will complete Parts 1, 2 and 3 of this form. Part 4 will be completed by the person receiving the material to be used as acceptable soil/fill material.

Part 1: Supplier of soil/fill material information

Date: _____
Name (print): _____ Title: _____
Company Name: _____
Street Address: _____
City: _____ State: _____ Zip: _____
Phone #: _____ Email Address: _____

Part 2: Contractor information

Name (print): _____ Title: _____
Company Name: _____
Street Address: _____
City: _____ State: _____ Zip: _____
Phone #: _____ Email Address: _____
NJDEP A-901 License Number: _____

Part 3: Source of acceptable soil/fill material site information

Source Site Name: _____
Past Site Name(s) if known: _____
Street Address: _____
Block _____ Lot(s) _____
City: _____ State: _____ Zip: _____

Brief history of the source property, including all property uses:

1. Has the source property ever been known or suspected to be contaminated? _____
2. Do historical operations at the property reflect or suggest the potential for radiological contaminants? _____
3. Are there naturally occurring radiological materials known or suspected at the source property? _____

If applicable, the date soil/fill material was subject to analytical testing (provide copies):

If analytical results are not provided, justification for determining the soil/fill is acceptable

without the need for analytical results: _____

Certification

I, the undersigned, certify under penalty of law, that the information provided in Parts 1 and 2 of this form is true and correct to the best of my knowledge and that the soil/fill material meets the definition of acceptable soil/fill as identified in Chapter 180. I also certify, based upon visual inspection, that the soil material does not contain solid waste, any free liquid other than water, obvious signs of staining or discoloration, and that it will not create a public nuisance such as, but not limited to, odors.

Signature: _____

Part 4: Person receiving or placing acceptable soil/fill material

Date: _____

Name (print): _____ Title: _____

Company Name: _____

Street Address: _____

City: _____ State: _____ Zip: _____

Phone #: _____ Email Address: _____

Physical address of soil/fill placement: _____

Block _____ Lot(s) _____

City: _____ State: _____ Zip: _____

1. Purpose for importing soil/fill: _____
2. Quantity, in cubic yards, of acceptable soil/fill material to be imported or placed: _____
3. Anticipated date of placement: _____
4. Anticipated date of final grading: _____
5. Anticipated date of securing the deposited fill (seeding, macadam, etc.): _____

Certification

I, the undersigned, certify under penalty of law that the information provided is true and correct to the best of my knowledge, information and belief.

Signature: _____