

# Regulatory Flexibility Analysis and Regulatory Impact Statement

May 18, 2016 RAC Meeting



# Regulatory Flexibility Act

Beginning January 1, 2016, agencies submitting proposed new or amended regulations that affect small businesses or individuals are required, under the new Regulatory Transparency and Accountability Acts of 2015 (see 80 Del. Laws, c. 112 and 113), to submit a Regulatory Flexibility Analysis (RFA) and a Regulatory Impact Statement (RIS) with the proposed regulation to the Registrar of Regulations (see 29 Del.C. Ch. 104). For agencies proposing amendments to existing regulations, the promulgating agency shall only be required to complete the RFA and RIS for the proposed amended portion of the existing regulation, and not for the entire existing regulation.



# Regulatory Flexibility Act

- Regulatory Flexibility Analysis
- Regulatory Impact Statement
- Also Being Provided
  - Introduction
  - Background
  - History and Updates
    - Summary of prior RFA submittals
    - RAC and subcommittee meetings and progress

# Regulatory Flexibility Analysis



# Regulatory Flexibility Analysis

(1) *The establishment of less stringent compliance or reporting requirements.*

- Standard Plan process
  - Existing project categories
  - Proposed project category (redevelopment)
- Design considerations
  - Wet ponds in lieu of runoff reduction features
  - Allowable alternative calculation methodologies
  - Others
- Offset options
  - Redefinition of program components
  - Different bases for fees-in-lieu and trading



# Regulatory Flexibility Analysis

*(2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements.*

- Not applicable.
- Regulations and Tech Document do not have schedules or deadlines.

# Regulatory Flexibility Analysis

*(3) The consolidation or simplification of compliance or reporting requirements.*

- Two-step plan review process being allowed in some instances

# Regulatory Flexibility Analysis

*(4) The establishment of performance standards to replace design or operational standards required in the proposed regulation.*

- Performance-based and standards-based approaches already allowed for Cv and Fv compliance.

# Regulatory Flexibility Analysis

*(5) The exemption of certain individuals or small businesses from all or part of the requirements contained in the proposed regulation.*

- §1.4.1 already exempts agricultural land management practices
- §1.4.2 already exempts developments or construction that disturbs less than 5,000 square feet

# Regulatory Flexibility Analysis

- (6) Such other alternative regulatory methods that will accomplish the objectives of the proposed regulation while minimizing the adverse impact upon individuals and small businesses.*
- Use of functional equivalency in specifying stormwater management features is already included in the regulations.

# Regulatory Impact Statement



# Regulatory Impact Statement

*(1) A specific reference to the statutory provision which allows for the adoption or amendment of the rule or regulation and the statutory provisions which address the subject matter of the rule or regulation.*

- Statutory Citation:
- URL:
- Subject Matter Statutory Citation:
- URL:

# Regulatory Impact Statement

*(2) A description of the purpose of the regulation.*

- § 1.2 states “the purpose 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.”
- Amendments are the result of a Superior Court decision of October 7, 2015 and Supreme Court affirmation on April 15, 2016.

# Regulatory Impact Statement

- (3) *An identification of the individuals and/or small businesses that would be subject to compliance under the regulation.*
- Any person, company or agency proposing development or land disturbing activities not otherwise exempted.

# Regulatory Impact Statement

*(4) A good-faith estimate by the agency of the potential cost of compliance for individuals and/or small businesses, which at minimum shall include the projected reporting, recordkeeping, and other administrative costs required to comply with the proposed regulation.*

- Cannot estimate compliance costs due to numerous variables – groundwater table, soil permeability, topography, watershed position, and development type as well as design options.
- Regulation amendments offer more flexibility – thus compliance costs should decrease.

# Regulatory Impact Statement

*(5) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation, to the extent such methods are not otherwise described herein.*

- Provision for water quality features in situations when minimum runoff reduction requirements cannot be met included in amendments.
- Runoff reduction requirements have been lessened for redevelopment sites.

# Regulatory Impact Statement

*Optional – Estimate the amount of agency, board, or commission staff hours it took to prepare this RFA and RIS statement.*

*Optional – Agencies are encouraged to list trade or industry groups, small businesses, or other stakeholders such as currently regulated parties that were consulted by the agency, board, or commission in preparing this RFA and RIS. The agency, board, or commission is further encouraged to send them a copy of the RFA and RIS upon completion.*



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