

## Regulatory Flexibility Act Compliance Form

**Background:** The Regulatory Flexibility Act (29 Del. C. Chapter 104) states that prior to the issuance of any rule or regulation an agency shall consider whether it is lawful, feasible and desirable for the agency to exempt individuals and small businesses from the effect of the rule or regulation or whether the agency may and should promulgate a rule or regulation which sets less stringent standards for compliance by individuals and/or small businesses.

**Instructions:** This form must accompany your Register Notice and the proposed regulation prior to being published in the Register of Regulations. **Please explain your considerations for each of the following factors (attach additional pages or documents as needed):**

### **Regulatory Action and Background**

The *Delaware Sediment and Stormwater Regulations* have been recently revised, with the effective date of the revisions to the regulations being January 1, 2014. At this time, revisions to nine specific sections of the regulations are proposed to clarify that the Technical Document that supports the revised regulations is guidance to be used as a reference for compliance. The Technical Document provides compliance methods but is not the only means of complying with the regulations. Functionally equivalent methods to those provided in the Technical Document may be considered on a case-by-case basis.

The compliance requirements under the *Delaware Sediment and Stormwater Regulations* will not change with these proposed revisions to regulation language. These proposed changes to the regulation language simply clarify that there are options for compliance.

### **1) The nature of any reports and the estimated cost of their preparation by individuals and/or small business which would be required to comply with the new rule:**

Detailed Sediment and Stormwater Management plans are required to be developed by design professionals licensed in the State of Delaware. There is a design and consulting cost associated with development of the plan. The cost is dependent upon the size of the project and complexity of the design.

The compliance requirements under the *Delaware Sediment and Stormwater Regulations* will not change with these proposed revisions to regulation language. The proposed changes to the regulation language simply clarify that there are options for compliance, offering the regulated community more flexibility in the way that they may comply with the *Delaware Sediment and Stormwater Regulations* than in the previous regulatory language.

### **2) The nature and estimated costs of other measures or investments that would be required by individuals and/or small businesses in complying with the rule:**

Best management practices (BMPs) are measures that are implemented on construction and development sites both during construction and post construction to comply with the requirements of the *Delaware Sediment and Stormwater Regulations*. The regulations now reference the Technical Document which includes design criteria and technical specifications for BMPs that may be implemented on sites to aid the owner and owner's consultant and contractor with compliance with the regulations. Use of the technical specifications contained in the Technical Document will reduce the cost of design of these BMPs; however, an owner may propose functionally equivalent compliance methods for approval if they choose to do so.

### **3) The nature and estimated cost of any legal, consulting and accounting services which individuals and/or small businesses would incur in complying with the rule:**

There are legal and consulting costs associated with developing the Sediment and Stormwater Plan for approval prior to construction. The legal and consulting costs are expected to remain and are not expected to be significantly affected by the proposed revisions to the *Delaware Sediment and Stormwater Regulations*.

**4) The ability of individuals and/or small businesses to absorb the costs estimated under questions 1, 2 and 3 of this form without suffering economic harm and without adversely affecting competition in the marketplace:**

The regulations now reference the Technical Document which includes design criteria and technical specifications for BMPs that may be implemented on sites to aid the owner and owner's consultant and contractor with compliance with the regulations. Use of the technical specifications contained in the Technical Document will reduce the cost of design of these BMPs versus having to develop design details specific to each project. However, an owner may propose functionally equivalent compliance methods for approval, developed at their own cost, if they choose to do so.

**5) The additional cost, if any, to the agency of administering or enforcing a rule which exempts or sets lesser standards for compliance by individuals and/or small business:**

Allowing alternative methods to be used for compliance rather than only following the methods in the Technical Document will result in additional staff time to review proposed methods to determine that are functionally equivalent to those provided in the Technical Document and meet the compliance requirements of the *Delaware Sediment and Stormwater Regulations*.

**6) The impact on the public interest of exempting or setting lesser standards of compliance for individuals and/or small businesses.**

Under the Federal Clean Water Act, the State of Delaware is required to meet water quality goals. The *Delaware Sediment and Stormwater Regulations* are in place to help the state meet water quality improvement initiatives from developing urban lands. Failure to implement or enforce the state regulations could lead to increased enforcement by EPA for the same projects.

Allowing functionally equivalent methods to be used for compliance rather than only following the methods in the Technical Document will result in additional staff time to review functionally equivalent methods to ensure that those functionally equivalent methods achieve the same water quality goals.

**7) What accommodations, if any, have been made in the regulations to address individual or small business concerns identified above?**

Clarifying the language in the *Delaware Sediment and Stormwater Regulations* to state that the Technical Document is a guidance document to be used as a reference for compliance, and allowing functionally equivalent methods to be considered for compliance provides flexibility in complying with the regulations, which benefits all regulated parties, including individuals and small businesses.