

Revisions to
Delaware Sediment and Stormwater Regulations

Comments Received
During Public Comment Period

February 1, 2012 – April 2, 2012

Proposed Revisions to Delaware Sediment and Stormwater Regulations
Comments Received during Public Comment Period
February 2012

Prepared by: Sally Ford, LandDesign

Date Submitted: 2/14/12

Submitted by e-mail (attachment)

Comments:

The inability of DNREC to issue a Notice of Completion per the definition found on page 8 of the regulations will have a severe economic impact. The definition is as follows:

“Notice of Completion” means a document issued by the Department or Delegated Agency at the end of project construction when all items and conditions of the approved Sediment and Stormwater Management Plan have been satisfied, post construction verification documents demonstrate that the stormwater management systems have been constructed in accordance with the approved Sediment and Stormwater Management Plan, and final stabilization of all disturbed areas on the site has been achieved.

- *Standard subdivisions do not have individual homes shown on lots, thus once they have completed all roads, utilities, grading, stormwater management and stabilization they should qualify for a **“Notice of Completion” and termination of the NOI.***
 - ***Single lot construction qualifies for the Standard Plan** per Appx. 3.01.1.1 of the Technical Documents.*
 - *The developer is not going to want to keep the NOI open paying a fee of \$195 each year, renewing Stormwater Plans every 3 years for a fee (and chance that new regulation may require additional revisions) waiting for the last home to be built.*
 - ***If “Notice of Completion” and NOI’s can not happen until the “last” home is built, developers will not sell lots to those unable to build immediately***
 - *young people hoping to build in the future would not be able to buy vacant lots*
 - *middle age people who want a lot for retirement or investors who want a piece of land for future prospects would not buy have the option of vacant lots*
 - *This will have a definite impact on sales and the economy.*
- *An approved site plan (commercial or residential) which has completed all roads, utilities, grading, stormwater management and stabilized all remaining land (only building construction remaining), should qualify for a **“Notice of Completion” and termination of the NOI.***
 - *If future disturbance is greater than 1 acre per Appx. 3.01.1.2 of the Technical Documents, they would need to file a NOI prior future construction*
 - *If the amount of impervious is more than the original approved Stormwater Plans, then they would need to provide additional stormwater management as needed under these new regulations.*

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If “Notice of Completion” and NOI’s can not happen until the “last” building is built, there will be even more projects that have started but not builtout, that will never be completed. The economy is slow, banks are not lending and homes are not selling – few have the money and incentive to continue building. This policy/regulation is really detrimental to the economy of today and of the future.

The \$195 annual NOI fee is a revenue generator, because it will be years before projects will be able to get their “Notice of Completion”.

Prepared by: J. Michael Riemann, Becker Morgan Group

Date Submitted: 2/21/12

Submitted by e-mail

Comments:

There was some question/confusion as to the grandfathering requirements. Randy, I thought, mentioned that if a project was approved under the old regs, but did not start construction, the developer could request for one 3 year extension, even if this was after the adoption of the new regs. Effectively giving the developer six years. I am not sure the language in the regs reads the same.

Prepared by: Paul Morrill, Committee of 100

Date Submitted: 2/28/12

Submitted by e-mail

Comments:

The proposed regs say this about plans that have been approved, but construction has not commenced: 1.3.2.1 Plans approved before the effective date of these regulations where construction has not commenced within three years of the plan approval date shall expire. If the earlier plan expires, 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.

The Technical Document, Article 2, 2.02 says this:

Plans that have been approved prior to the effective date of the regulations where construction has not commenced prior to Plan expiration may have the plan approval extended under the requirements of the previous regulations for a maximum of one additional three year time period. If construction has not commenced following the second three-year approval period, the approved plan will expire and a new plan compliant with the current version of the Delaware Sediment and Stormwater Regulations will be required to be approved by the Department or Delegated Agency prior to construction beginning on the project.

The regs seem to prohibit an extension, while the tech doc appears to allow one 3 year extension.

**Delaware Sediment and Stormwater Program
2012 Proposed Revisions**

Public Hearing Comments, March 1, 2012

The Committee of 100

The Committee of 100 believes there are too many unanswered questions about the cost impact of the proposed revisions to the Delaware Sediment and Stormwater Regulations to support their immediate promulgation. We know projects will cost more under these regulations. We don't know how much more. We believe this uncertainty about the effect the revisions might have on project economics will have a chilling effect on development decisions in general and on redevelopment projects in particular. The state of the economy is such that more uncertainty is the last thing Delaware employers - and prospective employers - need. The Committee of 100 recommends that the effective date of the revisions be delayed for up to a year, while DNREC and the regulated community work together in a focused effort to understand the effects of the regulations on actual projects and how they might be mitigated. We stand ready to actively assist in that effort.

The proposed regulations are not without merit. There are environmental advantages to basing stormwater management on volume control rather than peak discharge. There are environmental and business advantages to planning stormwater impacts on a watershed basis, rather than on a site by site basis. Over time, implementing runoff reduction practices can lessen drainage flooding impacts and reduce stream bank erosion. Provisions in the regulations for offsets and the fee-in-lieu create opportunities for off-site pollution reduction practices that may be more economical, as well as more effective, than on-site facilities. It is also important to note that the regulations contain no TMDLs and that EPA has indicated that it accepts compliance with Delaware's proposed runoff reduction requirements as satisfying the Chesapeake Bay pollution reduction allocation for development within that watershed. The critical question remains, at what cost do these advantages come?

The Division of Watershed Stewardship is to be commended for the extensive, open process that resulted in the proposed revisions. Prompted in part by a request by The Committee of 100 for a test of the DURMMv2 model, the Division funded a design analysis of four land development projects by consulting engineers. The consultants took actual projects with designs approved under the current regulations and applied the new requirements to see what changes would be required. The results were instructive in giving an understanding of the significant changes in the design process itself and how they would affect the engineering community and add upfront costs to projects, at least initially. The exercise also indicated that the runoff reduction requirements could be met with existing BMPs. What it did not do is give a clear understanding of how much the size and number of those BMPs would increase and what the cost would be to construct them. It is that critical knowledge gap which has created uncertainty in the development community and is the reason why we are recommending an intensive effort to complete those studies (or other more representative projects) prior to implementing the new regulations.

In addition to cost issues, we have concerns about the plan review process and the length of time it takes to get approvals. We are particularly concerned that DeIDOT has been added to the list of sign-offs needed prior to the initial stormwater planning meeting. Time limits must be placed on the plan approval process. In our opinion, DeIDOT and the Delegated Agencies should be required to enter into MOUs with DNREC committing to reasonable review schedules that are then enforced. We recognize that the private sector shares some of the blame for the revolving door reviews and we would welcome the opportunity to work with the Department on ways to make the process more transparent and accountable – and faster.

We have brought to the attention of the Division that the Sunset provisions of the regulations conflict with those in the Technical Document. For the record, we believe that approved sediment and stormwater plans for projects that are not yet under construction should be renewable. The Technical Document references a three year extension. However, because of the lengthy recession, some approved plans have lapsed, even though the land use jurisdiction's sunset period has not ended. In the Grandfather provision, plans that are in the review process prior to the effective date of the new regulations have one year from that date to be approved. In some jurisdictions, it can take up to three years to go through the approval process. The Grandfather period for sediment and stormwater plans approved under the current regulations should be extended to reflect that reality. To avoid flood of plan renewals in a short time frame and a market-distorting glut of construction brought on by regulatory deadlines, we recommend that previously approved and pending plans be given five years from the effective date of the new regulations to begin construction, unless the record plan has sunsetted previous to that date.

Finally, we are especially concerned about redevelopment projects under the proposed regulations. These are often tight urban sites with a high percentage of impervious surfaces and can be challenging and/or expensive for runoff reduction practices. We must not make it more expensive or more difficult to do redevelopment projects or they will not happen. Instead we will push development pressures to greenfields, contributing to more sprawl. The proposed regulations make some provision for redevelopment projects, but we must be prepared to adjust the requirements further if necessary. We should be prepared to accept a lower fee-in-lieu if required to make redevelopment work and be liberal in how we determine the watersheds eligible for offsets for a particular project. When dealing with redevelopment of sites within an impaired watershed, we should be willing to accept some improvement over current conditions and not demand overnight perfection.

Thank you for the opportunity to comment on these proposed regulations. We look forward to working with the Department to resolve the concerns we have raised as quickly as possible.

March 1, 2012

Honorable Colin O'Mara
Secretary
Department of Natural Resources and Environmental Control
89 Kings Highway
Dover, DE 19901

Re: Sediment & Stormwater Regulation
Public Hearing Comments

Dear Mr. O'Mara:

The American Council of Engineering Companies, Delaware Chapter (ACEC-DE) appreciates the opportunity to review the proposed changes to the State of Delaware, Sediment and Stormwater regulations. We respectfully submit the following comments and questions.

1. DNREC is to be commended on their comprehensive approach to the revisions of the Sediment and Stormwater regulations. DNREC's development of the revisions has been transparent and the opportunity for professional and public input over the past 4 years is unprecedented in the State of Delaware.
2. It appears that the new regulations will increase protection from the discharge of pollutants from stormwater runoff associated with land disturbing activities. In addition, the new regulations' goal is to better protect streams from bank and bed erosion associated with extended bankfull flows. ACEC-DE supports the goal to improve the quality of our waters and efforts to minimize erosion.
3. Under the new regulations, the number and size of stormwater management (SWM) facilities will increase to some extent. These increases will result in increased engineering and construction costs. We request that the Department consider the potential impact of these increased costs with respect to economic development.
4. The new regulations require more information earlier in the review process; therefore, a higher monetary investment for the owner/developer earlier in the plan review process will be required. This early expenditure of funds at the concept level may discourage many businesses from considering a project in Delaware.
5. It appears that compliance with the new regulations will be difficult for redevelopment sites resulting in a high potential to discourage redevelopment. Discouragement of redevelopment is in conflict with most existing land use policies. Offsets, if found to be economically feasible, may provide a vehicle for compliance. Further, discouragement of redevelopment will lead to more "greenfield" development and sprawl.

6. It is unclear if the proposed fee in-lieu cost of \$23 per cubic foot of unmanaged stormwater runoff is economically feasible. The new regulations should include provisions to negotiate or change this fee, a phase-in price, a project cap, or allow trading across watersheds to keep compliance costs feasible.
7. It appears that new residential subdivisions in undeveloped watersheds (green fields) will be the least impacted by the new regulations, thereby encouraging development in these areas and possibly resulting in sprawl.
8. There has been little discussion regarding the compatibility of the new regulations with local land use agencies. As written, the new regulations appear to be in conflict with some local land use code and policies (e.g., reduced impervious area vs. required sidewalks, parking, etc). In addition, with an increase in the size and number of SWM facilities, there is a decrease in usable land, particularly in jurisdictions where SWM facilities cannot be considered open space. Flexibility in local agency SWM buffer, setback and open space requirements is essential to maintain the practical and economic feasibility of development projects.
9. Although there are provisions for TMDL compliance using the DURMM v.2.0 spreadsheet incorporated in the new regulations, currently there are no TMDL requirements. Clearly, at some point in near the future TMDL compliance for land disturbing activities will be a requirement. It is our understanding that the EPA will consider compliance with the new regulations as compliance with Chesapeake Bay Watershed TMDLs. This may be an advantage, however, based on the preliminary plan sample projects, it is unclear if a site can meet compliance using the DURMM v.2.0 model.
10. Since the EPA has not finalized its effluent limitation guidelines (ELGs) for construction sites, there are currently no ELG requirements included in the proposed regulations. However, when EPA established new ELGs, DNREC must follow suit and require ELGs for construction sites. How will ELG requirements be incorporated into the new regulations? We encourage that DNREC consider delaying the implementation of the new regulations until the EPA has issued its EGL requirements
11. There is a concern that DelDOT input required in the draft of the proposed regulations will result in delays in plan approval. A Memorandum of Understanding outlining DelDOT's role, responsibilities and plan review turn-around times should be in place before the regulations are promulgated. We request an explanation of why DelDOT's input on stormwater issues is even necessary on projects that do not impact DelDOT stormwater conveyance or management facilities.
12. Uncertainty surrounding the increase in construction costs associated with new regulation compliance warrants further study. Therefore, it is our opinion that that promulgation of the regulations should be a delayed for one year to allow adequate

time to evaluate this economic impact. Economic evaluations should particularly consider cost impacts on redevelopment projects.

13. We believe that approved sediment and stormwater plans for projects that are not yet under construction should be renewable. The Technical Document references a three year extension. However, because of the lengthy recession, some approved plans have lapsed, even though the land use jurisdiction's sunset period has not ended. In the Grandfather provision, plans that are in the review process prior to the effective date of the new regulations have one year from that date to be approved. In some jurisdictions, it can take up to three years to go through the approval process. The Grandfather period for sediment and stormwater plans approved under the current regulations should be extended to reflect that reality. To avoid flood of plan renewals in a short time frame and a market-distorting glut of construction brought on by regulatory deadlines, we recommend that previously approved and pending plans be given five years from the effective date of the new regulations to begin construction, unless the record plan has sunsetted previous to that date.
14. With respect to grandfathering, we request that DNREC consider a site plan grandfathered once a formal preliminary/exploratory plan submittal has been made to a local plan review agency, consistent with recent policy developed by DelDOT.

ACEC-Delaware appreciates your consideration of our comments and questions. Please do not hesitate to contact us if you have any questions or if we can assist you in anyway.

Respectfully,
ACEC – Delaware

Mike Karia

To: Frank P.

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Fax Cover Sheet

Date 03-01-12 Account No. _____
To Sec. O'Mara
From Ralph Scott III
Number of Pages 1

Please call if you do not receive all pages.

With tonight's hearing looming large, I wanted to briefly pass along some Sussex sentiments. I own this business, Am on Board of Directors of Bridgeville Building & Loan Assn., and Greater Seaford Chamber of Commerce, and am active and informed in by several Citizen Groups. With the struggling economy, the last thing any & all businesses & agriculture needs is more restrictive regulations & controls. Tax increases to Fund these proposed increased regulations would be the Final Crippling blow to OUR Delaware Way.
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March 1, 2012

The Honorable Collin O'Mara, Secretary
 Department of Natural Resources and Environmental Control
 89 Kings Highway
 Dover, DE 19901

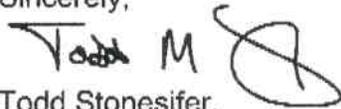
Dear Secretary O'Mara:

On behalf of the 3,200 members of the Delaware Association of REALTORS® I respectfully request the hearing record for the Revised Sediment and Stormwater Regulations and corresponding Technical Document to remain open for at least 30 days.

Given the far reaching impact and highly technical nature of this comprehensive re-write of the Sediment and Stormwater Regulations, we believe a minimum of 30 days to review the final proposal is appropriate.

Thank you for your consideration.

Sincerely,



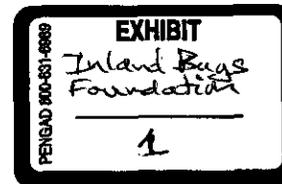
Todd Stonesifer,
 President

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STATEMENT FOR THE RECORD
MARCH 1, 2012 PUBLIC HEARING

PROPOSED SEDIMENT AND STORMWATER REGULATIONS

Good evening. My name is Bill Moyer and I am speaking tonight as President of the Inland Bays Foundation (IBF) and on behalf of the members of our Board of Directors and our public members.

The Inland Bays Foundation is a non-profit environmental advocacy organization whose goal is to work diligently and proactively toward removing the Inland Bays and their tributaries from the State and Federal list of impaired waters and to return them to their once 'fishable' and 'swimmable' status.

We appreciate the opportunity to present testimony for the public record of this hearing.

It has been shown scientifically that nutrient-laden storm water and sediment entering the Inland Bays from runoff within the watershed is significantly contributing to the continuing eutrophication of the Inland Bays, thereby reducing the chances that the Inland Bays will ever meet the State and Federal Water Quality Standards for which they are designated. The Inland Bays of Delaware are designated as waters of "Exceptional Recreational and Ecological Significance"(ERES) which is a

1 Troon Road, Dover, Delaware 19904

Telephone: 302-678-1165

classification that should afford the Inland Bays an extra level of protection.

After decades of scientific studies and decades of effort, a “2011 State of the Bays” report published by the Center for the Inland Bays indicates that the water quality of the Bays is “remains fair to poor.” (p .61) The Center for the Inland Bays has helped tremendously to raise public awareness of the condition of the Bays and in conducting and funding research that has greatly improved our ecological understanding of the Bays’ dynamics. This important role will continue under the effective leadership of **Chris Bason, the newly appointed Executive Director of The Center for the Inland Bays.**

It is true that progress has been made. However, the Inland Bays will not ‘heal themselves in time’ and there are no ‘dramatic improvements’ in place that are ‘working their magic’ as the Positive Growth Alliance asserted in a News Journal article published on January 9, 2012). It is blatantly absurd to think that the Inland Bays are going to clean themselves up, let alone to profess this magical theory to the public. If the Positive Growth Alliance’s assertion were true, it would be the first time in human history that a water body cleaned itself up. I would put little or no credibility in any testimony presented by the Positive Growth Alliance at this or any other public hearing that deals with the improvement of the health of the Inland Bays or the protection of our environment. I would also suggest that a more appropriate name for the Positive Growth Alliance would be the “Irresponsible Growth Alliance.” They most certainly will continue to oppose any attempts to improve the very asset that attracts so many people to eastern Sussex County.

Improvements in the current situation are clearly needed. The proposed regulations will assist in achieving the ERES standard.

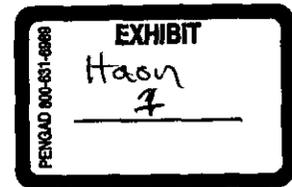
The Inland Bays Foundation strongly supports the implementation of the Sediment and Stormwater Regulations. We refuse to wait for a miracle.

Our specific comments are:

- 1. Section 1.3.1 should include the Wetlands Act (7 Del.C. Chapter 66) and the Subaqueous Lands Act (7 Del. C. Chapter 72)**
- 2. Section 1.4.3 should list examples of other State and Federal sediment and erosion control and storm water management laws that are applicable.**
- 3. Section 1.7.3 should state that no offset requirements be allowed until such time as the Department formally adopts the procedures referenced in this subsection.**
- 4. Section 6.5.6.2 should require that a set of “as-built plans” be submitted as part of the post- construction verification.**
- 5. Section 7.3 – The IBF is concerned that the Department and/or designated agencies may not have adequate staff to conduct maintenance reviews. This Subsection should require that each permittee submit an annual maintenance report to the Department and/or designated agency.**
- 6. The IBF is concerned with the amount of impervious surfaces, in the form of roads, rooftops and parking lots, which are being constructed within the three inland bays watersheds. Scientific studies indicate that when the total impervious surface area of a watershed exceeds 10% (as it does in Rehoboth Bay by 10.5% and Little Assawoman Bay by 10.2%) then significant negative impacts on water quality will result from bacteria and chemical contaminants.**

The percent of impervious surface must, at worst, not exceed 10% of a watershed. Therefore in some instances, existing impervious surfaces may have to either be removed or allowed to remain only as an “offset” when developing offset requirements relative to subsection 1.7.3.

I thank you again for this opportunity to comment on the proposed regulations.



Elaine Webb
DNREC-Sediment and Stormwater Program
89 Kings Highway
Dover, DE 19901

March 1, 2012

Dear Mrs. Webb

Good evening. My name is Harry Haon and I am here as an officer of the Inland Bays Foundation and the Sierra Club of Southern Delaware.

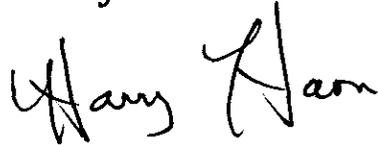
I commend DNREC for the thoroughness of this proposed regulation. But, unfortunately, there is one significant missing piece. And that is storm water and sediment control on farmland in the Inland Bays watershed.

Early in the proposed regulation it is made clear that farmland is exempted. This is particularly troublesome when it is recognized that chicken litter used as fertilizer contains high concentrations of nitrogen and phosphorus nutrients and is allowed to be deposited right up to the edge of the bays, their tributaries and wetlands. In this situation steps should be taken to significantly reduce the amount of nutrient pollution washed into the bays by storm water.

CAPO regulations primarily address the land around chicken houses and litter storage piles but does not cover the land at the edge of waterways. We

recommend that regulations similar to these for residential and commercial development be enacted for farmland to reduce pollution of the Inland Bays.

Harry Haon

A handwritten signature in black ink that reads "Harry Haon". The signature is written in a cursive style with a large, stylized "H" and "A".

Inland Bays Foundation and Sierra Club of
Southern Delaware

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Executive Vice President

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March 1, 2012

Secretary Collin O'Mara
DNREC Division of Soil & Water Conservation
Sediment and Stormwater Program
89 Kings Highway
Dover, DE 19901



Dear Secretary O'Mara;

We recognize that clean water quality standards are an important part of our community. Our members do their best to build and develop according to the most up to date, local regulations in place.

We are very concerned because the new regulations have not been properly evaluated for the economic impact on our communities. These regulations not only affect residential development, but commercial development as well as many small and large businesses that want to expand or come to the state of Delaware. They also do not encourage re-development.

The proposed regulations have the potential to significantly increase the design costs and subsequent construction costs with a project. It appears that the front end design costs before entitlement or approval can be particularly high, increasing the risk for a project.

The example projects commissioned by DNREC showed questionable environmental benefits at increased costs and the potential for sites to be rendered un-developable. One example is an institutional project that would have required a 60% increase in the size of the bio-retention area.

On a residential project example, the engineering costs would be higher and the site would not meet the TMDL requirements. On a commercial redevelopment project in a developed area, the project could not meet the new requirements.

Because of the increased standards required by the new regulations, costs will increase as did in these example test cases.

DNREC has not performed a true cost analysis on the impact of these regulations. Any assertion that the costs associated are nominal need to be backed up with a concrete cost analysis.

The grandfathering provisions are in need of clarification. If not clarified and expanded upon, the potential impact can be devastating for businesses that want to pursue a project, but can't now due to the economy.

It is our understanding the DNREC recognizes this and has pledged to clarify the grandfathering provisions. We feel that any projects previously approved or submitted but not approved plans should be granted a 6 year extension.

Clarification is also needed to define if a project ceases construction for 3 years. Under the new regs, if it ceases construction, it must be re-approved under the new regs. What defines a cease in construction? If a project has 2 phases constructed, but not actively building the 3rd stage while the builder is selling homes, or a landlord trying to locate tenants; does that constitute a cease of construction? Or, considerations should be given to adopting Del Dots standards for grandfathering of large projects.

Another concern is how these new regulations will be affected by other potentially costly initiatives DNREC and the EPA have launched. DNREC has initiated new studies with cost implications on Sea Level Rise and Floodplain drainage. It appears that another new initiative on Wetland Preservation is coming. The Chesapeake Bay WIP's is intertwined with the Stormwater regs as well.

All these issues have cost implications for businesses and property owners. The costs associated with these initiatives should be evaluated along with the stormwater regulations, not separately. This is another reason why the new Stormwater regulations should not be adopted now.

Increased costs of projects during these economic times will be devastating to all business in Delaware. Companies will not want to expand or come to Delaware which will cost jobs and lost revenue for the Municipalities and the State. It will hurt small businesses the most. The new regulations do not encourage re-development of existing sites.

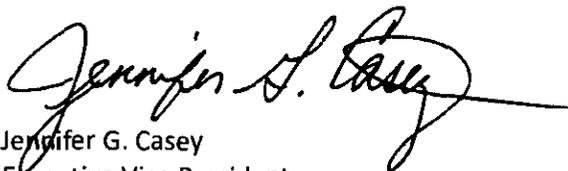
The HBADE is requesting that a thorough cost analysis of the new regulations with respect to the increased pollution removal be conducted.

The HBADE is requesting that the implementation of these rules be delayed at least one year and that implementation not occur until the General Assembly has reviewed the cost analysis and determined that the increased costs are commensurate with the environmental benefits.

The HBADE is suggesting that the regulations be reconsidered in areas where it discourages re-development or promotes sprawl.

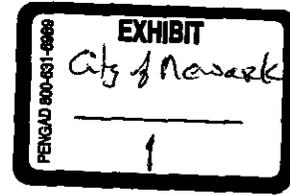
The HBADE is requesting that these regulations be delayed until the full economical effect of all new proposed regulations by DNREC has been evaluated (Sea Level Rise, Floodplain drainage, Chesapeake WIP's, Wetland preservation)

Thank you for your time and consideration.



Jennifer G. Casey
Executive Vice President

CC: David Small, DNREC
Frank Piorko, DNREC
146th Delaware General Assembly, all members



Section 5: Performance Criteria for Post Stormwater Management, Subsection 5.6.3.2

The City of Newark is very concerned about the economic impact that the 50% reduction in the effective imperviousness for redevelopment will have. Newark is primarily built out with the majority of our construction being redevelopment. This requirement could effectively discourage redevelopment and have a significant impact on revenues generated that supplement our tax and electric revenues.

The cost of meeting the 50% reduction in the effective imperviousness along with the increased volumes to be managed, will be more expensive to achieve in Newark where clay soils are predominant in comparison to south of the canal where sandy soil is more prevalent. It is recommended that the % reduction in effective imperviousness be revised to a range of 20% to 50% depending on hydrological soil groups. This will help to lessen the economic impact in Newark and New Castle County and make costs more consistent across the state.

**LEAGUE OF WOMEN VOTERS OF DELAWARE
2400 W. 17th Street, Clash Wing, Room 1 Lower Level
Wilmington, DE 19806-1311**

March 20, 2012

TO: ELAINE WEBB, SEDIMENT & STORMWATER PROGRAM

**FROM: CAROL JONES, PRESIDENT LWVDE
PAT TODD, CHAIR, NATURAL RESOURCES**

RE: PROPOSED SEDIMENT AND STORMWATER REGULATIONS

Thank you for this opportunity to comment on the proposed Sediment and Stormwater Regulations. The League commends the Soil and Conservation Division for its tenacity for the last seven years in promulgating regulations that will meet the present and future needs of Delaware residents. The League wholeheartedly supports these new regulations and support without delay.

As more areas in Delaware are affected by sea level rise and more turbulent storms and winds bringing additional concentrated rainfall, it is all the more important that strict Sediment and Stormwater Regulations be put in place. While some may balk at the so called higher costs that the regs might require, in the long run, money will be saved by the State and residents if construction is done properly and does not have to be continually redone.

We suggest that the DNREC Sediment and Stormwater Program might do well to investigate the system set up by the Brownfields Remediation Program to streamline the process that plans follow. This helps all those involved know just how long each section of the plan will take. With a concise schedule, developers, owners of land, construction companies and state personnel have better opportunity to prepare and usually, to save money.

Thank you.

.cc Collin O'mara

Delaware Center for the Inland Bays
39375 Inlet Road
Rehoboth Beach, DE 19971
March 25, 2012

Elaine Z. Webb, P.E.
DNREC Sediment and Stormwater Program
89 Kings Highway
Dover, DE 19901

RE: Proposed Revisions to Sediment & Stormwater Regulations

Dear Elaine:

I am writing on behalf of the Center for the Inland Bays to support the proposed revisions to DNREC's Sediment and Stormwater Regulations. The revisions will serve to reduce the volume, and thus the erosive power, of stormwater carried to streams. This will reduce the potential for flood damage, preserve the natural capacity of streams to mitigate pollutants, and reduce the amount of nutrients and sediments conveyed to surface waters.

These revisions will be of significant importance to the watersheds of the Inland Bays, which experienced a 57% increase in developed lands from 1992 to 2007. Two of these watersheds now exceed 10% impervious cover, a threshold often cited as the point where the effects of land development begin to degrade surface water quality. After decades of restoration efforts, the Inland Bays continue to demonstrate fair to poor water quality, and many of their tributaries remain severely degraded by excess nutrient pollution caused in part by urban runoff. These revisions implement the Inland Bays Comprehensive Conservation and Management Plan by helping to achieve the Total Maximum Daily Loads for the Inland Bays and by requiring Environmentally Sensitive Development.

The Center would also like to comment on one section of the proposed revisions in particular. The offset provision for applicants who cannot fully meet the resource protection event criteria provides flexibility to meet stormwater management goals. However, this provision requires a strict monitoring and enforcement component to ensure that offsets are properly implemented. The Center encourages the Department to take every step necessary to ensure that where applicants can meet resource protection event criteria on site, they do so. We also encourage the Department to continually scrutinize the monetary compensation rate to ensure that the full costs of planning, designing, implementing, monitoring, and maintaining offset projects be borne by the applicant seeking the offset. The often hidden costs of formulating and successfully administering such a program, if not properly accounted for, could increase the public costs of the program and reduce its potential for success.

Sincerely,

Chris Bason
Executive Director

Elaine Webb
DNREC Sediment & Stormwater Program
89 Kings Highway
Dover, DE 19901



Dear Ms. Webb

Re: Regulation No. 5101 Sediment and Stormwater Regulations & Technical Document

I support Delaware's proposed Sediment and Stormwater Regulations and Technical Document.

It is important that we take full advantage of the updated science, technologies and experiences that have been used to inform your regulatory proposal.

Focusing on reducing the volume of polluted runoff, on protecting drinking water supplies and stream/river flows, on protecting the natural landscapes that prevent needless polluted runoff and beautify our state at the same time, as well as ensuring DNREC and the community have the best information possible to ensure we are making good decisions are all high priority goals I support.

Increasing pollution, flood damages and erosion harm our economy, jeopardize the safety of our communities, and deprive our children of a safe, beautiful and healthy future. Your regulations ensure Delaware and its residents will continue to benefit from healthy environments and only appropriate developments.

Thank you for this well reasoned proposal and put the citizens of Delaware first.

Sincerely, *Tari Pantaleo*

Tari Pantaleo
311 Plainsboro Road
Plainsboro, NJ, 08536-1905

Cc :Maya K. van Rossum, the Delaware Riverkeeper

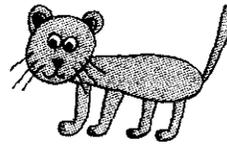
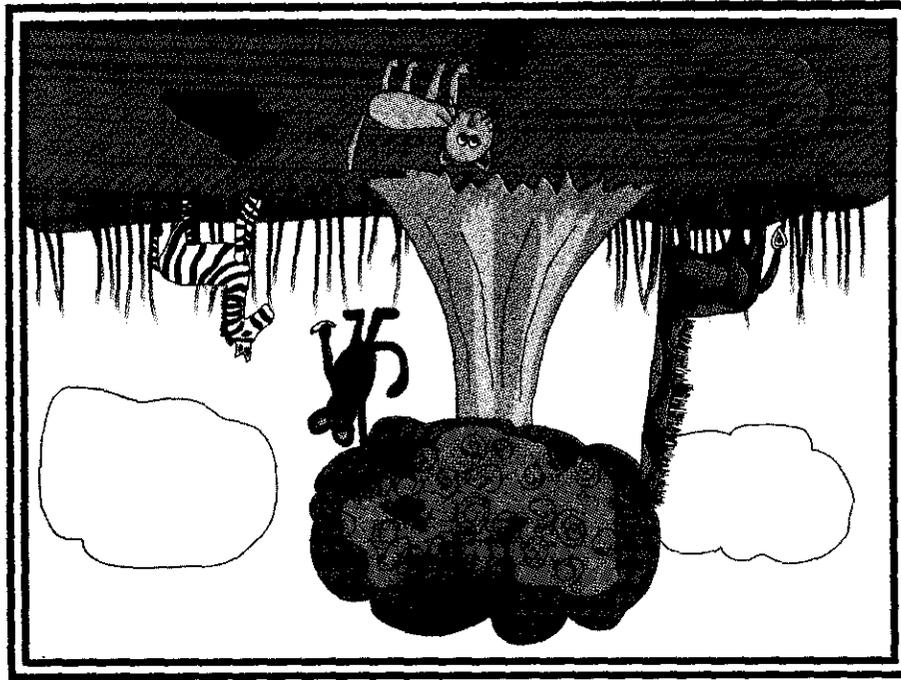
much for way too long. We
all must work to save
Planet Earth!

Sincerely yours
Michael R. Pickens

Open Fields
Camden, NJ
19934

To Whom It May
Concern: 3/25/12

This is my letter of support
to the new regulations you
have proposed. The developers
have gotten away with NAY Tom



“Circle of Life”
by Audriana, Age 6

Save the Children is the leading independent organization creating **lasting change** for children in need in the United States and around the world. Our innovative programs in health, education, literacy and nutrition and economic opportunity create better futures for millions of children. To learn more about Save the Children and how you can help us serve children in need, go to www.savethechildren.org.



Save the Children.

Elaine Webb
DNREC Sediment & Stormwater Program
89 Kings Highway
Dover, DE 19901

Dear Ms. Webb

Re: Regulation No. 5101 Sediment and Stormwater Regulations & Technical Document

As a fisherman and all-around outdoorsy type, I support Delaware's proposed Sediment and Stormwater Regulations and Technical Document.

It is important that we take full advantage of the updated science, technologies and experiences that have been used to inform your regulatory proposal.

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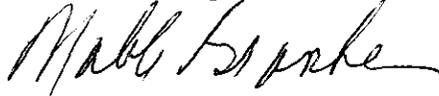
Sincerely,


Robert Zink
1914 Gravers Lane
Wilmington, DE, 19810

Cc :Maya K. van Rossum, the Delaware Riverkeeper

March 26, 2012

To: Elaine Webb, DNREC Sediment & Stormwater Program

From: Mable Granke, concerned citizen 

Re: Regulation No. 5101 Sediment & Stormwater Regulations &
Technical Document

It is requested that this statement be made a part of the record.

This statement is to indicate that I support the proposed regulations put forth in Regulation No. 5101. It has become most important that careful attention be given to how the land is developed. Sussex County after heavy rainfall last year experienced severe flooding in developments because sufficient attention had not been given or exercised to address the volume of runoff and thus the flood damage incurred.

We must have the protection of regulations that require site plans include necessary protection from harmful runoff. The time and dollars spent now is an investment that can assure a safer future.

Regulation No. 5101 needs to be adopted and put into effect immediately.

1013 Scarborough Ave. Ext.
Rehoboth Beach, De. 19971
(302) 227-6637

Elaine Webb
DNREC Sediment & Stormwater Program
89 Kings Highway
Dover, DE 19901

Dear Ms. Webb

Re: Regulation No. 5101 Sediment and Stormwater Regulations & Technical Document

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Sincerely,

donna gregory
1141 old forge road
new castle, de, 19720

Elaine Webb
DNREC Sediment & Stormwater Program
89 Kings Highway
Dover, DE 19901

Dear Ms. Webb

Re: Regulation No. 5101 Sediment and Stormwater Regulations & Technical Document

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As I enjoy recreational fishing, boating and reside close to the Delaware River, I wish to express the need to conserve and protect Delaware's marine habitats and the Delaware Bay.

Thank you for this well-reasoned proposal and put the citizens of Delaware first.

Sincerely,

Rick Pennell
28 The Strand
New Castle, DE, 19720

Elaine Webb
DNREC Sediment & Stormwater Program
89 Kings Highway
Dover, DE 19901

Dear Ms. Webb

Re: Regulation No. 5101 Sediment and Stormwater Regulations & Technical Document

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Thank you for this well-reasoned proposal and put the citizens of Delaware first.

Sincerely,

Amy Roe
19 Sunset Road
Newark, DE, 19711

Elaine Webb
DNREC Sediment & Stormwater Program
89 Kings Highway
Dover, DE 19901

Dear Ms. Webb

Re: Regulation No. 5101 Sediment and Stormwater Regulations & Technical Document

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Thank you for this well-reasoned proposal and put the citizens of Delaware first.

Sincerely,

Dorothy Flippen
200 Old Mill Lane
Wilmington, DE, 19803

Elaine Webb
DNREC Sediment & Stormwater Program
89 Kings Highway
Dover, DE 19901

Dear Ms. Webb

Re: Regulation No. 5101 Sediment and Stormwater Regulations & Technical Document

As a fisherman and all-around outdoorsy type, I support Delaware's proposed Sediment and Stormwater Regulations and Technical Document.

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Thank you for this well-reasoned proposal and put the citizens of Delaware first.

Sincerely,

Robert Zink
1914 Gravers Lane
Wilmington, DE, 19810

POSITIVE GROWTH ALLIANCE

Po Box 1145 • Millsboro, DE 19966 • Phone 302-934-1227 • Fax 302-394-1933
www.positivegrowthalliance.org E-Mail: pgalliance@delaware.net

March 27, 2012

Comments for the Public Record Regarding DNREC Sediment & Stormwater Regulation Revisions

First, I would like to correct my oral comment at the public hearing on March 1, 2012 that the Regulatory Flexibility Analysis was not available to the public. I realized the next day that it actually was on the DNREC website.

COMMENTS IN ADDITION TO THE ORAL COMMENTS MADE 3/1/12:

Item 1. Citizens are required to follow state laws and regulations. In regards to complying with DNREC regulations, if we do not, we are subject to delay and extra expense at a minimum and arrest, fines, or incarceration at the worst. DNREC is also required to follow laws, inconvenient though it may be.

Specifically, Title 29, Chapter 104, the Regulatory Flexibility Act, requires that DNREC submit proposed regulations to the appropriate General Assembly committees and ask for their comments.

§ 10405. Transmission of rule to General Assembly standing committees; comments.

The agency prescribing such rule shall transmit such rule to, and obtain the comments, if any, of, the appropriate standing committees of the General Assembly with oversight responsibilities for legislation affecting that agency with respect to the impact on individuals and/or small businesses resulting from implementation of such rules

Some members of the House Natural Resources Committee have not received the Regulatory Flexibility Analysis from DNREC, much less been given the opportunity to make comments on it. We believe that DNREC has the legal obligation make a serious effort to fulfill this responsibility to the elected representatives of the citizens they serve. Since it has been 7 years since stormwater regulations have been revised, it is hardly a heavy burden. No new regulations should be promulgated until DNREC has proven they have hand delivered to every member of appropriate committees, or used another provable method.

Item 2. The “fee in lieu” is in violation of both the Delaware Supreme Court advisory opinion of April 20, 1990, (identified as 575 A.2d 1186:1190 Del. LEXIS 203, Number 80, 1990) and existing state law. The opinion makes clear that new fees or fee increases require a 3/5 vote of the Delaware General Assembly.

The “fee in lieu” is also in violation of state law. Title 7, Chapter 40 states, in regards to fees:

§ 4005. Program funding and financial assistance.

(a) The Department, conservation districts, counties or municipalities are authorized to receive from federal, state, or other public or private sources financial, technical or other assistance for use in accomplishing the purposes of this chapter. The Department may allocate, as necessary or desirable, any funds received to conservation districts, counties or municipalities for the purpose of effectuating this chapter.

(b) The conservation districts, counties and municipalities shall have authority to adopt a fee system to help fund program implementation. That fee system shall be implemented by the designated plan approval agency to fund overall program management, plan review, construction review, enforcement needs and

maintenance responsibilities. In those situations where the Department becomes the designated plan approval agency, the Department may assess a plan review and inspection fee. That fee shall not exceed \$80 per disturbed acre per project. There shall be no duplication of fees by the various implementing agencies for an individual land disturbing activity and the fee schedule shall be based upon the costs to the Department, conservation districts, counties or municipalities to implement and administer the program. In addition, the Department of Transportation is authorized to act as the designated plan approval agency in those situations where a public utility engages in land-disturbing activity for which a permit is required because of a project initiated by the Department of Transportation, subject to the following provisions:

(1) If the land-disturbing activity takes place on an existing right-of-way of the Department of Transportation, that Department is permitted to assess and collect a fee for this purpose which shall not exceed \$125 per acre, with a \$250 minimum.

(2) If the land-disturbing activity takes place adjacent to but not upon an existing right-of-way of the Department of Transportation, the fee contemplated by paragraph (b)(1) of this section is waived.

(c) Authority is also granted to the Department, conservation districts, counties or municipalities to establish a stormwater utility as an alternative to total funding under the fee system. The stormwater utility shall be developed for the designated watersheds and may fund such activities as long range watershed master planning, watershed retrofitting, and facility maintenance. This fee system shall be reasonable and equitable so that each contributor of runoff to the system, including state agencies, shall pay to the extent to which runoff is contributed. Criteria for the implementation of the stormwater utility shall be established in regulations promulgated under this chapter. The implementation of a stormwater utility will necessitate the development of a local utility ordinance prior to its implementation.

I have underlined the relevant parts of the statute. It appears that DNREC may charge no more than \$80 per disturbed acre for plan review and inspection. It also may be possible to charge a fee for overall program management, plan review, construction review, enforcement needs and maintenance responsibilities. The “fee in lieu” has nothing to do with those items.

Item 3. If the “fee in lieu” is not legal, that creates serious problems with the DNREC statement in the Regulatory Flexibility Analysis on page 4 that “There are sites that may not be able to comply with runoff reduction requirements due to site conditions. **Those sites are offered an offset fee-in-lieu option for compliance.**” Obviously, DNREC will have to develop some other method to prevent the owners of thousands of acres from suffering a total taking.

Item 4. There is another way that the Regulatory Flexibility Act response for this regulation revision is inadequate. All of the comments regarding meeting requirements of the Act are based on earlier versions of regulatory revisions that did not comply with Regulatory Flexibility Act requirements in any way. We believe an analysis of at least the 2005 revision would be necessary to make any comments in 2012 relevant.

Item 5. Finally, we remind DNREC that the stormwater revisions of 2005 have had virtually no chance to be tested. Due to the economic downturn that started in 2007, very few projects have actually been built that had to comply with the 2005 regs. Given the state of the economy, we believe the Department should wait until there has been adequate testing of those regs before moving forward with the proposed revisions.

Thank you,

Rich Collins

Executive Director

Webb Elaine Z. (DNREC)

From: Positive Growth Alliance <info@pgalliance.org>
Sent: Thursday, March 29, 2012 3:11 PM
To: Webb Elaine Z. (DNREC)
Subject: FW: ADDITIONAL COMMENT ON STORMWATER REGS

Categories: Comments

Signature added.

From: Positive Growth Alliance
Sent: Thursday, March 29, 2012 3:08 PM
To: 'elaine.webb@state.de.us'
Subject: ADDITIONAL COMMENT ON STORMWATER REGS

We have heard there is a possibility that DNREC believes the Technical Document to the Stormwater Regs is not subject to the Administrative Procedures Act, either in its original version or in any future modified versions. An examination of the Act reveals that the Technical Document or any substantive modification absolutely is required to undergo the full public procedure, nor do any of the exclusions in the act apply to it.

We request that it be made clear that the Technical Document is subject to the public participation procedure described in the Administrative Procedures Act.

Rich Collins
Executive Director

Title 29, Chapter One, § 10102. Definitions:

(7) "Regulation" means any statement of law, procedure, policy, right, requirement or prohibition formulated and promulgated by an agency as a rule or standard, or as a guide for the decision of cases thereafter by it or by any other agency, authority or court. Such statements do not include locally operative highway signs or markers, or an agency's explanation of or reasons for its decision of a case, advisory ruling or opinion given upon a hypothetical or other stated fact situation or terms of an injunctive order or license.

§ 10113. Adoption of regulations; exemptions.

(a) All regulations, except those specifically exempted, shall be adopted according to the requirements of this chapter.

(b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally:

(1) Descriptions of agency organization, operations and procedures for obtaining information;

(2) Rules of practice and procedure used by the agency;

(3) Delegations of authority to subordinates;

(4) Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors;

(5) Amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations; and

(6) Codifications of existing agency or judicial principles of decision derived from previous decisions and rulings.

Any regulation adopted pursuant to this subsection, along with a copy of the order adopting said regulation, shall be filed with the Registrar of Regulations, and the regulation so filed shall become the official regulation as defined in § 1132 of this title.

Mar. 28, 2012

Elaine Webb

DNREC Sediment and Stormwater Program.

89 Kings Highway

Dover, DE 19901

Dear Ms. Webb:

I would like to assure you of my strong support for the DNREC Sediment and Stormwater Program and Regulation 5101 with the supporting Technical Document.

With the rapidly increasing population of the State of Delaware and the impending climate changes, already apparent in our weather, it is imperative that we have a robust program to control runoff and unlimited, unplanned development as well as to keep pollution of our waterways in check.

Sincerely,

Kenneth B. Keating

KENNETH B. KEATING

1404 STONELEIGH ROAD

WEBSTER FARM

WILMINGTON, DE 19803-3415

TEL: 302-478-6174

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

3/30/12

Dear Ms. Webb

Re: Regulation No. 5101 Sediment and Stormwater Regulations & Technical Document

I support Delaware's proposed Sediment and Stormwater Regulations and Technical Document.

It is important that we take full advantage of the updated science, technologies and experiences that have been used to inform your regulatory proposal.

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Thank you for this well-reasoned proposal and put the citizens of Delaware first.

Sincerely,

Peter Pray
240 Barbara Blvd
Felton, DE, 19943

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

Sami Salam
621 Academy Street
Newark, DE, 19711

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

Rosemary Volpe
1210 Donna Marie Way
Bear, DE, 19701

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

Sarah Bucic
206 Washington St. PO Box 352
Delaware City, DE, 19706



Delaware Center
for Horticulture™

People and Plants • Grow With Us

1810 N Dupont Street
Wilmington, DE 19806

TEL 302 658 6262
FAX 302 658 6267
TheDCH.org

3/30/12

Directors

- Laura Aschenbeck
- Kirk C. Ayars
- Amy Watson Bish
- Linda R. Boyden
- Sherese Brewington-Carr
- David W. Brownlee
- Andrew Bunting
- Patricia M. Bussard
- Patrick Callahan
- Felise T. Cressman
- Bonnie W. Crosby
- Elizabeth A. Dougherty
- Carrie W. Gray
- Mary Hopkins
- Jeffrey T. Lank
- Sharon Loving
- M. William Lower
- William H. Lunger
- Stephen M. Mockbee
- Christopher S. Patterson
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- Eleanor Maroney
- Mrs. Christopher L. Moseley
- Ellen C. Petersen
- Mrs. Richard E. Riegel, Jr.
- Mrs. Harold S. Schutt, Jr.
- Katharine D. Schutt
- Mrs. Sidney Scott, Jr.
- Elizabeth A. Sharp
- Jeanne O. Shields
- P. Coleman Townsend, Jr.
- Ann D. Wick

Executive Director

Pamela Sapko

Elaine Webb
DNREC Sediment and Stormwater Program
89 Kings Highway
Dover, DE 19901

Re: Regulation No. 5101 Sediment and Stormwater Regulations & Technical Doc

Dear Ms Webb:

I support Delaware's proposed Sediment and Stormwater Regulations and Technical Document.

Stormwater runoff carries with it toxic pollutants from pavement and hard surfaces; things like benzene and toluene that are health hazards and can be found in toxic runoff. These proposed stormwater regulations will also reduce flooding problems downstream - something that is of concern for historic river towns. The regulations also encourage redevelopment of already built areas - so instead of paving over new land, they encourage redevelopment of existing lands which would directly Delaware's cities.

Increasing pollution, flood damages and erosion harm our economy, jeopardize the safety of our communities, and deprive our children of a safe, beautiful and healthy future. Your regulations ensure Delaware and its residents will continue to benefit from healthy environments and only appropriate developments.

Thank you for a well reasoned proposal and put the citizens of Delaware first.

Sincerely Yours,

Gary Schwetz

Senior Program Analyst

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Thank you for this well-reasoned proposal and put the citizens of Delaware first.

Sincerely,

John Irwin
1908 Kynwyd Road
Wilmington, DE, 19810

Webb Elaine Z. (DNREC)

From: George Kelly <george@ebxusa.com>
Sent: Friday, March 30, 2012 10:18 AM
To: Webb Elaine Z. (DNREC)
Cc: Evan Branosky
Subject: 5101 Delaware Sediment and Stormwater regulations

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Comments

Provided below are some comments to the proposed 5101 Delaware Sediment and Stormwater regulations:

Proposed regulations-In section 1.7 and Section 2.0 in the definition of "Offset", it should be made clear that "in-lieu fees shall be an offset of last resort, in the event on-the-ground options are not available. There shall be a preference for on-the-ground offsets rather than payment into an in-lieu fee account."

Supplemental technical document-In section 2.04, pages 1-2, the following should be added to the fee-in-lieu section at the beginning of page 2:

"The fee-in-lieu ("ILF") option shall be used as a last resort. Offset projects on-the-ground or certified offsets or banks shall be given a preference over the use of the ILF. To the extent an ILF is created, the Department shall continually evaluate the ILF to make sure that the fees are high enough to take into account the true cost accounting of putting projects on-the-ground. If ILF fees are collected, they must be spent within one year of receipt of funds. Any ILF fees collected shall not be considered revenue for general government funds and must be spent only on achieving sediment and stormwater objectives as set forth in the Regulations. Any ILF fees may be spent on purchasing private offset projects or banks through an RFP process."

Thank you for the opportunity to comment.

George Kelly
George W. Kelly
Environmental Banc & Exchange, LLC
10055 Red Run Blvd., Suite 130
Owings Mills, MD 21117
(M) 410-375-6340
(T) 410-356-5159 x 224
(F) 410-356-5822
www.ebxusa.com
george@ebxusa.com

Webb Elaine Z. (DNREC)

From: Sue Young <sue@delawareriverkeeper.org>
Sent: Friday, March 30, 2012 1:04 PM
To: Webb Elaine Z. (DNREC)
Subject: Comment Letters - Delaware Stormwater Regulations
Attachments: stormwater_reg_comments_2012.pdf; DelRegsMemoMeliora.pdf; DE Regs Group sign on doc.pdf

Importance: High

Categories: Comments

Ms. Webb,

On behalf of Maya van Rossum, the Delaware Riverkeeper, I am submitting the Comment Letter from Delaware Riverkeeper Network, along with the referenced memo from Meliora Design, LLC, regarding Delaware's proposed stormwater regulations. Also attached is a collaborative comment letter, signed by various environmental groups. Printed copies of these documents will be mailed today via USPS.

Please confirm receipt of this e-mail at your earliest convenience.

Regards,

Sue Young
Executive Assistant
Delaware Riverkeeper Network
925 Canal Street, Suite 3701
Bristol, PA 19007
215-369-1188, X 105
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March 30, 2012

Elaine Webb
DNREC Sediment and Stormwater Program
89 Kings Highway
Dover, DE 19901

Re: Regulation No. 5101 Sediment and Stormwater Regulations

Dear Ms. Webb,

The Delaware Riverkeeper Network supports the proposed Sediment and Stormwater Regulations and encourages their passage. While there are a few areas where we think the regulatory package can and should be strengthened, we believe that with these regulations Delaware's Department of Natural Resources and Environmental Control (DNREC) is taking a proactive step to help protect our communities from the avoidable harms of inappropriate development practices. DNREC is proposing a set of Sediment and Stormwater Regulations that are clearly designed to put in place modern day standards for protecting communities and waterways from the non-natural flooding, pollution and erosion caused by inappropriate development practices.

In addition to this comment letter, attached you will find a memorandum prepared for the Delaware Riverkeeper Network (DRN) by Meliora Design, LLC. Michelle Adams and her team at Meliora Design are nationally recognized experts in the field of stormwater management and engineering. Their memorandum provides sound feedback and guidance regarding the regulations that we submit for your consideration and the record.

General Provisions:

As discussed in the attached memorandum from Meliora Design, LLC (*Meliora Memo*) Section 1.1.1.2 while sound in its intent could use some refinement to ensure clarity and accuracy. The section should be modified to ensure it is clear that all land development activities have the potential for causing accelerated erosion and nonpoint source polluted runoff, not just those aspects of land development that result in impervious cover such as roads and parking lots. The language in Section 1 cites impervious cover as the cause of accelerated runoff and nonpoint source runoff but then

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discusses regulation of all land development activities – not recognizing all land development activities as being potential causes of accelerated erosion and nonpoint source pollution could create confusion and the opportunity for legal challenge. And so, we encourage you to consider the recommendations in the *Meliora Memo*.

DRN recommends that Section 1.1.1.3 be edited so as to also specifically refer to flood damages as a ramification of increasing stormwater runoff and a benefit of the proposed regulations. Flooding is a natural, normal, needed part of any waterway's lifecycle, it is the human-induced, unnatural flooding that needs to be addressed and it is the flood damages caused by this human-induced flooding and/or inappropriate siting of development projects that we are seeking to minimize.

Applying the regulations at a threshold of 5,000 square feet as per Section 1.4.2, is an important and proactive provision that recognizes the potentially significant impacts of smaller projects on both an individual but also a cumulative basis. DRN supports the use of the 5,000 square feet threshold. Please also see attached *Meliora Memo* for their support as technical experts of this threshold.

The definition of the term “hardship” used in Section 1.5.3.2 which could entitle a property owner to waiver from the provisions found in the regulations needs definition. Without definition there is too much opportunity for misuse, challenge and/or confusion. Having a definition for the term “hardship” as used in these regulations will provide the needed clarity and guidance that will ensure the hardship waiver provision is only used in limited circumstances when truly warranted; and that when a request for such waiver is denied that there is stronger defensibility in the face of a legal challenge. When this definition of “hardship” is crafted, DRN urges that under no circumstances should the term include as a consideration of “hardship” an increase in the cost of the project, nor should a needed reduction in the size of the project in terms of square footage of disturbance and/or impervious cover qualify one for a hardship exemption.

DRN would recommend that a greater time frame than 15 days be provided in section 1.5.6 to ensure full opportunity for a substantially affected person to review and appeal an approval to the EAB. 60 days seems a much more equitable time frame.

As per the attached *Meliora Memo*, we urge DNREC to specifically define any Offset Provisions included in the regulatory framework, and that when doing so you ensure the provisions are rigorous and only support and encourage their use when needed as a last resort. The Offset Provisions should ensure protection of the streams and watersheds that would be affected by a project. Payment of a “fee in lieu” should never be allowed as an offset. And the inclusion of an Offset Provision in the regulations should not negate the option/opportunity/possibility of DNREC outright denying requested permit applications for a project when doing so would be the most beneficial and appropriately protective for the environment and communities that would otherwise be impacted – in other words, including the opportunity for offsets in the regulation should not be used

as a means to ensure that every project proposal put before DNREC will be granted approval for construction/implementation.

It would be helpful to define the term “water flow characteristics” used in section 1.11.

Sections 1.3.2, 1.4.1 and 1.6.2 are important provisions that we support for the reasons provided in the attached *Meliora Memo*.

Definitions:

DRN urges a modification of the definition given “Best Management Practices”. The definition of Best Management Practices used in the regulations is overly broad and deceptive in that it would seemingly include any kind of structural control. Best Management Practices are generally used to describe practices that are designed to rely upon and/or restore and/or mimic the natural function of nature for reducing the volume of runoff and or the level of pollution contained therein. The term Best Management Practices generally includes the following concepts:

- Preventing stormwater runoff in the first place through sound development practices that protect and restore vegetated landscapes and the environment's natural ability to infiltrate rainfall so as to avoid the water quality and hydrologic impacts that runoff creates.
- Approaches that protect and restore infiltration of stormwater in order to minimize the volume of runoff, recharge aquifers, filter out pollutants, reduce human-induced flooding and feed groundwater to streams during dry times.
- Building, engineering and commonsense techniques that can effectively protect and enhance infiltration of rainfall and filter out nonpoint source pollution.

Best Management Practices are generally intended to preserve and/or mimic the natural world using natural systems in place or restored, and are intended to steer developers and regulators away from construction and installation of structural measures, particularly those that use hardened, artificial mechanisms and piping for dealing with stormwater runoff. And so in addition to providing a clear definition of Best Management Practices it would also be appropriate to include a hierarchy of consideration with the nonstructural Best Management Practices being given preferential consideration as compared to those that are more structural.

In the definition of “final stabilization” DRN does not believe it is appropriate to be making the criteria included (1)(a) and (1)(b) as co-equals. Allowing the use of gabions, riprap etc. is in no way similar or equivalent environmentally to the use and benefits of native vegetation and therefore we would urge a language change that encourages the use of native vegetation strategies as referenced in (a) to the hardened bank approaches discussed in (b).

Also in the definition of “final stabilization” it would seem to make sense to change the terminology used in (3)(a) and (b) from homebuilder to simply builder, and from homeowner to property owner.

For clarity and to ensure full applicability, in the definition of “Land disturbing activity” DRN suggests you add the words “and/or increased volume of” before “stormwater runoff, including, but not limited to, clearing, grading, excavating, transporting and filling of land” found in the last sentence.

DRN would suggest that the definition of “permanent stabilization” use language making clear that native vegetation is not just suggested but mandated, there is no reason to allow anywhere in these regulations the use of non-native vegetation and so we would urge any changes necessary to make that clear.

As per the *Meliora Memo* (see memo for greater detail and/or explanation):

- The definition of Adverse Impact is sound and should be maintained as is.
- The definition of Brownfield should refer to the federal definition of the term to provide needed clarity.
- The definition of Licensed Professional as used in the regulations is overly broad – the regulations need to be modified to ensure that all stormwater calculations are approved and sealed by a licensed and qualified engineer, it is not appropriate to allow landscape architects or surveyors to be providing final approval of such calculations.
- The definition of Redevelopment should exempt road projects where the subbase is altered or disturbed.
- The definition of Runoff Reduction Practices should be expanded “so that delayed delivery is designed to replicate the natural system of infiltration, shallow interflow, and discharge and does NOT include extended surface basin detention as ‘runoff reduction’.”

Plan Approval Procedures and Requirements:

DRN supports the three-step process for project review and approval. We believe the process provides good opportunity for ensuring full application of the terms and goals of the regulations. The Project Application Meeting ensures a timely opportunity for discussion between the regulators and the developers at a time when participants feel more able to make the adjustments necessary for best implementation of the law. But it would be beneficial to provide an additional level of definition to the process and to sure there is documentation placed in the file that citizens can review.

Section 3.4.2 should be enhanced with more guidance as to when design changes meet the threshold that warrants a starting over of the review process. Such guidance would better empower the agency to take such action when warranted and better inform the regulated community as to when they can anticipate, or how they can avoid, this step.

For additional clarification on these comments and additional input regarding the three-step process see the attached *Meliora Memo*.

It would seem that in section 3.6 it would be appropriate to allow the expiration of a plan approval within the 3-year period if there is some substantial changed condition

within the watershed or affected waterway. DRN would recommend that this provision be modified so as to allow for expiration within the 3-year period if there is some demonstrable change in the watershed or waterway that would warrant it.

DRN, informed by the technical expertise of Meliora Design, supports the elements found in section 3.7 designed to aid in meeting the requirements of the regulations for small projects, i.e. reducing the requirements for professional design support but also ensuring the ability of DNREC to seek a greater level of information and review when warranted.

While participation in the training discussed in 3.8.3 is later qualified so as to mandate updated training if so noticed by the Department, DRN suggests it would also be valuable to ensure that even when there has not been a change in the overall program or materials professionals should be required to participate in the course on a regular basis to ensure ongoing upkeep with the concepts and materials in the training and in this regulation. Mandating participation a minimum of every two years seems appropriate.

Section 3.8 should also be modified to mandate that all stormwater calculations be approved and sealed by a licensed and qualified engineer.

Performance Criteria:

Including a description of low impact development practices in provision 5.1.1 is very beneficial and we support it. But, DRN would suggest adding the word “implementing” before “other measures that simulate natural watershed hydrological processes” found in the last sentence of that provision.

Section 5.1.3, as per the *Meliora Memo*, could use some clarification and perhaps adjustment.

The definition and exemption found in section 5.1.6 “regarding and replacement of existing pervious areas” could be inappropriately applied if additional clarification is not provided. For example, right now the exemption provided in this section could apply to golf courses and athletic fields which in fact have significant stormwater impacts and therefore should not be entitled to the exemption. DRN suggests clarification and modification that takes out of the exemption areas such as golf courses, ball fields, and other manicured and/or developed landscapes that can have significant stormwater impacts.

DRN supports the provisions and concepts found in Section 5.2 regarding Resource Protection Criteria. As provided for, this section can go a long way towards providing communities and the environment needed protections that would otherwise result from development. As written, this section also provides the opportunity to improve existing conditions, which is important considering all of the flooding, erosion and pollution problems already in place as the result of past inappropriate development practices.

But as per the *Meliora Memo*, in order to ensure the provisions in this section are not manipulated or misapplied more guidance for implementation is warranted.

As discussed previously, this section too needs more clarification regarding the offset provision/opportunity to ensure it is not misused or misapplied in any given situation. See *Meliora Memo* for additional input.

The focus of Sections 5.3 and 5.4 on volume reduction are important and supported by DRN. But these sections could benefit from an additional level of guidance and detail to ensure clarity, understanding, and accurate implementation. See *Meliora Memo* for additional detail and discussion.

5.4.1 should be clear that it is not concerned about “flooding” it is concerned about human-induced, non-natural flooding and flood damages. It is important that those implementing the regulations and/or the community they are designed to protect understand that flooding is not in and of itself a problematic condition, in fact when at natural levels it is vital for environmental health, and so offering qualifying language in this provision would help to offer that clarity of understanding.

Section 5.5 provides the opportunity for Alternative Criteria defined by a watershed plan; DRN believes this is a good opportunity to include in the regulations as long as there is language added that makes clear the Alternative Criteria cannot be “less” rigorous than would otherwise be required by these regulations. Section 5.5 talks about additional protections for impaired streams and/or meeting specific pollutant reduction targets found in Delaware water quality regulations; but it would also be appropriate to add a provision that allows for alternative and/or additional practices and/or criteria to protect high quality streams.

Section 5.6 Redevelopment Criteria could use some further clarification as discussed in the *Meliora Memo*.

Finally, nowhere in the regulations is there a mandatory minimum buffer requirement – either the protection of pre-development buffers or the creation of buffers. While this may be referenced as a development strategy in the associated materials, having a mandatory minimum buffer requirement of 300 feet for all streams and additional protection for impaired or still high quality streams is appropriate --- the scientific literature is clear, when you start getting below 100 feet much of the benefit provided by a buffer is lost, and that greater than 100 feet, and in the range of 300 feet is significantly more beneficial and protective. Not only do buffers reduce polluted runoff, encourage infiltration, reduce the volume of runoff from a site, but they also ensure communities are not developing increasingly close to the water’s edge so as to result in these harms and to put their structure in the path of floods. While there are other regulatory requirements in Delaware having to do with floodplain protection etc., ensuring that buffers are also a recognized stormwater and pollution strategy is critical.

The Delaware Riverkeeper Network champions the rights of our communities to a Delaware River and tributary streams that are free-flowing, clean and healthy. DRN works throughout the entire Delaware River watershed to accomplish this mission. DRN has worked on stormwater issues, regulations and policies throughout the watershed including serving on specific committees and panels at the State and the regional level focused on enhancing stormwater, floodplain and buffers protections in the region. DRN has over 10,000 members, many of whom live, work, and/or recreate in the State of Delaware and so have a particular interest in seeing the enhancement and passage of this solid regulatory package being proposed by DNREC.

Respectfully submitted,



Maya K. van Rossum
the Delaware Riverkeeper

attached:

Memorandum from Michele Adams, Meliora Design, LLC dated March 27, 2012.

Cc: Robert Haynes, DNREC Hearing Officer



Meliora Design, LLC

MEMORANDUM

Date: 27 March 2012

To: Maya Van Rossum, Delaware Riverkeeper Network

From: Michele Adams

CC: Ruth Sitler, Meliora Design

**RE: Proposed 5101 Sediment and Stormwater Regulations
Delaware Department of Natural Resources and Environmental Control,
Division of Watershed Stewardship**

Maya –

Below are my comments regarding the proposed Delaware Sediment and Stormwater Regulations. Most of my comments are related to providing more clarity regarding the specifics of the proposed regulations. The overall intent of the regulations is very good.

General Provisions - Section 1

Section 1.1.1.2 This comment is related to nomenclature more than substance, as the intent of this section is very good. This section cites “additional impervious areas such as roads and parking lots” as the cause of accelerated erosion and nonpoint source runoff. **Section 1.1.2** notes that the “regulation of stormwater runoff from land development activities will control stormwater runoff, soil erosion, etc.” While the intent of these two sections is good, the language may cause some confusion or dispute. Stormwater problems are caused by **both** impervious surfaces and pervious surfaces that have been altered (such as lawns, athletic fields, etc.). All land development activities have the potential to adversely affect stormwater quantity and quality, not just impervious surfaces. By stating that impervious surfaces are the source of the problem, but that all land development activity may be regulated, this section could be misconstrued (i.e. a golf course is not a stormwater problem and should not be required to “fix” the problem).

This section is very good in that it does recognize that “the removal of stable ground cover” is a problem. The issue is nomenclature and the opportunity for intent to be misconstrued.

Section 1.3.2 This section does not grandfather plans that were approved more than three years ago, and also stipulates that “earthmoving” alone without infrastructure improvements does not constitute “commencement”. These are excellent provisions.

Section 1.4.1 Exempting agricultural activities that have a soil and water conservation plan makes sense and is appropriate, and it strengthens the Department's implementation of soil and water conservation plans for Ag by including the language in the regulation.

Section 1.4.2 The regulations apply at a threshold of 5,000 square feet of disturbance. This is very proactive and recognizes that the cumulative effects of many small projects (that are below the 1 acre NPDES threshold) can be significant. Equally important, this section does not automatically exempt individual disturbances that accumulate to 5,000 square feet. The benefits of addressing many small projects can be significant. *If DNREC has not already done so, a simplified design and approval process for "small sites" would assure greater compliance and success.*

Section 1.4.3 I am not exactly sure how this section would be applied. It's important that the Department have flexibility when other State and Federal laws apply, but I am unclear how extensively this could be applied as an "out", or the types of sites (and how many) could be affected. This may be more of a legal question.

Section 1.5.3 It would be good to describe the definition of "hardship" as this is not included in the Definitions. It is important for the department to have the ability to address hardship situations, but again, this cannot be abused.

Section 1.5.6 Fifteen (15) days is scarcely enough time for a substantially affected person to identify that a project has been approved, to review the conditions, and to appeal to the EAB.

Section 1.6.2 Requirement of a financial guarantee for stormwater improvements is excellent.

Section 1.7 Again, it is important that the Department have the ability to define Offset Provisions, however, the specifics of these provisions should be reviewed when published. The Offset Provisions must be rigorous enough to discourage their use unless required as a "last resort", and also should provide for protection of the stream segment/sub-watershed in which the project is located.

Definitions - Section 2

"Adverse Impact" I like the inclusiveness and open-ended nature of this definition.

"Brownfield" This definition should at a minimum cite the federal definition of brownfield. The definition provided is somewhat ambiguous and this is a federally defined term (the Brownfields Site definition is found in Public Law 107-118 (H.R. 2869) - "Small Business Liability Relief and Brownfields Revitalization Act" signed into law January 11, 2002).

All terms that have federal definitions should be coordinated to incorporate or reference the federal definitions and not conflict.

"Licensed Professional" includes Landscape Architects, Surveyors, and Engineers under the sections cited. All stormwater calculations should be approved and sealed by an Engineer.

“Redevelopment” The definition is good, but other jurisdictions (i.e. Philadelphia) allow an exemption for repaving but ANY disturbance of the subbase under the surface course constitutes “disturbance”. This can have large implications for roadway projects (which have large stormwater impacts) and is worth suggesting. In other words, if the subbase is altered or disturbed at all, the project is subject to the regulations. The definition is better defined under “land disturbing activity”.

“Runoff reduction practices” this is also a good definition, but it indicates that practices “that delay the delivery of stormwater to a surface discharge” are included. It should be expanded so that delayed delivery is designed to replicate the natural system of infiltration, shallow interflow, and discharge and does NOT include extended surface basin detention as “runoff reduction”.

Plan Approval Procedures and Requirements – Section 3

The “three step process” is excellent, including the requirement for a Project Application Meeting. This will provide the regulators with the ability to influence the design before the Owner has spent any significant design fees, and therefore should allow for greater flexibility and incorporation of measures recommended by the Department. This is required before the Preliminary Plan submission. In many situations, the “Preliminary Plan” is actually closer to a final plan, the owner has expended significant design fees, and everyone is resistant to any plan changes or improvements. The Project Application Meeting is an excellent requirement.

Of course, the training, availability, and Department support of the review staff are critical to the successful implementation of the regulations. The Department should define its process for effective support and implementation of this Three Step Process. Section 3.4.2 allows the Department to “start the process” over if there are significant design changes in the size and location of the BMPs. This provision is important, however, the Department may benefit from further definition of “significant design changes”. If the changes are to the Developer’s benefit, then repeating the process is warranted. But if the changes improve the Plan to the benefit of State waters, then some leniency should be allowed.

Similarly, it would be in the Department’s interest to define the review process such that new comments are not generated with each submission. In other words, the development community needs to have some comfort level regarding the review process, anticipated approval timeline, and specific requirements. Uncertainty regarding the approval process and timeline may result in more “pushback” on the part of the design community and property owners than the regulations warrant. It is essential that the Department provide adequate numbers of trained staff to meet the timelines defined in Section 3.5, and to provide the technical support to the applicants so that submitted plans successfully meet the regulations.

Section 3.7 This section allows for “standard plans”. This is excellent in that it will allow small property owners to meet the requirements with minimal professional design support and cost. This also allows relief from some of the detailed review process. This approach has been applied successfully in other jurisdictions (most notably Seattle) and is critical for implementation of the new regulations on “small sites”. The Department also retains the right to require a detailed plan (Section 3.7.5), which is good because no site is “guaranteed” that a standard plan may be applied. Rather, the decision rests with the Department.

Section 3.8 This section defines Plan Certification requirements. Again, any stormwater calculations should be approved by a Licensed Engineer, not simply a Licensed Professional.

Performance Criteria for Construction Stormwater Management - Section 4

Section 4.4.3 The limitation of twenty acres of disturbance at one time to a discharge point is good.

Performance Criteria for Post Construction Stormwater Management

Section 5.1.1 Including description of "low impact development" practices as part of the requirement is very good and very clear.

Section 5.1.3 I am a little unclear as to how this would apply to practices on an individual parcel that are part of a larger site stormwater system (i.e. rain gardens on individual lots). I am not clear how this would be implemented. It may be beneficial to have stormwater practices on individual parcels that are maintained as part of a larger system (and such a maintenance approach will likely have greater longterm success).

Section 5.1.6 The exemption for "regrading and replacement of existing pervious areas" could potentially be applied to areas such as golf courses and athletic fields. These areas meet the definition of pervious but have significant stormwater impacts.

Section 5.2 Resource Protection Event Criteria (RPv) The 1-year (or 99% probability) storm is a significant rainfall event (i.e. 2.72 inches for Wilmington; 2.81 inches for Lewes). Setting the criteria that wooded or meadow areas that are developed have to a "wooded" condition is a high standard and if successfully implemented, can mitigate the adverse effects of land development (**Section 5.2.3.1**). For areas that are not in woods or meadow before development, the performance must meet "an equivalent 0% effective imperviousness" (**Section 5.2.3.2**). This is also strong in that it will likely result in stormwater controls that improve existing conditions, rather than simply maintaining them. However, it is essential that the department provide more specific technical guidance for implementation of this criteria, as it could easily be "manipulated", and different pervious surfaces have very different performances. Much more guidance is needed for implementation.

The requirement for an "offset" for unmanaged RPv is also good, so that the RPv is met. However (as mentioned earlier) the "offset" requirements need to be clearly defined and rigorous. It should not be easy to pay a fee in lieu. If mitigation is provided at another site, there needs to be assurance that there will not be adverse effects at the original project site because the requirements were not met at that location. The implications of "offsets" warrant additional consideration in the drainage areas to headwater streams, impaired waters, etc. Offsets are a necessary option, but require clear guidance and criteria, and should not be "too easy" to obtain, but rather be the option of last resort.

Section 5.3 (Conveyance Event Criteria, Cv) and Section 5.4 (Flooding Event Criteria, Fv) I think the intent of this section is good, but the details are not here (and maybe that is intentional). Essentially, they are saying that the design has to provide conveyance for the 10-year event and flood control for the 100-year, and prevent damage, but the specifics are not provided. Both sections encourage volume reduction and allow for consideration of that volume reduction in calculating flows. But the actual "rules" are a bit ambiguous.

For example, the 10-year Conveyance Event allows for either a standards-based approach or a performance-based approach, but does not say what this means. Typically, a “standards-based” would be a peak flow rate reduction (i.e. post-development peak flows cannot exceed predevelopment peak flows), and a performance approach would demonstrate protection of the resource as intended by the regulations. But I am just guessing, the specifics are not provided.

That is not necessarily a bad thing, and may indicate that they are struggling with the merging of traditional peak rate calculation methodologies/models with newer volume based requirements. The appropriate tools have not been available for designers, and as a result, designers tend to use detention basins and call them infiltration basins.

I do know that the state has been updating their DURMM modeling tool based on the Small Storm Hydrology method and WinSLAMM, which is a good thing. So it may be that they are intentionally leaving the flow specifics somewhat vague in this section, as long as flooding and channel erosion are prevented (cited under both the Conveyance Event Criteria and the Flooding Event Criteria).

Section 5.5 The option of Alternative Criteria defined by a watershed plan is also a good option, and allows the Department to impose the requirements specific to the needs of a given watershed. This seems especially important in impaired watersheds where higher criteria may be warranted. It would seem that some language indicating that the Alternative Criteria cannot be less rigorous is warranted.

Section 5.6 Redevelopment Criteria This criteria also makes sense, as it imposes less stringent requirements for redevelopment. But only for those portions of the site that were previously developed. Woods or meadow are held to the same criteria as new development. The same ambiguity that exists in 5.2.3.2 (i.e. what does equivalent effective impervious mean?), applies here and requires further clarification.

American Rivers ♦ Brandywine Conservancy
Delaware Audubon Society ♦ Delaware Nature Society
Delaware Riverkeeper Network ♦ Delaware Wild Lands
Inland Bays Foundation ♦ League of Women Voters of Delaware
Sierra Club, Delaware Chapter ♦ Sierra Club of Southern Delaware

March 30, 2012

Elaine Webb
DNREC Sediment and Stormwater Program
89 Kings Highway
Dover, DE 19901

Re: Regulation No. 5101 Sediment and Stormwater Regulations

Dear Ms. Webb,

The organizations represented by this letter support the proposed Sediment and Stormwater Regulations. Overall, the regulations are an important advancement in protecting communities and the environment from the harms inflicted by stormwater and sediment pollution – they bring Delaware’s regulations up to modern day standards, reflecting the scientific and technological advancements and understandings that exist today on these important issues. DNREC is to be commended for this important and protective proposal.

There are a few modifications/clarifications we would seek and support, but overall we think you have done a good job in modernizing these regulatory requirements so vital for protecting our communities from flooding, flood damages, and water pollution.

Specific Areas of Support

One of the biggest initial sources of increased water runoff that causes flooding and pollution problems for neighboring and downstream waterways and communities is the removal of ground covering vegetation. The regulatory proposal, in provision 1.1.1.2 recognizes this significant source for increasing the volume of polluted runoff from development and thereby sets an important element of the stage for this regulatory proposal as a whole to address this water and pollution contribution from new and re-development.

The regulatory proposal ensures coverage of all projects 5,000 square feet or greater in provision 1.4.2. Ensuring coverage of projects of this size is important, otherwise we leave our watersheds and communities open to the continuing piecemeal devastation of our landscapes without an appropriate level of regulatory protection.

The three-step approval process and the expiration of an approval if not acted upon within three years are both sound elements of the proposed regulations, and we support them. It is important that the process allow enough time for the communication that is provided by the application meeting, the preliminary plan submission and then the final submission for consideration through the approval process. This ensures the maximum opportunity for solid applications that fulfill the requirements of the law and that the Department can act upon favorably. The provision of three years of validity for an approved plan provides plenty of time for the applicant to act upon the approval but also ensures that plans are not allowed to stay in force and be implemented many years later (i.e. 4 plus) when numerous changes on the ground may have made them no longer appropriate due to changing community conditions and the introduction of new developments and other projects.

The Stormwater performance requirements included in section 5 of the Rule are largely sound:

- ✓ they prevent reliance upon basins for stormwater management which we know from the experience of increased flooding in our communities to be ineffective;
- ✓ they focus on preserving the rate, volume and duration of runoff from pre-development to post development which is key to preventing increased flooding and pollution problems for communities;
- ✓ while additional details are needed on the specifics in provisions 5.2, 5.3, and 5.5, the focus on multiple storm events and their water quality and runoff implications is important; and
- ✓ we are very supportive of DNREC's efforts to ensure that redevelopment projects are also viewed and regulated as an opportunity to undo some of the harms of past inappropriate development by ensuring more modern standards are required for redevelopment projects in Delaware.

Improvements that are Necessary to Ensure the Most Effective Rule Possible.

Provision 1.5 provides for a variance due to "hardship" which can be obtained within 15 days. It is important that the rules include a specific definition of what would be considered a "hardship". This definition should clearly not allow a hardship variance to be issued when the concern claimed is purely economic. In addition, a 15-day review period is too short for the Department to do an effective level of review; a minimum 45 to 60 days should be provided. And it is important that any hardship request be subjected to immediate public notice and comment to ensure fully informed decision making by DNREC.

Provision 1.7 allows for offsets and yet fails to provide the process and/or specific guiding substance by which an offset request will be considered and judged. Substantive guidelines and a specific process, which includes opportunity for public review and comment, needs to be specifically articulated in the regulations.

The definition of Land Disturbance needs to include roadways, a significant and growing source of polluted runoff in all communities.

Communities in Delaware will benefit from these more protective regulations. With the modifications we have suggested we support the proposed regulations.

Respectfully,

American Rivers

Laura Craig, Ph.D., Associate Director, River Restoration Program

Brandywine Conservancy

Wes Horner, Senior Advisor for Water Resources

Delaware Audubon Society

Mark Martell, President

Delaware Nature Society

Brian Winslow, Executive Director

Delaware Riverkeeper Network

Maya K. van Rossum, the Delaware Riverkeeper

Delaware Wild Lands

Kate Hackett, Executive Director

Inland Bays Foundation, Inc.

William F. Moyer, President

League of Women Voters of Delaware

Carol Jones, President

Sierra Club, Delaware Chapter

Jim Black, Chair

Sierra Club of Southern Delaware

Harry Haon, Executive Committee

cc: Robert Haynes, DNREC Hearing Officer

Webb Elaine Z. (DNREC)

From: Richard Schneider <richardgr8ful@gmail.com>
Sent: Friday, March 30, 2012 6:21 PM
To: Webb Elaine Z. (DNREC)
Subject: Regulation No. 5101 Sediment and Stormwater Regulations and Technical Document

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Comments

Elaine Webb
DNREC Sediment And Stormwater Program

Dear MS. Webb,

We strongly support Delaware's Sediment and Stormwater Regulations and Technical Documents.

To protect our waterways and the aquatic life in those waterways, all efforts should be used to provide clean water. Proper regulations are necessary.

We thank DNREC for your efforts to protect our waterways for the benefit of all the aquatic life, wildlife and the citizens of Delaware.

Thank You,

Richard Schneider,

Coalition To Protect Fisheries

302-5071270

cc: Frank David



MAR 30 2012
8445

THE DELAWARE ASSOCIATION OF REALTORS®

"Together We Succeed"

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March 30, 2012

The Honorable Collin O'Mara
Department of Natural Resources and Environmental Control
89 Kings Highway
Dover, Delaware 19903

Dear Secretary O'Mara,

On behalf of the 3200 members of the Delaware Association of REALTORS®, I am writing to share our serious concerns with the proposed stormwater regulations recently submitted by the Division of Watershed Stewardship.

We appreciate the additional time to comment on the proposed regulations but remain concerned that it is still not enough time to review this very complex and potentially expensive regulation.

DAR is concerned that appropriate economic analysis was not done. The "study projects" (taken only through preliminary design) offered by the Department showing the extent of the impact on a typical project was not complete. The projects did not take into account the impact of new and/or re-development projects in Kent and Sussex Counties. Because the regulations now look at volumes as opposed to storm events -- the impact on the impoundment of water is very significant on lands with high water tables and no slopes. There was also a negative impact upon those re-development projects in an urban setting. Some estimations place the open space requirement on these urban infill projects of up to 50% of the total land on the site. These numbers will not work in today's economy, and may not ever work.

We have additional concerns on specific sections of the proposed regulation as outlined below:

Section 3.5.6 relating to grandfathering: DAR believes that any project in any jurisdiction under review or submitted should be automatically grandfathered from these regulatory provisions.

Section 3.6.1 extension period: Given the extremely difficult economy housing is facing, with no relief in sight, the three (3) year sunset on the plans as submitted to the Department should be a minimum of five (5) years. In many instances, local government is extending good plans for

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years because there is simply no market. Recently the State of Virginia by statute extended all approved plans to 2014.

Section 3.11.1 releasing the bond: It is imperative that the Department, once post construction verification documents have been submitted, they or the Delegated Agency must return the bond within 30 days. Currently there is not timeline as to when a response is received from the regulator.

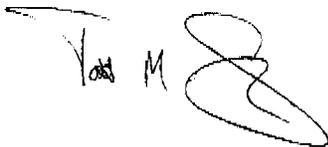
Section 4.5.1 stabilization: Here, there is no consideration for extensive weather events that prevent the builder or property owner from fixing soil stabilization structures within the 14 days. While it is unlikely, 14 days may not be enough time to do what is required under this section.

Section 4.5.3 additional soil testing: Once additional soil testing is required by the regulator, there is not time frame as to when the Department or Delegated Agency shall return these documents or reports to the builder or property owner. This time delay could be costly if the regulator becomes unresponsive.

Section 5.4.3.1 flooding event: This essentially states that, in our estimation, 100% of the rainfall event shall be retained on the property. This is the heart of the regulation, and, as discussed previously, the size and depth of the retention facilities to be used in Kent and Sussex Counties could become prohibitively expensive.

In summary, we are asking that this regulation be suspended for a minimum of one year until a complete fiscal impact study is conducted by the Department. We continue to maintain that the housing market is rocky at best, and any increases in costs will simply make housing more expensive. As stated during testimony, the impact upon all aspects of Delaware's economy cannot be ignored and the fiscal impact must be fully vetted before this is approved and made the law of the land.

Respectfully submitted,



Todd Stonesifer,
President

"Serving Delaware Since 1950"



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Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

Dear Ms. Webb

Re: Regulation No. 5101 Sediment and Stormwater Regulations & Technical Document

Attached please find letters from concerned citizens, not residing in the state of Delaware but from the surrounding region that care about the Delaware River and wanted to be sure that their voices of support for Delaware's proposed regulations were heard.

Thank you for your kind attention to this issue.

Sincerely,

Doris Brooke
Office Assistant

REMEMBER THE RIVER - *To remind us all to Remember the River in every decision we make;
And to hold our elected officials accountable to do the same.*

Delaware Riverkeeper Network
925 Canal Street, Suite 3701
Bristol, PA 19007
tel: (215) 369-1188
fax: (215) 369-1181
drkn@delawareriverkeeper.org
www.delawareriverkeeper.org

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

Dear Ms. Webb

Re: Regulation No. 5101 Sediment and Stormwater Regulations & Technical Document

I support Delaware's proposed Sediment and Stormwater Regulations and Technical Document.

It is important that we take full advantage of the updated science, technologies and experiences that have been used to inform your regulatory proposal.

Focusing on reducing the volume of polluted runoff, on protecting drinking water supplies and stream/river flows, on protecting the natural landscapes that prevent needless polluted runoff and beautify our state at the same time, as well as ensuring DNREC and the community have the best information possible to ensure we are making good decisions are all high priority goals I support.

Increasing pollution, flood damages and erosion harm our economy, jeopardize the safety of our communities, and deprive our children of a safe, beautiful and healthy future. Your regulations ensure Delaware and its residents will continue to benefit from healthy environments and only appropriate developments.

Thank you for this well-reasoned proposal and put the citizens of Delaware first.

Sincerely,

Lisa Rochelle
po box 202
martins creek, pa, 18063

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

Dear Ms. Webb

Re: Regulation No. 5101 Sediment and Stormwater Regulations & Technical Document

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Sincerely,

Than Hansen
6804 burns street suite f1
forest hills, ny, 11375

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

sara hart
92 park avenue
amityville, ny, 11701

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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As a former resident of Delaware and a frequent return visitor, I especially appreciate your efforts to keep Delaware clean.

Thank you for this well-reasoned proposal and put the citizens of Delaware first.

Sincerely,

Amy Kimmel
20 Juniper Street
Lockport, NY, 14094

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

Dear Ms. Webb

Re: Regulation No. 5101 Sediment and Stormwater Regulations & Technical Document

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Sincerely,

JANET GRILLO
504 County Road 519
Frenchtown, NJ, 08825

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

molly
6439 north 40th st
milwaukee, Wisconsin, 53209

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

SHANNON PENDLETON

bryn athyn, PA, 19009

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

Catherine Smith
383 Olde House Lane
Media, PA, 19063

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

Jennifer Foulk
21 Edinboro Circle
Chalfont, PA, 1891

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

CAROL JAGIELLO
91 wood pl
bloomingdale, nj, 07403

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

Dear Ms. Webb

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Sincerely,

Faith Zerbe
379 Upland Way
Drexel Hill, PA, 19026

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

Sharon Mendelson
57 Steeple Dr
Kintnersville, PA, 18930

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

Janet Cavallo
1276 Providence Rd
Secane, PA, 19018

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

veronica farmer
701 pickering lane
phoenixville, 19460..,

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

Marilyn Tjaden
73 Beaver Run Road
Ottsville, PA, 189428

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

Mary Anne Borge
5 Crofton Court
Lambertville, NJ, 08530

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

Leslie Stephens
37 7th St
Frenchtown, NJ, 08825

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

laura Guiliano

commack, ny, 11725

Elaine Webb
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& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

Robert Moore
21 Austin Road
Yardley, Pa, 19067

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

Dear Ms. Webb

Re: Regulation No. 5101 Sediment and Stormwater Regulations & Technical Document

I support Delaware's proposed Sediment and Stormwater Regulations and Technical Document.

My family and I have spent time in Delaware enjoying the wonderful beaches for the last three years. It is important for the future of those beach/resort towns that already add to the Delaware's economy, that the waters do not become anymore polluted. Someone always lives downstream.

It is important that we take full advantage of the updated science, technologies and experiences that have been used to inform your regulatory proposal.

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Sincerely,

Alisha Dubb
505 N 21st Street
Philadelphia, 19130

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

Sharon Egan
32 Bailey Drive
Washington Crossing, Pennsylvania, 18977

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

Pouné Saberi
1504 Montrose st
Philadelphia, PA, 19146

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

June Cattell
200 Pineview Road
West Columbia, 29169

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

john eschen
308 E Street
grand coulee, WA 99133, 9747

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

Caylee Gabbott
3453 S 100 W
Bountiful, UT, 84010

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

Dear Ms. Webb

Re: Regulation No. 5101 Sediment and Stormwater Regulations & Technical Document

I support Delaware's proposed Sediment and Stormwater Regulations and Technical Document.

It is important that we take full advantage of the updated science, technologies and experiences that have been used to inform your regulatory proposal.

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Thank you for this well-reasoned proposal and put the citizens of Delaware first.

Sincerely,

roger
105 cardinal dr
palmerton, pa, 18071

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

Dear Ms. Webb

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Sincerely,

Larry Siegel
2113 Fox Run Drive
Plainsboro, NJ, 08536

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

Laura Cushman
20 Lake Shore Drive
West Windsor, NJ, 08550

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

Halla Baker
650 Maryland Avenue
Prospect Park, PA, 19076

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

Joy Kreves
54 Montague Ave
Ewing, NJ, 08628

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

Dear Ms. Webb

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Sincerely,

Jan Tyniec
100 Gelderman Rd
Hawley, PA, 18428

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

Bruce Fredericks
131 S Main St
Pennington, NJ, 08534

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

Naomi Goldin
18 Woodhollow Road
West Windsor, NJ, 08550

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

Leigh Ann Adams
21 Sparrow Lane
Pine Grive, PA, 17963

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

Maureen Brodt
114 Laurel Avenue
Pompton Lakes, NJ, 07442

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

Tari Pantaleo
311 Plainsboro Road
Plainsboro, NJ, 08536-1905

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

ashley schmid
388 blue ridge dr
Levittown, pa, 19057

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

Dear Ms. Webb

Re: Regulation No. 5101 Sediment and Stormwater Regulations & Technical Document

Although I am not a resident of Delaware, I do live in New Jersey and I am concerned about pollution, storm runoff, etc. I support Delaware's proposed Sediment and Stormwater Regulations and Technical Document.

It is important that we take full advantage of the updated science, technologies and experiences that have been used to inform your regulatory proposal.

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Sincerely,

Cheryl Dzubak
69 Elton Avenue
Yardville, New Jersey, 08620

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

Dear Ms. Webb

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Sincerely,

Jason Kemple
28 Homestead Farm Rd
Milford, NJ, 08848

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

Heidi Furman
504 Maple Ave
Ewing, NJ, 08618

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

Simone Adler
2090 Jenkintown Road
Glenside, PA, 19038

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

Audrey Braam
310 Crown Street
Morrisville, 19067,

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

Michael W Evans
3731 S Sepulveda Blvd Apt 1
Los Angeles, CA, 90034-6888

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

Dear Ms. Webb

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Sincerely,

Michael Tyksinski
54 Kingwood Ave
Frenchtown, NJ, 08825

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DNREC Sediment
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89 Kings Highway
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Sincerely,

David LaVerne
844 Lincoln Street
Dickson City, PA, 18519-1429

Elaine Webb
DNREC Sediment
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89 Kings Highway
Dover, DE 19901

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Sincerely,

Andrew McGrath
358 Lombardy Rd
Drexel Hill, Pennsylvania, 19026

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DNREC Sediment
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89 Kings Highway
Dover, DE 19901

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Sincerely,

Pat Brundage
90 River Drive
Titusville, NJ, 08560

Elaine Webb
DNREC Sediment
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89 Kings Highway
Dover, DE 19901

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Sincerely,

Jack Lupo
641 Conklin Forks Rd
Conklin, NY, 13748

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

Jessica De Vivo
113 Wayne Street
Jersey City, NJ, 07302

Elaine Webb
DNREC Sediment
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89 Kings Highway
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Sincerely,

kristin lauersen
144 s main st
lambertville, nj, 08530

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

Dear Ms. Webb

Re: Regulation No. 5101 Sediment and Stormwater Regulations & Technical Document

At this point in time when we have knowledge and capabilities to build with conscious attention to the ever-more-precious environment, every effort should be made to do so. I live up the river from Delaware where we are fighting tooth and nail to protect the water that flows downstream to you folks. We are all downstream from someone and depend on each other for protection of these critical resources.

We are also facing a time when rising sea levels could have a major impact on coastal areas. Taking steps now in planning stages can have a major effect on the sustainability of development.

Managing stormwater so that it does what it needs to do - replenish the aquifer - is critically important. Developers need to shift their mindset to sustainability and away from the quickest buck. I think they would have no resistance from buyers.

I support Delaware's proposed Sediment and Stormwater Regulations and Technical Document.

These regulations ensure Delaware and its residents will continue to benefit from healthy environments and only appropriate developments.

Thank you for this well-reasoned proposal and put the citizens of Delaware first.

Sincerely,

Hester Greene

Hester Greene
1521 River Rd
Damascus, PA, 18415

Elaine Webb
DNREC Sediment
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89 Kings Highway
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Sarah Brown
4 Bell Lane
Downingtown, PA, 19335

Elaine Webb
DNREC Sediment
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89 Kings Highway
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Sincerely,

Lauren VanSteenvoort
105B North Custer Avenue
New Holland, PA, 17557

Elaine Webb
DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Sincerely,

chase canadé
NE 17th Crt
Hollywood, 33020

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DNREC Sediment
& Stormwater Program
89 Kings Highway
Dover, DE 19901

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Re: Regulation No. 5101 Sediment and Stormwater Regulations & Technical Document

I support Delaware's proposed Sediment and Stormwater Regulations and Technical Document.

It is important that we take full advantage of the updated science, technologies and experiences that have been used to inform your regulatory proposal.

Focusing on reducing the volume of polluted runoff, on protecting drinking water supplies and stream/river flows, on protecting the natural landscapes that prevent needless polluted runoff and beautify our state at the same time, as well as ensuring DNREC and the community have the best information possible to ensure we are making good decisions are all high priority goals I support.

Increasing pollution, flood damages and erosion harm our economy, jeopardize the safety of our communities, and deprive our children of a safe, beautiful and healthy future. Your regulations ensure Delaware and its residents will continue to benefit from healthy environments and only appropriate developments.

Thank you for this well-reasoned proposal and put the citizens of Delaware first.

Sincerely,

Sandra Reddy
1888 Choptank Road
Middletown, DE, 19709

2317 Woodland Lane
Arden, DE 19810
March 31, 2012

Elaine Webb
DNREC Sediment and Stormwater Program
89 Kenge Highway
Dover, DE 19901

Dear Ms Webb:

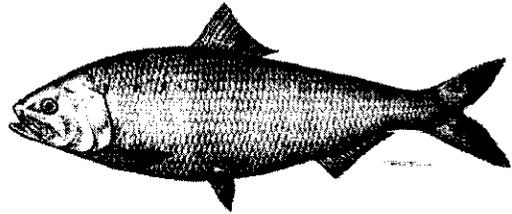
I fully support Delaware's proposed
"Sediment and Stormwater Regulations and
Technical Document." (Reg. No 5101)

It is imperative to health to

1. focus on reducing polluted runoff volume
2. protect drinking water supplies and streams + rivers
3. safekeep natural landscapes that are helpful
in both prevention of damaging runoff as well
as beauty
4. have the result of DNREC's access to and use
of updated science, technology, and experience to
inform beneficial - to - all decisions.

I write this note in hopes that it meets the
deadline for urgings and that it will help you
to choose on behalf of my and your and other Delawareans
present and future families. Thank you for this proposal.

Sincerely,
Luth Panella



Amy Roe Ph.D. 19 Sunset Road · Newark, DE 19711

Thursday, March 29, 2012

Elaine Webb
DNREC Sediment and Stormwater Program
89 Kings Highway
Dover, DE 19901

RE: Regulation No. 5101 Sediment and Stormwater Regulations and
Technical Document

Dear Ms. Webb,

DNREC's proposed stormwater regulations are a vital step forward in the protection of aquatic life. Nutrient loads and sediment are damaging to the biological and reproductive processes of fish and amphibians, including species which are considered rare, endangered or threatened in Delaware. Acidic water prevents fish eggs from hatching, excessive nutrients encourage algal blooms and hypoxia, leading to fish kills, and sediments produce such fine silt that damages fragile eggs.

The proposed regulations would safeguard these species and enable populations to recover. These regulations are essential to progress towards sustainability in our state's aquatic systems.

Regards,

Amy Roe, Ph.D.
19 Sunset Road
Newark, DE 19711
amywroe@gmail.com
(302) 690-6956

American Rivers ♦ Brandywine Conservancy
Delaware Audubon Society ♦ Delaware Nature Society
Delaware Riverkeeper Network ♦ Delaware Wild Lands
Inland Bays Foundation ♦ League of Women Voters of Delaware
Sierra Club, Delaware Chapter ♦ Sierra Club of Southern Delaware

March 28, 2012

Elaine Webb
DNREC Sediment and Stormwater Program
89 Kings Highway
Dover, DE 19901

Re: Regulation No. 5101 Sediment and Stormwater Regulations

Dear Ms. Webb,

The organizations represented by this letter support the proposed Sediment and Stormwater Regulations. Overall, the regulations are an important advancement in protecting communities and the environment from the harms inflicted by stormwater and sediment pollution – they bring Delaware’s regulations up to modern day standards, reflecting the scientific and technological advancements and understandings that exist today on these important issues. DNREC is to be commended for this important and protective proposal.

There are a few modifications/clarifications we would seek and support, but overall we think you have done a good job in modernizing these regulatory requirements so vital for protecting our communities from flooding, flood damages, and water pollution.

Specific Areas of Support

One of the biggest initial sources of increased water runoff that causes flooding and pollution problems for neighboring and downstream waterways and communities is the removal of ground covering vegetation. The regulatory proposal, in provision 1.1.1.2 recognizes this significant source for increasing the volume of polluted runoff from development and thereby sets an important element of the stage for this regulatory proposal as a whole to address this water and pollution contribution from new and re-development.

The regulatory proposal ensures coverage of all projects 5,000 square feet or greater in provision 1.4.2. Ensuring coverage of projects of this size is important, otherwise we leave our watersheds and communities open to the continuing piecemeal devastation of our landscapes without an appropriate level of regulatory protection.

The three-step approval process and the expiration of an approval if not acted upon within three years are both sound elements of the proposed regulations, and we support them. It is important that the process allow enough time for the communication that is provided by the application meeting, the preliminary plan submission and then the final submission for consideration through the approval process. This ensures the maximum opportunity for solid applications that fulfill the requirements of the law and that the Department can act upon favorably. The provision of three years of validity for an approved plan provides plenty of time for the applicant to act upon the approval but also ensures that plans are not allowed to stay in force and be implemented many years later (i.e. 4 plus) when numerous changes on the ground may have made them no longer appropriate due to changing community conditions and the introduction of new developments and other projects.

The Stormwater performance requirements included in section 5 of the Rule are largely sound:

- ✓ they prevent reliance upon basins for stormwater management which we know from the experience of increased flooding in our communities to be ineffective;
- ✓ they focus on preserving the rate, volume and duration of runoff from pre-development to post development which is key to preventing increased flooding and pollution problems for communities;
- ✓ while additional details are needed on the specifics in provisions 5.2, 5.3, and 5.5, the focus on multiple storm events and their water quality and runoff implications is important; and
- ✓ we are very supportive of DNREC's efforts to ensure that redevelopment projects are also viewed and regulated as an opportunity to undo some of the harms of past inappropriate development by ensuring more modern standards are required for redevelopment projects in Delaware.

Improvements that are Necessary to Ensure the Most Effective Rule Possible.

Provision 1.5 provides for a variance due to "hardship" which can be obtained within 15 days. It is important that the rules include a specific definition of what would be considered a "hardship". This definition should clearly not allow a hardship variance to be issued when the concern claimed is purely economic. In addition, a 15-day review period is too short for the Department to do an effective level of review; a minimum 45 to 60 days should be provided. And it is important that any hardship request be subjected to immediate public notice and comment to ensure fully informed decision making by DNREC.

Provision 1.7 allows for offsets and yet fails to provide the process and/or specific guiding substance by which an offset request will be considered and judged. Substantive guidelines and a specific process, which includes opportunity for public review and comment, needs to be specifically articulated in the regulations.

The definition of Land Disturbance needs to include roadways, a significant and growing source of polluted runoff in all communities.

Communities in Delaware will benefit from these more protective regulations. With the modifications we have suggested we support the proposed regulations.

Respectfully,

American Rivers

Laura Craig, Ph.D., Associate Director, River Restoration Program

Brandywine Conservancy

Wes Horner, Senior Advisor for Water Resources

Delaware Audubon Society

Mark Martell, President

Delaware Nature Society

Brian Winslow, Executive Director

Delaware Riverkeeper Network

Maya K. van Rossum, the Delaware Riverkeeper

Delaware Wild Lands

Kate Hackett, Executive Director

Inland Bays Foundation, Inc.

William F. Moyer, President

League of Women Voters of Delaware

Carol Jones, President

Sierra Club, Delaware Chapter

Jim Black, Chair

Sierra Club of Southern Delaware

Harry Haon, Executive Committee

Updated Version

American Rivers ♦ Brandywine Conservancy
Delaware Audubon Society ♦ Delaware Nature Society
Delaware Riverkeeper Network ♦ Delaware Wild Lands
Inland Bays Foundation ♦ League of Women Voters of Delaware
Sierra Club, Delaware Chapter ♦ Sierra Club of Southern Delaware

March 30, 2012

Elaine Webb
DNREC Sediment and Stormwater Program
89 Kings Highway
Dover, DE 19901

Re: Regulation No. 5101 Sediment and Stormwater Regulations

Dear Ms. Webb,

The organizations represented by this letter support the proposed Sediment and Stormwater Regulations. Overall, the regulations are an important advancement in protecting communities and the environment from the harms inflicted by stormwater and sediment pollution – they bring Delaware’s regulations up to modern day standards, reflecting the scientific and technological advancements and understandings that exist today on these important issues. DNREC is to be commended for this important and protective proposal.

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Sierra Club of Southern Delaware

Harry Haon, Executive Committee

cc: Robert Haynes, DNREC Hearing Officer



March 30, 2012

Elaine Webb
DNREC Sediment and Stormwater Program
89 Kings Highway
Dover, DE 19901

Re: Regulation No. 5101 Sediment and Stormwater Regulations

Dear Ms. Webb,

The Delaware Riverkeeper Network supports the proposed Sediment and Stormwater Regulations and encourages their passage. While there are a few areas where we think the regulatory package can and should be strengthened, we believe that with these regulations Delaware's Department of Natural Resources and Environmental Control (DNREC) is taking a proactive step to help protect our communities from the avoidable harms of inappropriate development practices. DNREC is proposing a set of Sediment and Stormwater Regulations that are clearly designed to put in place modern day standards for protecting communities and waterways from the non-natural flooding, pollution and erosion caused by inappropriate development practices.

In addition to this comment letter, attached you will find a memorandum prepared for the Delaware Riverkeeper Network (DRN) by Meliora Design, LLC. Michelle Adams and her team at Meliora Design are nationally recognized experts in the field of stormwater management and engineering. Their memorandum provides sound feedback and guidance regarding the regulations that we submit for your consideration and the record.

General Provisions:

As discussed in the attached memorandum from Meliora Design, LLC (*Meliora Memo*) Section 1.1.1.2 while sound in its intent could use some refinement to ensure clarity and accuracy. The section should be modified to ensure it is clear that all land development activities have the potential for causing accelerated erosion and nonpoint source polluted runoff, not just those aspects of land development that result in impervious cover such as roads and parking lots. The language in Section 1 cites impervious cover as the cause of accelerated runoff and nonpoint source runoff but then

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discusses regulation of all land development activities – not recognizing all land development activities as being potential causes of accelerated erosion and nonpoint source pollution could create confusion and the opportunity for legal challenge. And so, we encourage you to consider the recommendations in the *Meliora Memo*.

DRN recommends that Section 1.1.1.3 be edited so as to also specifically refer to flood damages as a ramification of increasing stormwater runoff and a benefit of the proposed regulations. Flooding is a natural, normal, needed part of any waterway's lifecycle, it is the human-induced, unnatural flooding that needs to be addressed and it is the flood damages caused by this human-induced flooding and/or inappropriate siting of development projects that we are seeking to minimize.

Applying the regulations at a threshold of 5,000 square feet as per Section 1.4.2, is an important and proactive provision that recognizes the potentially significant impacts of smaller projects on both an individual but also a cumulative basis. DRN supports the use of the 5,000 square feet threshold. Please also see attached *Meliora Memo* for their support as technical experts of this threshold.

The definition of the term “hardship” used in Section 1.5.3.2 which could entitle a property owner to waiver from the provisions found in the regulations needs definition. Without definition there is too much opportunity for misuse, challenge and/or confusion. Having a definition for the term “hardship” as used in these regulations will provide the needed clarity and guidance that will ensure the hardship waiver provision is only used in limited circumstances when truly warranted; and that when a request for such waiver is denied that there is stronger defensibility in the face of a legal challenge. When this definition of “hardship” is crafted, DRN urges that under no circumstances should the term include as a consideration of “hardship” an increase in the cost of the project, nor should a needed reduction in the size of the project in terms of square footage of disturbance and/or impervious cover qualify one for a hardship exemption.

DRN would recommend that a greater time frame than 15 days be provided in section 1.5.6 to ensure full opportunity for a substantially affected person to review and appeal an approval to the EAB. 60 days seems a much more equitable time frame.

As per the attached *Meliora Memo*, we urge DNREC to specifically define any Offset Provisions included in the regulatory framework, and that when doing so you ensure the provisions are rigorous and only support and encourage their use when needed as a last resort. The Offset Provisions should ensure protection of the streams and watersheds that would be affected by a project. Payment of a “fee in lieu” should never be allowed as an offset. And the inclusion of an Offset Provision in the regulations should not negate the option/opportunity/possibility of DNREC outright denying requested permit applications for a project when doing so would be the most beneficial and appropriately protective for the environment and communities that would otherwise be impacted – in other words, including the opportunity for offsets in the regulation should not be used

as a means to ensure that every project proposal put before DNREC will be granted approval for construction/implementation.

It would be helpful to define the term “water flow characteristics” used in section 1.11.

Sections 1.3.2, 1.4.1 and 1.6.2 are important provisions that we support for the reasons provided in the attached *Meliora Memo*.

Definitions:

DRN urges a modification of the definition given “Best Management Practices”. The definition of Best Management Practices used in the regulations is overly broad and deceptive in that it would seemingly include any kind of structural control. Best Management Practices are generally used to describe practices that are designed to rely upon and/or restore and/or mimic the natural function of nature for reducing the volume of runoff and or the level of pollution contained therein. The term Best Management Practices generally includes the following concepts:

- Preventing stormwater runoff in the first place through sound development practices that protect and restore vegetated landscapes and the environment's natural ability to infiltrate rainfall so as to avoid the water quality and hydrologic impacts that runoff creates.
- Approaches that protect and restore infiltration of stormwater in order to minimize the volume of runoff, recharge aquifers, filter out pollutants, reduce human-induced flooding and feed groundwater to streams during dry times.
- Building, engineering and commonsense techniques that can effectively protect and enhance infiltration of rainfall and filter out nonpoint source pollution.

Best Management Practices are generally intended to preserve and/or mimic the natural world using natural systems in place or restored, and are intended to steer developers and regulators away from construction and installation of structural measures, particularly those that use hardened, artificial mechanisms and piping for dealing with stormwater runoff. And so in addition to providing a clear definition of Best Management Practices it would also be appropriate to include a hierarchy of consideration with the nonstructural Best Management Practices being given preferential consideration as compared to those that are more structural.

In the definition of “final stabilization” DRN does not believe it is appropriate to be making the criteria included (1)(a) and (1)(b) as co-equals. Allowing the use of gabions, riprap etc. is in no way similar or equivalent environmentally to the use and benefits of native vegetation and therefore we would urge a language change that encourages the use of native vegetation strategies as referenced in (a) to the hardened bank approaches discussed in (b).

Also in the definition of “final stabilization” it would seem to make sense to change the terminology used in (3)(a) and (b) from homebuilder to simply builder, and from homeowner to property owner.

For clarity and to ensure full applicability, in the definition of “Land disturbing activity” DRN suggests you add the words “and/or increased volume of” before “stormwater runoff, including, but not limited to, clearing, grading, excavating, transporting and filling of land” found in the last sentence.

DRN would suggest that the definition of “permanent stabilization” use language making clear that native vegetation is not just suggested but mandated, there is no reason to allow anywhere in these regulations the use of non-native vegetation and so we would urge any changes necessary to make that clear.

As per the *Meliora Memo* (see memo for greater detail and/or explanation):

- The definition of Adverse Impact is sound and should be maintained as is.
- The definition of Brownfield should refer to the federal definition of the term to provide needed clarity.
- The definition of Licensed Professional as used in the regulations is overly broad – the regulations need to be modified to ensure that all stormwater calculations are approved and sealed by a licensed and qualified engineer, it is not appropriate to allow landscape architects or surveyors to be providing final approval of such calculations.
- The definition of Redevelopment should exempt road projects where the subbase is altered or disturbed.
- The definition of Runoff Reduction Practices should be expanded “so that delayed delivery is designed to replicate the natural system of infiltration, shallow interflow, and discharge and does NOT include extended surface basin detention as ‘runoff reduction’.”

Plan Approval Procedures and Requirements:

DRN supports the three-step process for project review and approval. We believe the process provides good opportunity for ensuring full application of the terms and goals of the regulations. The Project Application Meeting ensures a timely opportunity for discussion between the regulators and the developers at a time when participants feel more able to make the adjustments necessary for best implementation of the law. But it would be beneficial to provide an additional level of definition to the process and to sure there is documentation placed in the file that citizens can review.

Section 3.4.2 should be enhanced with more guidance as to when design changes meet the threshold that warrants a starting over of the review process. Such guidance would better empower the agency to take such action when warranted and better inform the regulated community as to when they can anticipate, or how they can avoid, this step.

For additional clarification on these comments and additional input regarding the three-step process see the attached *Meliora Memo*.

It would seem that in section 3.6 it would be appropriate to allow the expiration of a plan approval within the 3-year period if there is some substantial changed condition

within the watershed or affected waterway. DRN would recommend that this provision be modified so as to allow for expiration within the 3-year period if there is some demonstrable change in the watershed or waterway that would warrant it.

DRN, informed by the technical expertise of Meliora Design, supports the elements found in section 3.7 designed to aid in meeting the requirements of the regulations for small projects, i.e. reducing the requirements for professional design support but also ensuring the ability of DNREC to seek a greater level of information and review when warranted.

While participation in the training discussed in 3.8.3 is later qualified so as to mandate updated training if so noticed by the Department, DRN suggests it would also be valuable to ensure that even when there has not been a change in the overall program or materials professionals should be required to participate in the course on a regular basis to ensure ongoing upkeep with the concepts and materials in the training and in this regulation. Mandating participation a minimum of every two years seems appropriate.

Section 3.8 should also be modified to mandate that all stormwater calculations be approved and sealed by a licensed and qualified engineer.

Performance Criteria:

Including a description of low impact development practices in provision 5.1.1 is very beneficial and we support it. But, DRN would suggest adding the word “implementing” before “other measures that simulate natural watershed hydrological processes” found in the last sentence of that provision.

Section 5.1.3, as per the *Meliora Memo*, could use some clarification and perhaps adjustment.

The definition and exemption found in section 5.1.6 “regarding and replacement of existing pervious areas” could be inappropriately applied if additional clarification is not provided. For example, right now the exemption provided in this section could apply to golf courses and athletic fields which in fact have significant stormwater impacts and therefore should not be entitled to the exemption. DRN suggests clarification and modification that takes out of the exemption areas such as golf courses, ball fields, and other manicured and/or developed landscapes that can have significant stormwater impacts.

DRN supports the provisions and concepts found in Section 5.2 regarding Resource Protection Criteria. As provided for, this section can go a long way towards providing communities and the environment needed protections that would otherwise result from development. As written, this section also provides the opportunity to improve existing conditions, which is important considering all of the flooding, erosion and pollution problems already in place as the result of past inappropriate development practices.

But as per the *Meliora Memo*, in order to ensure the provisions in this section are not manipulated or misapplied more guidance for implementation is warranted.

As discussed previously, this section too needs more clarification regarding the offset provision/opportunity to ensure it is not misused or misapplied in any given situation. See *Meliora Memo* for additional input.

The focus of Sections 5.3 and 5.4 on volume reduction are important and supported by DRN. But these sections could benefit from an additional level of guidance and detail to ensure clarity, understanding, and accurate implementation. See *Meliora Memo* for additional detail and discussion.

5.4.1 should be clear that it is not concerned about “flooding” it is concerned about human-induced, non-natural flooding and flood damages. It is important that those implementing the regulations and/or the community they are designed to protect understand that flooding is not in and of itself a problematic condition, in fact when at natural levels it is vital for environmental health, and so offering qualifying language in this provision would help to offer that clarity of understanding.

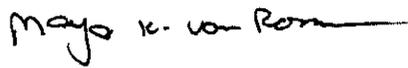
Section 5.5 provides the opportunity for Alternative Criteria defined by a watershed plan; DRN believes this is a good opportunity to include in the regulations as long as there is language added that makes clear the Alternative Criteria cannot be “less” rigorous than would otherwise be required by these regulations. Section 5.5 talks about additional protections for impaired streams and/or meeting specific pollutant reduction targets found in Delaware water quality regulations; but it would also be appropriate to add a provision that allows for alternative and/or additional practices and/or criteria to protect high quality streams.

Section 5.6 Redevelopment Criteria could use some further clarification as discussed in the *Meliora Memo*.

Finally, nowhere in the regulations is there a mandatory minimum buffer requirement – either the protection of pre-development buffers or the creation of buffers. While this may be referenced as a development strategy in the associated materials, having a mandatory minimum buffer requirement of 300 feet for all streams and additional protection for impaired or still high quality streams is appropriate --- the scientific literature is clear, when you start getting below 100 feet much of the benefit provided by a buffer is lost, and that greater than 100 feet, and in the range of 300 feet is significantly more beneficial and protective. Not only do buffers reduce polluted runoff, encourage infiltration, reduce the volume of runoff from a site, but they also ensure communities are not developing increasingly close to the water’s edge so as to result in these harms and to put their structure in the path of floods. While there are other regulatory requirements in Delaware having to do with floodplain protection etc., ensuring that buffers are also a recognized stormwater and pollution strategy is critical.

The Delaware Riverkeeper Network champions the rights of our communities to a Delaware River and tributary streams that are free-flowing, clean and healthy. DRN works throughout the entire Delaware River watershed to accomplish this mission. DRN has worked on stormwater issues, regulations and policies throughout the watershed including serving on specific committees and panels at the State and the regional level focused on enhancing stormwater, floodplain and buffers protections in the region. DRN has over 10,000 members, many of whom live, work, and/or recreate in the State of Delaware and so have a particular interest in seeing the enhancement and passage of this solid regulatory package being proposed by DNREC.

Respectfully submitted,



Maya K. van Rossum
the Delaware Riverkeeper

attached:

Memorandum from Michele Adams, Meliora Design, LLC dated March 27, 2012.

Cc: Robert Haynes, DNREC Hearing Officer



Meliora Design, LLC

MEMORANDUM

Date: 27 March 2012

To: Maya Van Rossum, Delaware Riverkeeper Network

From: Michele Adams

CC: Ruth Sittler, Meliora Design

**RE: Proposed 5101 Sediment and Stormwater Regulations
Delaware Department of Natural Resources and Environmental Control,
Division of Watershed Stewardship**

Maya –

Below are my comments regarding the proposed Delaware Sediment and Stormwater Regulations. Most of my comments are related to providing more clarity regarding the specifics of the proposed regulations. The overall intent of the regulations is very good.

General Provisions - Section 1

Section 1.1.1.2 This comment is related to nomenclature more than substance, as the intent of this section is very good. This section cites "additional impervious areas such as roads and parking lots" as the cause of accelerated erosion and nonpoint source runoff. **Section 1.1.2** notes that the "regulation of stormwater runoff from land development activities will control stormwater runoff, soil erosion, etc." While the intent of these two sections is good, the language may cause some confusion or dispute. Stormwater problems are caused by **both** impervious surfaces and pervious surfaces that have been altered (such as lawns, athletic fields, etc.). All land development activities have the potential to adversely affect stormwater quantity and quality, not just impervious surfaces. By stating that impervious surfaces are the source of the problem, but that all land development activity may be regulated, this section could be misconstrued (i.e. a golf course is not a stormwater problem and should not be required to "fix" the problem).

This section is very good in that it does recognize that "the removal of stable ground cover" is a problem. The issue is nomenclature and the opportunity for intent to be misconstrued.

Section 1.3.2 This section does not grandfather plans that were approved more than three years ago, and also stipulates that "earthmoving" alone without infrastructure improvements does not constitute "commencement". These are excellent provisions.

Section 1.4.1 Exempting agricultural activities that have a soil and water conservation plan makes sense and is appropriate, and it strengthens the Department's implementation of soil and water conservation plans for Ag by including the language in the regulation.

Section 1.4.2 The regulations apply at a threshold of 5,000 square feet of disturbance. This is very proactive and recognizes that the cumulative effects of many small projects (that are below the 1 acre NPDES threshold) can be significant. Equally important, this section does not automatically exempt individual disturbances that accumulate to 5,000 square feet. The benefits of addressing many small projects can be significant. *If DNREC has not already done so, a simplified design and approval process for "small sites" would assure greater compliance and success.*

Section 1.4.3 I am not exactly sure how this section would be applied. It's important that the Department have flexibility when other State and Federal laws apply, but I am unclear how extensively this could be applied as an "out", or the types of sites (and how many) could be affected. This may be more of a legal question.

Section 1.5.3 It would be good to describe the definition of "hardship" as this is not included in the Definitions. It is important for the department to have the ability to address hardship situations, but again, this cannot be abused.

Section 1.5.6 Fifteen (15) days is scarcely enough time for a substantially affected person to identify that a project has been approved, to review the conditions, and to appeal to the EAB.

Section 1.6.2 Requirement of a financial guarantee for stormwater improvements is excellent.

Section 1.7 Again, it is important that the Department have the ability to define Offset Provisions, however, the specifics of these provisions should be reviewed when published. The Offset Provisions must be rigorous enough to discourage their use unless required as a "last resort", and also should provide for protection of the stream segment/sub-watershed in which the project is located.

Definitions - Section 2

"Adverse Impact" I like the inclusiveness and open-ended nature of this definition.

"Brownfield" This definition should at a minimum cite the federal definition of brownfield. The definition provided is somewhat ambiguous and this is a federally defined term (the Brownfields Site definition is found in Public Law 107-118 (H.R. 2869) - "Small Business Liability Relief and Brownfields Revitalization Act" signed into law January 11, 2002).

All terms that have federal definitions should be coordinated to incorporate or reference the federal definitions and not conflict.

"Licensed Professional" includes Landscape Architects, Surveyors, and Engineers under the sections cited. All stormwater calculations should be approved and sealed by an Engineer.

“Redevelopment” The definition is good, but other jurisdictions (i.e. Philadelphia) allow an exemption for repaving but ANY disturbance of the subbase under the surface course constitutes “disturbance”. This can have large implications for roadway projects (which have large stormwater impacts) and is worth suggesting. In other words, if the subbase is altered or disturbed at all, the project is subject to the regulations. The definition is better defined under “land disturbing activity”.

“Runoff reduction practices” this is also a good definition, but it indicates that practices “that delay the delivery of stormwater to a surface discharge” are included. It should be expanded so that delayed delivery is designed to replicate the natural system of infiltration, shallow interflow, and discharge and does NOT include extended surface basin detention as “runoff reduction”.

Plan Approval Procedures and Requirements – Section 3

The “three step process” is excellent, including the requirement for a Project Application Meeting. This will provide the regulators with the ability to influence the design before the Owner has spent any significant design fees, and therefore should allow for greater flexibility and incorporation of measures recommended by the Department. This is required before the Preliminary Plan submission. In many situations, the “Preliminary Plan” is actually closer to a final plan, the owner has expended significant design fees, and everyone is resistant to any plan changes or improvements. The Project Application Meeting is an excellent requirement.

Of course, the training, availability, and Department support of the review staff are critical to the successful implementation of the regulations. The Department should define its process for effective support and implementation of this Three Step Process. Section 3.4.2 allows the Department to “start the process” over if there are significant design changes in the size and location of the BMPs. This provision is important, however, the Department may benefit from further definition of “significant design changes”. If the changes are to the Developer's benefit, then repeating the process is warranted. But if the changes improve the Plan to the benefit of State waters, then some leniency should be allowed.

Similarly, it would be in the Department's interest to define the review process such that new comments are not generated with each submission. In other words, the development community needs to have some comfort level regarding the review process, anticipated approval timeline, and specific requirements. Uncertainty regarding the approval process and timeline may result in more “pushback” on the part of the design community and property owners than the regulations warrant. It is essential that the Department provide adequate numbers of trained staff to meet the timelines defined in Section 3.5, and to provide the technical support to the applicants so that submitted plans successfully meet the regulations.

Section 3.7 This section allows for “standard plans”. This is excellent in that it will allow small property owners to meet the requirements with minimal professional design support and cost. This also allows relief from some of the detailed review process. This approach has been applied successfully in other jurisdictions (most notably Seattle) and is critical for implementation of the new regulations on “small sites”. The Department also retains the right to require a detailed plan (Section 3.7.5), which is good because no site is “guaranteed” that a standard plan may be applied. Rather, the decision rests with the Department.

Section 3.8 This section defines Plan Certification requirements. Again, any stormwater calculations should be approved by a Licensed Engineer, not simply a Licensed Professional.

Performance Criteria for Construction Stormwater Management - Section 4

Section 4.4.3 The limitation of twenty acres of disturbance at one time to a discharge point is good.

Performance Criteria for Post Construction Stormwater Management

Section 5.1.1 Including description of "low impact development" practices as part of the requirement is very good and very clear.

Section 5.1.3 I am a little unclear as to how this would apply to practices on an individual parcel that are part of a larger site stormwater system (i.e. rain gardens on individual lots). I am not clear how this would be implemented. It may be beneficial to have stormwater practices on individual parcels that are maintained as part of a larger system (and such a maintenance approach will likely have greater longterm success).

Section 5.1.6 The exemption for "regrading and replacement of existing pervious areas" could potentially be applied to areas such as golf courses and athletic fields. These areas meet the definition of pervious but have significant stormwater impacts.

Section 5.2 Resource Protection Event Criteria (RPv) The 1-year (or 99% probability) storm is a significant rainfall event (i.e. 2.72 inches for Wilmington; 2.81 inches for Lewes). Setting the criteria that wooded or meadow areas that are developed have to a "wooded" condition is a high standard and if successfully implemented, can mitigate the adverse effects of land development (**Section 5.2.3.1**). For areas that are not in woods or meadow before development, the performance must meet "an equivalent 0% effective imperviousness" (**Section 5.2.3.2**). This is also strong in that it will likely result in stormwater controls that improve existing conditions, rather than simply maintaining them. However, it is essential that the department provide more specific technical guidance for implementation of this criteria, as it could easily be "manipulated", and different pervious surfaces have very different performances. Much more guidance is needed for implementation.

The requirement for an "offset" for unmanaged RPv is also good, so that the RPv is met. However (as mentioned earlier) the "offset" requirements need to be clearly defined and rigorous. It should not be easy to pay a fee in lieu. If mitigation is provided at another site, there needs to be assurance that there will not be adverse effects at the original project site because the requirements were not met at that location. The implications of "offsets" warrant additional consideration in the drainage areas to headwater streams, impaired waters, etc. Offsets are a necessary option, but require clear guidance and criteria, and should not be "too easy" to obtain, but rather be the option of last resort.

Section 5.3 (Conveyance Event Criteria, Cv) and Section 5.4 (Flooding Event Criteria, Fv) I think the intent of this section is good, but the details are not here (and maybe that is intentional). Essentially, they are saying that the design has to provide conveyance for the 10-year event and flood control for the 100-year, and prevent damage, but the specifics are not provided. Both sections encourage volume reduction and allow for consideration of that volume reduction in calculating flows. But the actual "rules" are a bit ambiguous.

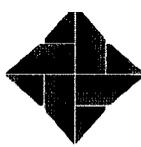
For example, the 10-year Conveyance Event allows for either a standards-based approach or a performance-based approach, but does not say what this means. Typically, a "standards-based" would be a peak flow rate reduction (i.e. post-development peak flows cannot exceed predevelopment peak flows), and a performance approach would demonstrate protection of the resource as intended by the regulations. But I am just guessing, the specifics are not provided.

That is not necessarily a bad thing, and may indicate that they are struggling with the merging of traditional peak rate calculation methodologies/models with newer volume based requirements. The appropriate tools have not been available for designers, and as a result, designers tend to use detention basins and call them infiltration basins.

I do know that the state has been updating their DURMM modeling tool based on the Small Storm Hydrology method and WinSLAMM, which is a good thing. So it may be that they are intentionally leaving the flow specifics somewhat vague in this section, as long as flooding and channel erosion are prevented (cited under both the Conveyance Event Criteria and the Flooding Event Criteria).

Section 5.5 The option of Alternative Criteria defined by a watershed plan is also a good option, and allows the Department to impose the requirements specific to the needs of a given watershed. This seems especially important in impaired watersheds where higher criteria may be warranted. It would seem that some language indicating that the Alternative Criteria cannot be less rigorous is warranted.

Section 5.6 Redevelopment Criteria This criteria also makes sense, as it imposes less stringent requirements for redevelopment. But only for those portions of the site that were previously developed. Woods or meadow are held to the same criteria as new development. The same ambiguity that exists in 5.2.3.2 (i.e. what does equivalent effective impervious mean?), applies here and requires further clarification.



FIRST STATE MANUFACTURED HOUSING
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March 30, 2012

Honorable Colin O'Mara
Secretary
Department of Natural Resources and Environmental Control
89 Kings Highway
Dover, DE 19901

Re: Sediment & Stormwater Regulation
Public Hearing Comments

Dear Mr. O'Mara:

The First State Manufactured Housing Association (FSMHA) appreciates the opportunity to review the proposed changes to the State of Delaware, Sediment and Stormwater regulations. We respectfully submit the following comments and questions..

1. It appears that the new regulations will increase protection from the discharge of pollutants from stormwater runoff associated with land disturbing activities. In addition, the new regulations' goal is to better protect streams from bank and bed erosion associated with extended bankfull flows. FSMHA supports the goal to improve the quality of our waters and efforts to minimize erosion.
2. Under the new regulations, the number and size of stormwater management (SWM) facilities will increase to some extent. These increases will result in increased engineering and construction costs. We request that the Department consider the potential impact of these increased costs with respect to economic development.
3. The new regulations require more information earlier in the review process; therefore, a higher monetary investment for the owner/developer earlier in the plan review process will be required. This early expenditure of funds at the concept level may discourage many businesses from considering a project in Delaware.
4. It appears that compliance with the new regulations will be difficult for redevelopment sites resulting in a high potential to discourage redevelopment. Discouragement of redevelopment is in conflict with most existing land use policies. Offsets, if found to be

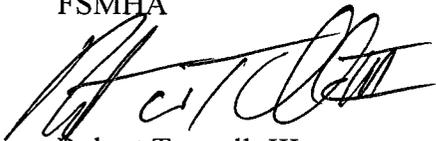
economically feasible, may provide a vehicle for compliance. Further, discouragement of redevelopment will lead to more “greenfield” development and sprawl.

5. It is unclear if the proposed fee in-lieu cost of \$23 per cubic foot of unmanaged stormwater runoff is economically feasible. The new regulations should include provisions to negotiate or change this fee, a phase-in price, a project cap, or allow trading across watersheds to keep compliance costs feasible.
6. It appears that new residential subdivisions in undeveloped watersheds (green fields) will be the least impacted by the new regulations, thereby encouraging development in these areas and possibly resulting in sprawl.
7. There has been little discussion regarding the compatibility of the new regulations with local land use agencies. As written, the new regulations appear to be in conflict with some local land use code and policies (e.g., reduced impervious area vs. required sidewalks, parking, etc). In addition, with an increase in the size and number of SWM facilities, there is a decrease in usable land, particularly in jurisdictions where SWM facilities cannot be considered open space. Flexibility in local agency SWM buffer, setback and open space requirements is essential to maintain the practical and economic feasibility of development projects.
8. Although there are provisions for TMDL compliance using the DURMM v.2.0 spreadsheet incorporated in the new regulations, currently there are no TMDL requirements. Clearly, at some point in near the future TMDL compliance for land disturbing activities will be a requirement. It is our understanding that the EPA will consider compliance with the new regulations as compliance with Chesapeake Bay Watershed TMDLs. This may be an advantage, however, based on the preliminary plan sample projects, it is unclear if a site can meet compliance using the DURMM v.2.0 model.
9. Since the EPA has not finalized its effluent limitation guidelines (ELGs) for construction sites, there are currently no ELG requirements included in the proposed regulations. However, when EPA established new ELGs, DNREC must follow suit and require ELGs for construction sites. How will ELG requirements be incorporated into the new regulations? We encourage that DNREC consider delaying the implementation of the new regulations until the EPA has issued its EGL requirements
10. There is a concern that DelDOT input required in the draft of the proposed regulations will result in delays in plan approval. A Memorandum of Understanding outlining DelDOT’s role, responsibilities and plan review turn-around times should be in place before the regulations are promulgated. We request an explanation of why DelDOT’s input on stormwater issues is even necessary on projects that do not impact DelDOT stormwater conveyance or management facilities.

11. Uncertainty surrounding the increase in construction costs associated with new regulation compliance warrants further study. Therefore, it is our opinion that that promulgation of the regulations should be a delayed for one year to allow adequate time to evaluate this economic impact. Economic evaluations should particularly consider cost impacts on redevelopment projects.

FSMHA appreciates your consideration of our comments and questions. Please do not hesitate to contact us if you have any questions of if we can assist you in anyway.

Respectfully,
FSMHA



Robert Tunnell, III.