

APPROVED BY David Small

DATE 11/3/15



START ACTION NOTICE 2015-10

1. TYPE OF ACTION:

This action is adoption of the Delaware Sediment and Stormwater Regulations and accompanying Technical Documents as regulations.

2. PURPOSE OF ACTION:

A Superior Court decision of October 7, 2015 invalidated the 2013 and 2014 version of the Delaware Sediment and Stormwater Regulations on procedural grounds because the accompanying Technical Document referenced by the regulations was not published in the State Register in accordance with Administrative Procedure Act requirements. The Department issued Emergency Regulation Order 2015-WS-0040 on October 15, 2015 including both the 2014 Sediment and Stormwater Regulations and the latest version of the Technical Document, dated October 2015, as regulation to correct the procedural flaw.

This action is being taken to formalize the emergency regulations. The regulatory development process will allow for input from a Regulatory Advisory Committee and include a Public Hearing and public comment on the draft regulations. The regulation development process must be completed prior to expiration of the emergency regulations which are effective for 120 days from the date of the Emergency Regulation Order, with a possible one-time 60-day extension.

The Sediment and Stormwater Program intends to include a revision to the Residential Construction Standard Plan section (3.01.1.1) of the Technical Document as part of this action.

3. STATUTORY BASIS:

Title 7, Delaware Code, Chapter 40, the Sediment and Stormwater Law

4. LIKELY AFFECTED PUBLIC:

Land developers, contractors, builders, engineers, landscape architects, land surveyors, architects, DeIDOT

5. PROPOSED SCHEDULE OF ACTIVITIES:

November 10, 2015 - Convene Regulatory Advisory Committee to present draft regulation
December 1, 2015 - Publication of Draft Regulation in State Register
January 5, 2016 - Public Hearing
January 20, 2016 - Public written comment period closes
February 12, 2016 - Exhaustion of 120-day emergency regulation period; request 60-day extension
March 1, 2016 - Publication of Secretary's Order and Final Regulation in State Register
March 11, 2016 - Effective date of regulations
April 12, 2016 - Emergency regulation 60-day extension period expires

6. REVIEW COMMITTEE:

Sediment and Stormwater Program Regulatory Advisory Committee