

**Background**

Unless an activity is exempt based upon Section 1.4 of the *Delaware Sediment and Stormwater Regulations*, a Sediment and Stormwater Management Plan (Plan) must be approved prior to any land disturbance taking place on the project. When a building or grading permit is required for the project, the Plan approval should precede issuance of the building or grading permit. This process must be agreed upon by the Department or Delegated Agency and the agency responsible for issuing building or grading permits.

The Plan provides details for construction site stormwater best management practices (BMPs) to be implemented during construction as well as permanent stormwater management systems. The Plan also includes all computations to support the design of the construction site stormwater BMPs and permanent stormwater management systems.

The Plan is developed by a licensed professional in the State of Delaware and addresses all applicable elements of the *Regulations*. The Plan includes the seal of the licensed professional in accordance with the requirements of the licensing board.

A signed owner's certification statement is included on the plan. By signing the statement, the owner certifies that (1) all land clearing, grading, construction and development shall be done pursuant to the approved Plan, (2) responsible personnel certified by the Department will be in charge of all land clearing, grading, construction, or development, and (3) Department or Delegated Agency personnel shall have access to the site at reasonable times for the purposes of review and enforcement. The owner's certification must contain the original signature of the owner on the approved Plan.

The Department or the Delegated Agency reviews the Plan for compliance with the *Regulations* and once it is found acceptable, the Plan is approved. The approval date and expiration dates are stamped onto the Plan and an approval letter is issued.

**Plan Life**

Regardless of the level of activity on the project site, the approved Plan remains valid for three years following the date of approval of the Plan. The three year limit for a Plan approval allows for the incorporation of improved sediment and stormwater management technology into approved Plans. All approved Plans, including those for which construction has commenced and/or is ongoing, are subject to re-evaluation after

three years. If construction on the project site has not been completed and the project closed out within three years of the approval date, the approval must be extended, or a revised Plan must be re-approved by the approval agency, either the Department or the Delegated Agency. The approval agency sets the criteria, including fees, for extension or re-approval of a Plan.

It is the responsibility of the project owner to contact the Department or the Delegated Agency prior to Plan expiration to discuss necessary measures to extend or re-approve the Plan. When the Plan expires, it is no longer valid. In the absence of a valid Plan, the NPDES general permit requirements to discharge stormwater from a construction activity are not met and the project may be subject to enforcement.

If, at the three-year Plan expiration date, the Department or the Delegated Agency determines that the design criteria are unchanged and no Plan revisions are necessary from the original approval, Plan approval may be extended for a time frame not to exceed an additional three years. The cases when a Plan approval may be extended include large projects for which the construction period is expected to be longer than three years, and projects which have been delayed in the start of construction due to funding or other permitting requirements.

~~Plans approved for sites where construction has not commenced will be granted one three-year extension of the plan approval. As long as construction is ongoing on a project, the plan approval may continue to be extended at three-year intervals following a review by the Department or Delegated Agency. However, if construction ceases for an entire three-year approval period, that project's plan approval may no longer be extended. A new plan must be developed to continue construction.~~

Plans approved to comply with previous regulations must maintain plan approval in three-year approval periods and must commence construction no later than December 31, 2019. A plan approved to comply with previous regulations where construction has not commenced by December 31, 2019 shall expire. A new plan in compliance with current regulations shall be submitted to the Department or Delegated Agency for review and approval before commencement of construction.

Plans that have received an extension based on a variance in accordance with Article 2.05 will have one (1) year from the approval date of the variance to obtain Sediment and Stormwater Management Plan approval under the requirements of the previous regulations. Subsequent three-year approval periods will be based on that date going forward and will be subject to the same limits as above. Variances remain in effect for one year unless renewed following public hearing pursuant to §6011.

Individual pad sites in commercial developments or outparcels in a business or industrial park setting which were considered in the overall stormwater management design for the project site under previous regulations will be considered grandfathered under the previous regulations as long as construction commences on those lots no later than December 31, 2019. After that date, individual pad sites and outparcels will be subject to the full requirements of the current regulations.

Sediment and Stormwater Management Plans for phased projects may be extended for the entire project area that has been previously approved as long as construction has commenced on any part of that plan. Project phases that have not commenced construction may be extended when the Sediment and Stormwater Management Plan for that phase has been approved with the overall plan.

Phases shown on a conceptual plan that have not been reviewed for compliance with the Sediment and Stormwater Management Plan requirements will not be eligible for extension. A Sediment and Stormwater Management Plan must be developed for those phases separately.

### **Plan Revisions**

At any time, if the approved Plan needs to be modified, additional sediment and stormwater control measures may be required as deemed necessary by the Department or the Delegated Agency. If such modifications are not approved within the time period specified by the Department or Delegated Agency, the original approval will be rescinded and the Plan will be considered invalid. Any proposed changes to the approved Plan, including those initiated by the owner, prior to the three-year expiration date shall be reviewed by the Department or the Delegated Agency to determine whether a formal Plan revision is needed or whether a field change will suffice.

When a revision of a portion of the Plan is approved by the Department or Delegated Agency, the original approval and expiration dates for the project stand. A new approval date is issued only when the entire Plan is reviewed for compliance.

## **Grandfathering**

Plans in the review process prior to ~~the effective date of the regulations~~ January 1, 2014 where Plan approval is granted within 18 months ~~of the effective date of the regulations~~ shall not be subject to the requirements of the regulations. These Plans are subject to the previous regulations unless the owner chooses to comply with the current regulations. Once approved, the approved Plan remains valid for three years.

Plans in the review process prior to ~~the effective date of the regulations~~ January 1, 2014 where the approval is not granted within 18 months ~~of the effective date of the regulations~~ shall may be considered invalid if the applicant has not demonstrated a good faith effort to gain approval. In such case the applicant will be notified by the Department or Delegated Agency that the The project is no longer eligible for grandfathering ~~must be resubmitted to the Department or the Delegated Agency and~~ will be subject to the full requirements of the regulations.

Plans are considered to be “in the review process” when they have documented completion the first plan review step, such as a project application meeting or the first formal submittal step if a project application meeting is not required. Determination of what qualifies as the first plan review step is described by each Delegated Agency’s plan review policies and procedures. A compilation of all Delegated Agency policies has been provided in the DNREC policy document: “Review, Approval, and Extension of Projects Submitted Prior to the Effective Date of Revised *Delaware Sediment and Stormwater Regulations*”.

~~To provide an example of the grandfathering provision, if the effective date of the revised regulations is January 1, 2014, a project in review prior to the effective date is subject to the previous regulations if it is approved before July 1, 2015. Every project approved on or after July 1, 2015 must comply with the requirements of the revised regulations, regardless of when it entered the review process.~~

When a Plan revision is necessary for a Plan that has been approved to comply with previous regulations, those revisions shall be subject to the requirements of the previous regulations. When a revision of a portion of the Plan is approved by the Department or Delegated Agency, the original approval and expiration dates for the project stand. A new approval date is issued only when the entire Plan is reviewed for compliance.

Additional guidance on Grandfathering is included in Article 2.02.1.

## **Sunseting**

Plans that have been approved to comply with previous regulations remain valid for three years from the Plan approval date. After three years, the Plan expires. Projects which have commenced construction prior to the time of Plan expiration may have their Plan approvals extended in accordance with Plan extension procedures developed by the Department or Delegated Agency. The Plan extension will not require revisions to bring the Plan into full compliance with revised regulations.

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

Plans that have been approved to comply with previous regulations where construction has not commenced may have the plan approval extended in three-year approval periods, but must begin construction ~~within six years of the effective date of the revised regulations~~ on or before December 31, 2019. If, ~~after six years following the effective date~~ construction has not commenced by December 31, 2019, the plan will expire. Construction of the project will require a new plan to be developed, reviewed, and approved to comply with the revised regulations.

To provide an example of the sunset provision, if ~~the effective date of the revised regulations is January 1, 2014, and~~ an approved project has not commenced construction as of ~~that date~~ January 1, 2014, that plan approval may be extended in three-year approval periods to remain valid, but construction must begin no later than December 31, 2019, ~~or six years following the effective date of the regulations~~. All projects starting construction on or after January 1, 2020 will be starting construction based upon a plan approved to comply with the revised regulations.

## **Pre-development Condition**

When considering the pre-development condition of a project site for the purposes of compliance with RPv and/or ~~for~~ redevelopment criteria, the pre-development condition of the site shall be based upon the most current aerial photography available for the project site location.

Section 1.4.2 of the *Delaware Sediment and Stormwater Regulations* exempts disturbances of less than 5,000 square feet, except in cases where cumulative disturbances exceed a total of 5,000 square feet. The Department or Delegated Agency will use best available aerial imagery and/or field measurements to determine

the cumulative disturbances that would not be exempt. In no case will the review of cumulative disturbances extend back in time prior to the effective date of the current Delaware Sediment and Stormwater Regulations consider disturbances that occurred prior to January 1, 2014.

### **Technical Document**

All activities subject to the ~~Delaware Sediment and Stormwater Regulations~~ shall follow the ~~Regulations as well as Department~~ The policy policies, procedures and guidelines established in this Technical Document have been developed to assist the regulated community in gaining compliance with the Delaware Sediment and Stormwater Regulations. Any additions, corrections or revisions to this Technical Document require public notice prior to adoption of the change. The following procedure shall be utilized for public notice:

1. The Department shall advertise the proposed change in a newspaper of general circulation in the county in which the change is proposed, if applicable, and in a daily newspaper of general circulation throughout the State. The advertisement shall include (1) a brief description of the Department's Sediment and Stormwater Program, (2) the nature of the proposed change (i.e. Technical Document revision), (3) a brief description of the proposed change, and (4) the place at which a copy of the proposed changes may be reviewed.
2. If a meritorious request is made to the Department or Delegated Agency within 15 days or a reasonable time specified in the advertisement, a public hearing shall be held on the proposed change. A public hearing request shall be deemed meritorious if it exhibits a familiarity with the proposed change and a reasoned statement of the proposed program change's probable impact.
3. All public hearings shall be conducted in accordance with 7 Del. C. Ch. 60 §6006.
4. The Department shall be responsible for the cost of the advertisement and of any public hearings.