

## 2.02.1

### Example Grandfathering Scenarios

#### **Background**

In order to provide additional guidance to the regulated community regarding the grandfathering provisions of the *Delaware Sediment & Stormwater Regulations (DSSR)*, the Department has established policy interpretations for the following scenarios:

#### **Scenario 1: Plan expired prior to 12/31/13; construction had commenced.**

Under this scenario, the Department or Delegated Agency would grant a 3-year administrative extension from the most recent expiration date in accordance with Section 1.3.2.2 of the revised *DSSR*. The applicant is responsible for acquiring any additional extensions as necessary to complete the project in accordance with Sections 1.3.2.1 and 3.6 of the revised *DSSR*. Projects that expired more than three years prior to December 31, 2013 would need to submit a variance request in accordance with Section 1.5 of the revised *DSSR* to allow the plan approval to be extended.

#### **Scenario 2: Plan expired prior to 12/31/13; construction had not commenced.**

Under this scenario, the applicant may choose to redesign the plan to comply with the revised *DSSR* or to apply for a variance to the Department in accordance with Section 1.5 of the revised *DSSR*. Article 2.05.1 of the Technical Document contains standard forms to be completed by the applicant for the variance request. The Department may be able to advertise a group of variance requests for public notice, but the variance itself is granted or denied for each individual request. The applicant is responsible for any costs associated with public notice requirements. The Department will review the request with assistance from the appropriate Delegated Agency to verify that the expired plan met the intent of the previous *DSSR* through the use of Green Technology Best Management Practices (GTBMPs). Expired plans that did not employ GTBMPs would generally not be supported by the Sediment & Stormwater Program for a variance.

#### **Scenario 3: Plan expired prior to 12/31/13 for master plan project which included future building pads and/or parcels; regional SWM facility completed.**

Under this scenario, the applicant would submit a Sediment & Stormwater Plan for proposed development of pad site or parcel to appropriate Delegated Agency. The Delegated Agency verifies the proposed development meets the requirements of the original design of the regional SWM facility. If so, the plan can be approved without additional SWM requirements. If not, the proposed development must comply with the revised *DSSR*. The applicant is responsible for acquiring any additional extensions as necessary to complete the project in accordance with Section 1.3.2.1 and 3.6 of the

revised *DSSR*. If construction has not commenced on any remaining pads and/or parcels as of December 31, 2019, those pads and/or parcels will be required to comply with the revised *DSSR*.

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