

DNREC Sediment & Stormwater Listserve Update: October 2015

This month's topics:

1. Delaware Superior Court Invalidates Delaware Sediment & Stormwater Regulations

1. Delaware Superior Court Invalidates Delaware Sediment & Stormwater Regulations

In a decision handed down by Delaware Superior Court Judge T. Henley Graves on October 7, 2015, the 2013 Sediment & Stormwater Regulations and subsequent 2014 amendments have been ruled invalid. Judge Graves found that the Technical Document contained at least some elements that met the definition of a "regulation" as defined in Delaware's Administrative Procedures Act (APA) and should have therefore followed full APA procedures for adoption, including publication in the Register of Regulations.

Secretary David Small issued the following statement following the decision:

"We are obviously disappointed by Judge Graves' decision. The litigation challenging Delaware's stormwater regulations was based on procedural issues and not the merits of the requirements which are a vitally important tool to help improve water quality and protect our citizens and property from the impacts of flooding. We are very aware of the uncertainty that has been created by this decision and are currently reviewing our options to try and resolve this matter as expeditiously as possible."

The Department will be filing an appeal to the Delaware Supreme Court and requesting a stay in the Superior Court decision until the appeal is decided. There are no plans to revert back to the previous regulations. The Department has advised the Delegated Agencies to hold off on any plan approvals effective October 7, 2015 until a decision is rendered on the motion for stay. Additional information will be provided as it becomes available. Judge Graves' decision in its entirety is available at the following link:

<http://files.ctctcdn.com/2565a9f5401/61c0ac52-1ec4-4a6a-a6ad-4f6cdcff2a18.pdf>