

1.0 General Provisions

- 1.1 Findings of Fact
 - 1.1.1 It is determined that:
 - 1.1.1.1 Erosion and sedimentation and delivery of other nonpoint source pollutants such as nutrients through stormwater runoff continue to present serious problems throughout the State.
 - 1.1.1.2 The removal of a stable ground cover in conjunction with the decrease in the infiltration capability of soils resulting from the creation of additional impervious areas such as roads and parking lots has accelerated the process of soil erosion and sediment deposition and nonpoint source runoff of other pollutants resulting in pollution of waters of the State. This damages domestic, agricultural, industrial, recreational, fish and wildlife and other resource uses.
 - 1.1.1.3 Accelerated stormwater runoff increases flood flows and velocities, contributes to erosion, sedimentation and degradation of water quality, overtaxes the carrying capacity of streams and storm sewers, greatly increases the cost of public facilities in carrying and controlling stormwater, undermines floodplain management and flood control efforts in downstream communities, reduces groundwater recharge, and threatens public health, welfare and safety.
 - 1.1.2 The regulation of stormwater runoff from land development activities will control stormwater runoff, soil erosion and nonpoint source pollution and will mitigate the adverse effects of stormwater runoff from development and will reduce threats to public health and safety.
- 1.2 The ~~purpose intent~~ of this regulation is to enhance and extend the present erosion and sediment control activities and programs of the State for both rural and urban lands and to provide for control and management of stormwater runoff consistent with sound water and land use practices. These activities will reduce, to the maximum extent practicable, adverse effects of stormwater runoff on the water and lands of the State.
- 1.3 Applicability
 - 1.3.1 ~~On and after January 1, 2014, unless~~ Unless a particular activity is exempted by these regulations, a person shall not disturb land without an approved Sediment and Stormwater Management Plan from the Department or Delegated Agency. A Sediment and Stormwater Management Plan shall not be approved for a property unless it is consistent with the following items:
 - 1.3.1.1 These regulations;
 - 1.3.1.2 7 **Del.C.** Ch. 40, relating to erosion and sediment control and stormwater management; and
 - 1.3.1.3 7 **Del.C.** Ch. 60, relating to the development, utilization, and control of the land, water, underwater and air resources of the State, ~~and~~ including the current Delaware Construction General Permit (CGP).
 - 1.3.1.4 ~~Regulations Governing the Control of Water Pollution, Section 9.1.02, known as Special Conditions for Stormwater Discharges Associated with Construction Activities.~~
 - 1.3.2 Applicability of these regulations for plans that have been approved to comply with previous regulations shall be consistent with the following:
 - 1.3.2.1 Plans approved to comply with previous regulations where construction has not commenced on January 1, 2014 may have the plan approval extended under the requirements of the previous regulations in subsequent three-year approval periods. Any plan approved to comply with previous regulations must commence construction no later than December 31, 2019. A

plan approved to comply with previous regulations where construction has not commenced by December 31, 2019 shall expire and a new plan in compliance with these regulations shall be submitted to the Department or Delegated Agency for review and approval before commencement of construction.

1.3.2.2 Plans approved to comply with regulations in effect prior to January 1, 2014~~previous regulations~~ where construction has commenced may be extended based on the requirements in place at the time of original Plan approval. In no case shall the plan extension supersede the sunset provisions of the county or local government.

1.3.2.2.1 Project phases that have not commenced construction may be extended when the Sediment and Stormwater Management Plan for that phase has been approved with the overall plan.

~~4.3.2.2.1~~1.3.2.2.2 Phases shown on a conceptual plan that are not included on the approved Sediment and Stormwater Management Plan will not be eligible for extension. A Sediment and Stormwater Management Plan must be developed for conceptual phases separately.

1.3.2.3 Commencement of construction means that the construction of the approved Plan is visible with the construction of a structure or infrastructure, including but not limited to roads, water and sewer lines, and stormwater management systems. General earth moving is not considered commencement of construction.

1.3.2.4 An individual building pad site, outparcel or future phase which was considered in an overall master plan stormwater management design and where the stormwater management facility has been constructed based upon regulations in effect prior to January 1, 2014 shall be grandfathered under the regulations in place at the time of approval of the master plan project.

1.3.2.4.1 The Department or Delegated Agency shall verify that the proposed development of the individual building pad site, outparcel or future phase meets the original design assumptions for the stormwater management facility. If the proposed development of the individual building pad site, outparcel or future phase does not meet the original design assumptions for the regional stormwater management facility, the individual building pad site, outparcel or future phase plan must comply with these regulations.

1.3.2.4.2 The Department or Delegated Agency shall verify that the stormwater management facility functions in accordance with the approved design. If the stormwater management facility fails to function in accordance with the approved design it may be restored to its design condition as part of the proposed development of the individual building pad site, outparcel or future phase.

~~4.3.2.2.2~~1.3.2.4.2 The applicant shall submit a Sediment and Stormwater Plan for the proposed development of the individual building pad site, outparcel or future phase. The Plan may be approved without additional stormwater management requirements.

1.3.2.4.3

1.4 The following activities are exempt from both sediment control and stormwater management requirements established by these regulations:

1.4.1 Agricultural land management practices having a soil and water conservation plan, unless the Department or Delegated Agency determines that a new or updated soil and water conservation plan is required, and the Owner or operator of the land has refused either to apply to a Conservation District for the development of a

conservation plan, or to implement a conservation plan developed by a Conservation District.

- 1.4.2 Developments or construction that disturbs less than 5,000 square feet. Individual disturbances of less than 5,000 square feet that accumulate to exceed 5,000 square feet are not exempt and may be subject to the provisions of these regulations as determined by the Department or Delegated Agency on a case-by- case basis.
 - 1.4.3 With written agreement of the Department, land development activities which are regulated with respect to erosion and sediment control and stormwater management under other specific State or Federal laws.
 - 1.4.4 Commercial forest harvesting operations that meet the requirements of the Department of Agriculture under 3 **Del.C.** Ch. 10, Subchapter VI.
 - 1.4.5 Permitted land application of biosolids and residuals.
- 1.5 Variances
- 1.5.1 The Department may grant a variance from any requirement of these regulations in accordance with the provisions of 7 **Del.C.** §6011.
 - 1.5.2 The Department may grant a temporary emergency variance from any requirement of these regulations in accordance with the provisions of 7 **Del.C.** §6012.
 - 1.5.3 ~~Excluding items covered by 1.7 Offset Provisions,~~ The Department shall consider and decide applications for a variance from the provisions of these Regulations if all of the following are established by the applicant.
 - 1.5.3.1 The variance sought will not be detrimental to the environment or contrary to law or these Regulations.
 - 1.5.3.2 Owing to special conditions or an unusual situation, a literal interpretation of these Regulations will result in hardship to the owner of the property in question.
 - 1.5.3.3 If the variance were granted, the goals of these Regulations ~~and the technical documents~~ will be met with respect to the property in question.
 - 1.5.4 The applicant must submit a request for a variance to the Sediment and Stormwater Program of the Department that sets forth and explains the need for the variance.
 - 1.5.5 The Secretary or his designee shall publish his decision on the requested variance and the decision shall be effective immediately.
 - 1.5.6 Any person whose interests are substantially affected may appeal to the Environmental Appeals Board within 15 days of publication of the Secretary's decision.
 - 1.5.7 The variance shall be effective from the date of its approval, not to exceed one year until a final plan is approved, ~~unless the nature and scope of the project for which it was granted has changed.~~
- 1.6 Fees and Financial Guarantees
- 1.6.1 Fees
 - 1.6.1.1 The Delegated Agency has the authority to require fees to support local program implementation, including overall program management, plan review, construction review, enforcement, and maintenance responsibilities. An Owner seeking approval of a Sediment and Stormwater Management Plan shall pay a fee as prescribed by the Department or Delegated Agency. When the Department is the approval agency, the fees shall not exceed \$80.00 per disturbed acre per project.
 - 1.6.1.2 The establishment of fees, not involving stormwater utilities, shall be in accordance with the following items:
 - 1.6.1.2.1 The number of needed personnel and the direct and indirect expenses associated with those personnel shall be developed by the agencies

requesting delegation in a specific jurisdiction in conjunction with and with the concurrence of the Department. Those expenses will then form the basis for determining plan review, construction review and maintenance review costs.

- 1.6.1.2.2 The fee schedule and revisions to the fee schedule of the Delegated Agency with the concurrence of the Department shall be subject to applicable State or local public notice requirements. State public notice requirements shall be governed by 7 **Del.C.** §6004.

1.6.2 Financial Guarantee

1.6.2.1 The Department or Delegated Agency may require and implement a financial guarantee for construction of the elements of the approved Sediment and Stormwater Management Plan.

- 1.6.2.1.1 The Owner shall submit when required to the Department or Delegated Agency a financial guarantee before the onset of construction activities. The financial guarantee will ensure that action can be taken by the Department or Delegated Agency to complete required elements of the approved Sediment and Stormwater Management Plan, at the Owner's expense, should the Owner fail to initiate, complete, or maintain those measures identified in the approved Sediment and Stormwater Management Plan after being given proper notice and within a reasonable time specified by the Department or Delegated Agency.

1.6.2.1.2 The financial guarantee may be extended beyond the time period specified to cover a reasonable period of time, not to exceed less than one year, for testing the practices during storm events and for initial maintenance activities. However, the Department or Delegated Agency may adopt provisions for a partial release of the financial guarantee upon the completion of specified stages or phases of development as outlined in accepted procedures.

- 1.6.2.2 Following approval of the Department, the financial guarantee provisions of the Delegated Agency shall be subject to applicable State or local public notice requirements. State public notice requirements shall be governed by 7 **Del.C.** §6004.

~~1.7~~ Offset Provisions

~~1.7.1~~ 1.7.1 ~~The Department may require an offset as an alternative to full or partial compliance with the Resource Protection Event requirements as provided in Sections 5.2 and 5.6.3 of these regulations.~~

~~1.7.2~~ 1.7.2 ~~Offset requirements shall be subject to Departmental review and approval as well as to the public notice requirements of 7 **Del.C.** §6004.~~

~~1.7.3~~ 1.7.3 ~~Procedures for determining offset options may be developed by the Department and published in the technical document supplement to these regulations.~~

~~4.81.7~~ 1.81.7 These regulations are adopted pursuant to authority conferred by and in accordance with 7 **Del.C.** Ch. 40 and 7 **Del.C.** Ch. 60.

~~4.91.8~~ 1.91.8 These regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of these regulations should be considered minimum requirements, and where any provision of these regulations imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

~~4.101.9~~ 1.101.9 If any section, subsection, sentence, clause, phrase or portion of these regulations is for any reason held invalid or unconstitutional by any court or competent jurisdiction,

such provision and such holding shall not affect the validity of the remaining portions of these regulations.

- 4.141.10 Any person who undertakes or causes to be undertaken any land disturbing activities shall ensure that soil erosion, sedimentation, increased pollutant loads and changed water flow characteristics resulting from these activities are controlled so as to minimize pollution of state waters. The requirements of these regulations are minimum standards and a person's compliance shall not relieve the person from the duty of enacting all measures necessary to minimize pollution of, or detrimental impacts to state waters.
- 4.142.11 The conduct of all hearings conducted pursuant to these regulations shall be in accordance with the relevant provisions of 7 **Del.C.** Ch. 60.
- 4.143.12 The Department is responsible for the implementation and supervision of the sediment and stormwater program which is established by 7 **Del.C.** Ch. 40. The program shall be administered pursuant to these regulations. ~~The Department may also develop and maintain a Technical Document to serve as a guide for the regulated community and Delegated Agencies in complying with Chapter 40 and these regulations.~~
- 1.14 ~~Technical Document~~
 - 1.14.1 ~~The Technical Document may include policies, procedures, technical specifications and other advisory documents as deemed necessary by the Department to carry out implementation and supervision of the sediment and stormwater program.~~
 - 1.14.2 ~~The Technical Document, as well as any revisions or subsequent updates, shall be adopted following public notice requirements in accordance with 7 Del.C. §6004.~~
 - 1.14.3 ~~The Technical Document may be utilized as a reference for all activities subject to these regulations. Alternative measures that provide functional equivalency to the policies, procedures, technical specifications and other advisory provisions contained in the Technical Document and meet the provisions of these regulations may be considered on a case-by-case basis following Departmental review and approval.~~